

PUBLIC BENEFITS TOOLKIT

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By Leslye Orloff, National Immigrant Women's Advocacy Project, American University, Washington College of Law¹,

**Aditi Kumar, J.D. Candidate, American University, Washington College of Law,
and**

**Kristzina Szabo, LL.M. Candidate, American University, Washington College of
Law**

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Public Benefits Toolkit Index

I. Chapters and Training Tools Providing Overview of Immigrant Crime Victims' Legal Rights to Services and Public Benefits

- A. Breaking Barrier Chapter 4.1 - Access to Programs and Services that Can Help Battered Immigrants**
- B. Breaking Barrier Chapter 4.2 - Public Benefits Access for Battered Immigrant Women and Children**
- C. Breaking Barrier Chapter 4.3 - Barriers to Accessing Services: The Importance of Advocates Accompanying Battered Immigrants Applying For Public Benefits**
- D. In Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault- Chapter 16 - Access To Programs And Services That Can Help Victims of Sexual Assault (2013)**
- E. Trafficking Victim Benefits Eligibility Process**
- F. T Visa continued presence public benefits chart - Access to Federal and State Public Benefits for Victims of Human Trafficking**
- G. U Visa Victim Benefits Eligibility Process**
- H. U Visa Public Benefits Flow Chart**
- I. VAWA Public Benefits Eligibility Process**
- J. VAWA Public Benefits Flow Chart**
- K. Evidence List: For Battered Immigrant Women Seeking Public Benefits**
- L. Additional Resources From the National Immigration Law Center**

II. Programs Open to All Without Regard to Immigration Status

- A. AG order – Necessary Protect Life or Safety- Final Regulation**
- B. AG Order – Necessary to Protect Life and Safety – Preamble Request for Comments**
- C. HUD Shelter and Transitional Housing Letter**
- D. Legal Service Program Letter**
- E. Resources on Disaster Relief for Immigrants From the National Immigration Resource Center**

III. Federal Public Benefits: By Topic

- A. HUD**
 - 1. HUD Programs and Immigrant Eligibility**
 - 2. 8 U.S.C. § 1611 – Definition of Federal Public Benefits Open to “Qualified Immigrants” (See 8 U.S.C. § 1641) and Government Funded Assistance Exempt From the Federal Public Benefits Definition and Therefor Open to All Immigrants**
 - 3. 8 U.S.C. 1641 Qualified Immigrants Eligible for Federal Public Benefits**
 - 4. HUD Budget Conference Report (2003)**
 - 5. Letter from DHS to HUD Implementing 2003 Budget Directives (7.03.07)**
 - 6. National Immigration Law Center: Rental Housing Programs: Public housing, Section 8, rural housing, and low-income tax credit housing**
- B. Health and HHS Funded Programs**
 - 1. HHS Funded Programs Open to All Immigrants**
 - 2. CMS Memo on Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women**
 - 3. Additional Resource Materials**

1. **Student Aid Eligibility - Eligibility for Title IV Aid for "Battered Immigrants-Qualified Aliens" as provided for in the Violence Against Women Act**
2. **2009-2010 FAFSA on the Web (FOTW) Home Page and Related Questions**
3. **Chapter 28: Higher Education Resources And Student Assistance Programs Student Assistance General Provisions Relating To Student Assistance Programs**
4. **U.S. Immigration and Customs Enforcement Student and Exchange Visitor Program Overview**
5. **U.S. Immigration and Customs Enforcement Letter to Special Attorney Deputy General of North Carolina Department of Justice, Mr. Thomas Ziko**

D. Food Stamps

E. Low-Income Home Energy (LIHEAP) and Weatherization Assistance Programs (WAP)

1. **Payments for Heating, Cooling, and Weatherization**
2. **Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law**

IV. State Benefits Comparison Charts: By Topic

A. Multiple Benefits

1. **Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services**
2. **Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children**
3. **Quick Guide For State Court Judges On Common Issues That Arise From Parties' Immigration Status: Economic Remedies**

B. Childcare

1. **Childcare Access Chart**

C. Health Care

1. **Medical Assistance Programs for Immigrants and Immigrant Crime Victims: State by State**
2. **Post-Assault Healthcare And Crime Victim Compensation For Immigrant Victims Of Violence; State by State Chart**
3. **Coverage for Forensic Costs: State by State Chart**
4. **Coverage for Emergency Medicaid: State by State Chart**
5. **Coverage for Prenatal Care: State by state chart**

D. TANF

1. **Eligibility for State Funded TANF Replacement**

E. Food Assistance

1. **State-Funded Food Assistance Programs (NILC)**

F. SSI Benefits (NILC)

1. **State-Funded SSI Replacement Programs**

V. Drivers Licenses and Social Security Numbers

A. Acceptable Forms of Identification for State Drivers License/Identification Card

B. U.S. Department of Health and Human Services Memo on SSN

C. Memorandum on Steps to Obtain a Social Security Number for an Undocumented Immigrant and/or Child

D. Evidence List for an Undocumented Immigrant and/or Child to Obtain Social Security Numbers

VI. Screening and Eligibility

A. Public Benefits Access For Battered Immigrant Women and Children

VII. Additional Government Documents Relevant to Access to Public Benefits and Services for Immigrant Crime Victims

- A. Department of Justice Memorandum on : Motions for “Prima Facie” Determination and Verification Requests for Battered Spouses and Children**
- B. Field Guidance Re: Prima Facie Review of Form 1-360 when filed by a Self-Petitioning Battered Spouse/Child**
- C. Department of Homeland Security Memorandum on Extension of Validity Period for Notices of Prima Facie Case Issued in Connection with a Form 1-360 Filed by a Self-petitioning Battered Spouse/Child**
- D. Interim Guidance On Verification Of Qualified Immigrant Status For Benefits Purposes**
- E. [AG Order No. 2097-97]: Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits**
- F. [AG Order No. 2131-97]: Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits**

**Part I: Chapters Providing Overview
of Immigrant Crime Victims' Legal
Rights to Services and Public
Benefits**

A. Breaking Barrier Chapter 4.1 - Access to Programs and Services that Can Help Battered Immigrants

4.1

Access to Programs and Services that Can Help Battered Immigrants¹²

By Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang

Chapter Overview

Despite recent legal changes that restrict immigrant access to many forms of public assistance, battered immigrants continue to remain eligible for a wide array of programs and services.³ In recognition of the special needs of victims of domestic violence, the federal government has lifted many of the restrictions it otherwise imposes on immigrant access to legal and social services, allowing nonprofit organizations to provide a variety of services to battered immigrants regardless of their immigration status.⁴

1 "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women." We wish to gratefully acknowledge Jody Feder of Yale Law School, Maunica Sthanki of Louisiana State University, Anne Cortina of Yale Law School, and Autumn Brietstein of the University of Michigan School of Law for their contributions in the preparation of this chapter.

2 In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ For more information on this topic, visit <http://niwaplibrary.wcl.american.edu/public-benefits>.

⁴ It is important to note that despite immigrant restrictions on government services, nonprofit charitable organizations have no legal obligation to inquire about the immigration status of persons who seek their services, nor do they have a legal

Battered Immigrants' Access to Services

This chapter highlights several important types of assistance that nonprofit organizations serving immigrant victims of domestic violence may provide and discusses the requirements that service providers must meet when working with battered immigrant populations. Specifically, the chapter describes shelter services, victim compensation, legal assistance, and other types of federal benefits that organizations may provide to battered immigrants. Next, it discusses federal laws prohibiting service providers from discriminating on the basis of national origin and requiring them to provide services without regard to immigration status when necessary to protect the life and safety of a victim.

Access to Shelter

INTRODUCTION

According to federal law and orders issued by the U.S. Attorney General, undocumented shelter residents qualify for federally funded emergency and short-term shelter and housing programs, as well as other forms of state and federally funded assistance necessary to “protect life and safety.” In addition, service providers who receive funds under other federal programs may help undocumented immigrants if they provide assistance regardless of income eligibility criteria. As a result, shelters can use certain types of federal funding to house undocumented women and to provide other social services to battered immigrants without penalty. This section discusses the legal and funding guidelines that permit and require domestic violence shelters to provide assistance to all battered immigrant women regardless of immigration status by treating them as they would any other battered woman or shelter resident.

With recent changes in federal immigration and welfare laws, there has been much concern in the domestic violence advocacy community about providing shelter and transitional housing services to battered immigrant women. Two major fears were whether shelter advocates could house undocumented residents without risk of losing federal funds and whether battered immigrants could qualify for shelter services or certain other types of public assistance in the first place. As a matter of law, battered immigrant women have full access to government funded domestic violence shelters and services *even if* they are undocumented. Furthermore, federal laws and decisions confirm that domestic violence service providers should provide shelter services, emergency services, short-term housing, domestic violence services, counseling, and most other services to undocumented battered women in the same manner that these services are available to all other battered women. Programs that turn away undocumented battered immigrants risk being charged with discrimination in violation of Federal law and loss of federal funding.

While the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (commonly referred to as PRWORA or the Welfare Reform Act) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) cut certain benefits for certain immigrants. Congress and the U.S. Attorney General have affirmed that public benefits should be available to help battered immigrants rebuild their lives after leaving their abusers. Thus, many battered immigrant women remained eligible for and were granted increased access to public benefits. These amendments underscore Congress' commitment to ensuring that battered immigrant women have full access to services and protection from ongoing abuse.

Moreover, all battered immigrants qualify for federal, state, and locally supported emergency and short-term shelter programs, regardless of immigration status. This understanding is derived from the Welfare Reform Act, IIRAIRA, orders of the U.S. Attorney General, the Fair Housing Act, the McKinney Homeless Act, the Violence Against Women Act (VAWA), and guidance issued by federal agencies that serve domestic violence victims. This section will explain how each of these legislative acts and executive decisions protect a battered immigrant's right to shelter services and other types of public assistance, exempt shelters and other domestic violence service providers from the U.S. Citizenship and Immigration Services (CIS) verification and reporting guidelines, prevent discrimination against immigrants, and allow federal funds to be allocated to shelters and other organizations serving battered immigrants.

obligation to report this information to the Immigration and Naturalization Services (now CIS, the United States Bureau of Immigration and Customs Enforcement). 8 U.S.C.S. § 1642(d).

PROVISION OF SHELTER SERVICES UNDER WELFARE REFORM AND THE U.S. ATTORNEY GENERAL'S LIST OF SERVICES NECESSARY TO PROTECT LIFE AND SAFETY

The Welfare Reform Act put in place major changes to the welfare system in an effort to “promote[s] work over welfare and self-reliance over dependency.”⁵ However, while Congress wanted to shrink the rolls of the welfare system, it acknowledged that some people still needed assistance and could not be abandoned. To assist these needy persons, the bill “retains protections for those who experience genuine and intractable hardship.”⁶ Congress recognized that “qualified aliens” are exempt from certain federal benefits cutoffs.⁷ Battered immigrant women and children abused by U.S. citizen or lawful permanent resident spouses, former spouses, or parents are included in this qualified alien exemption category.⁸

Moreover, while state and local government officials are allowed to contact the BCIS for information on a person’s immigration status, the Welfare Reform Act does not explicitly require them to do so.⁹ The Act is written in this way as a compromise to offer officials the flexibility not to report when doing so would be contrary to other state interests (i.e., prosecuting crimes or protecting victims of domestic violence).

The Welfare Reform Act also gives the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, even if they are state or federally funded. Programs that meet the following criteria are required to provide services to all persons without regard to immigration status. These programs are also completely exempt from any requirements that they verify or report the immigration status of persons seeking or receiving their services. To be exempt, programs must:

- offer in-kind services¹⁰
- provide services at the community level
- provide services regardless of the individual’s income or resources and
- be necessary to protect life or safety¹¹

The following public assistance programs provided by community-based agencies have been designated by the U.S. Attorney General to be open to all persons, even undocumented immigrants, without regard to immigration status:¹²

- Crisis counseling and intervention programs;
- Services and assistance relating to child protection;
- Adult protective services;
- Violence and abuse prevention;
- Services to victims of domestic violence or other criminal activity;
- Treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children;
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens;
- Community food banks;
- Senior nutrition programs and other nutritional programs for persons requiring special assistance;

⁵H.R. REP. NO. 104-725, at 261 (1996).

⁶*Id.*

⁷The term “qualified alien” refers to non-citizens who are nonetheless eligible for public benefits.

⁸Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 501(c), 110 Stat. 3009-625 (1996).

⁹H.R. REP. NO. 104-725, at 383 (1996).

¹⁰“In-kind” services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, etc.

¹¹AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996); AG Order No. 2170-98, 63 Fed. Reg. 41,662, 4166 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

¹²AG Order No. 2049-96, 61 Fed. Reg. 45,985 (1Aug. 30,1996); see also Attorney General's list included in the Appendix to this Manual.

Battered Immigrants' Access to Services

- Medical and public health services and mental health disability or substance abuse assistance necessary to protect life and safety; and¹³
- Activities designed to protect the life and safety of workers, children, and youths or community residents.

When the U.S. Attorney General specified what programs were to be open to all persons, domestic violence shelters and service providers were specifically included.¹⁴

By being included in the above list, shelters are legally permitted and required to offer their services equally to battered immigrant women as to all other battered women without regard to immigration status. Furthermore, as nonprofit, charitable organizations, shelters can legally provide services and are explicitly allowed to do so without asking any questions about immigration status and without any immigration status verification of those being served. Additionally, nonprofit, charitable organizations, including shelters, cannot be penalized for failing to verify immigration status.

IIRAIRA AND REPORTING REQUIREMENTS

In November of 1997, the U.S. Attorney General issued guidelines that specifically state “nonprofit charitable organizations” are not required to inquire into immigration status or ensure that applicants are “qualified aliens” before providing them services or benefits.¹⁵ This is true even when the nonprofit organization is using funds deemed federal public benefits (e.g., TANF funds) to provide services to an immigrant who may be undocumented.¹⁶ If a shelter administers TANF funds for its residents, the shelter may provide those funds to all residents who otherwise qualify, without regard to immigration status. In so stating, the Department of Justice indicated that its commitment to helping battered immigrants and others who truly need assistance from these programs is more important than identifying the immigration status of applicants. Thus, as a matter of federal law, shelters and other domestic violence service providers can be assured that they can and are required under the U.S. Attorney General’s and the Department of Health and Human Service’s directives to provide shelter and other services to protect the lives and safety of all battered women, even those who are in the country without legal papers.

The U.S. Attorney General’s guidance states, “A nonprofit charitable organization that chooses not to verify cannot be penalized . . . for providing federal public benefits to an individual who is not a U.S. citizen, U.S. non-citizen national, or qualified alien.”¹⁷

The only exception to this is if the state TANF agency or other nonexempt entity has verified the immigration status of the immigrant domestic violence victim following verification procedures set forth by the U.S. Attorney General. If a government entity notifies a shelter that a particular immigrant does not meet verification requirements, TANF funds could not be used to house that immigrant.¹⁸ Even in those

¹³This definition includes: immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services, and treatment for sexually transmitted diseases. See Claudia Schlosberg, *Not qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998).

¹⁴Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation. AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

¹⁵Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,345 (Nov. 17, 1997).

¹⁶U.S. Department of Health and Human Services, *Policy Q's & A's – Immigrants*, available at <http://www.acf.dhhs.gov/programs/ofa/polquest/immigran.htm> (date revised Jan. 30, 2001).

¹⁷AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997).

¹⁸This problem would only arise if a battered immigrant sought benefits from a public benefits agency for which she did not qualify. It could also arise if she applied for benefits for her children and the benefits-granting agency verified her immigration status despite the fact that she was not applying for benefits for herself. Verifying the immigration status of a non-applicant is a violation of federal law. For this reason, we highly recommend that battered immigrants not apply for benefits unless they are accompanied by an advocate who is familiar with the U.S. Attorney General’s Guidance and HHS policy directives regarding procedures requiring that agencies only ask about immigration status and social security number information for the persons on whose behalf the benefits are being sought. See AG Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997). See also Verification of Eligibility for Public Benefits, AG Order No. 2170-98, 63 Fed. Reg. 41,662, 41,662-65 (Aug. 4, 1998); DEP’T OF HEALTH AND HUMAN SERV. AND DEP’T OF AGRICULTURE, POLICY GUIDANCE REGARDING

Battered Immigrants' Access to Services

circumstances, the undocumented battered immigrant would continue to be fully eligible for all other shelter services except TANF, Medicaid, or other programs which are federal means-tested public benefits. The shelter simply would not apply for TANF funds for that resident but would be able to use funds it receives from other sources. These sources could include other state, local or federal government funds, foundation grants, grants from ecumenical programs, and funds from other sources raised by domestic violence programs. (See the discussion of unrestricted federal funding programs later in this section and the chapter on benefits elsewhere in this manual.)

DISCRIMINATION

THE U.S. ATTORNEY GENERAL'S GUIDANCE

Service providers who help women escape abusive relationships must be aware that programs receiving federal funds are required to provide services in a nondiscriminatory manner. Congress has consistently upheld the right of immigrants to be free from discrimination based upon their immigration status. The U.S. Attorney General's guidelines for implementing the Welfare Reform Act acknowledge that Title VI "prohibits discrimination on the basis of race, color, or national origin in any program or activity . . . that receives federal funds or other federal financial assistance."¹⁹ The guidelines further state:

This prohibition applies to disparate treatment, as well as to the utilization of facially neutral procedures . . . that have the effect of discriminating against individuals because of their race, color, or national origin . . . A benefit provider that denies benefits or delays determinations of eligibility on the basis of an individual's race, color or national origin may violate Title VI. A benefit provider may violate Title VI if it concludes that applicants are ineligible for benefits because they have ethnic surnames or origins outside the United States, or because they look or sound foreign. It also may violate Title VI if it acts upon the assumption that applicants with these characteristics are illegal aliens, or if it imposes additional eligibility requirements on ethnic or racial minorities because of their ethnicity or race.²⁰

When nonprofit organizations exempt from CIS verification and reporting requirements ask about or attempt to verify status before providing services or assistance, they risk violating the prohibitions of Title VI.²¹

Furthermore, protection against national origin discrimination under Title VI encompasses individuals with limited English proficiency (LEP). Under Executive Order 13166, federal agencies are required to ensure that programs who are recipients of federal financial assistance provide meaningful access to their programs and activities for LEP individuals.²² Thus, if federally funded organizations that serve immigrants refuse to assist individuals who speak another language, they violate the prohibition against LEP discrimination. Because Executive Order 13166 requires each federal agency to issue specific guidance regarding compliance with the LEP nondiscrimination policy, organizations that receive federal funding should consult the relevant agency for additional guidance. In conjunction with Executive Order 13166, the Department of Justice provides a list of agency guidance on their website.²³

THE FEDERAL FAIR HOUSING ACT

Domestic violence shelters should further be aware that their services are subject to the Fair Housing Act, which prohibits discrimination on the basis of race, national origin, color, religion, sex, familial status, or

INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS, available at www.hhs.gov/ocr/immigration/triagency.html (last modified Sept. 21, 2000).

¹⁹ AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,360 (Nov. 17, 1997).

²⁰ *Id.*

²¹ Verification, Reporting and Confidentiality, 6 *in* National Immigration Law Center in IMMIGRATION AND WELFARE RESOURCE MANUAL: 1998 EDITION (National Immigration Law Center ed., 1998).

²² Improving Access to Services for Persons With Limited English Proficiency, Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

²³ Available at www.usdoj.gov/crt/cor/13166.htm.

Battered Immigrants' Access to Services

disability.²⁴ Shelters fall under the rubric of fair housing because they are considered "dwellings" under the law. A dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families."²⁵ The term residence is not defined by the statute, but courts have developed interpretations through case law. The courts have set forth various tests to determine whether a building is a "dwelling" and thereby bound to operate in compliance with the provisions of the Fair Housing Act.

For example, in the case of *Baxter v. City of Belleville*, the court looked to the objective intent of the director of the facility.²⁶ In that case, the facility was an AIDS hospice and the director installed a kitchen unit in the building. The court determined that the objective intent of the director was to use the building as a residence because he installed a kitchen where there previously had been none.²⁷ The court further determined that persons living at the hospice were not "mere transients", but rather were residents with the intent to return to that dwelling.²⁸ Preliminarily, the court found that adding kitchen units for individuals who would remain there temporarily or permanently made the building a residence. In turn, the AIDS hospice was bound by the provisions in the Fair Housing Act and could not discriminate against any individual on the basis of race, sex, national origin, color, religion, race, familial status, or disability. Similarly, domestic violence shelters are equipped with kitchens and their residents live there for an unspecified period of time while seeking other more permanent housing arrangements.

A later case also determined that a shelter for the homeless was a "dwelling" under the Fair Housing Act. *Woods v. Foster*, decided in 1995, further defined the term "dwelling" and what buildings fit into that definition.²⁹ In this case, the court deemed a homeless shelter to be a "dwelling" based on the intent of the visitor rather than the visitor's length of the stay at the shelter. The court stated, "Although the shelter is not designed to be a place of permanent residence, it cannot be said that the people who live there do not intend to return – they have nowhere else to go."³⁰

Women staying in domestic violence shelters have the intent to return there while they are shelter residents, however short their stay may be. Most shelters even have requirements that residents return to the shelter by a specified time each night. Furthermore, domestic violence shelter residents have no other safe place to reside because the violence in their homes has forced them to flee and seek shelter. The intent of the women is to return to the shelter because she has no other place where she may safely return. For some period of time, each woman who stays at a shelter *intends* to return there the next night.

These cases clarify that domestic violence shelters are bound by the Fair Housing Act. Failure to comply with this Act could put a shelter at risk of lawsuits or government enforcement actions. In order to protect themselves, it is advisable that shelters develop protocols for screening potential residents that are not based on any of the discriminatory factors prohibited under the Act such as race, national origin, language capabilities, or immigration status.

IMMIGRANT ACCESS TO FEDERALLY FUNDED PROGRAMS

The only federal programs from which immigrant access is restricted by the Welfare Reform Act or IIRAIRA are federal means-tested public benefits and federal public benefits.³¹ The only federal funds that fall into these categories are federal funds paid directly to an individual, a family unit, or a household. (For more detailed rules regarding these categories of federal programs, see the Benefits Chapter.) Thus, all state or federal funds provided to a shelter or other service provider to assist the organization in its work with battered women fall within the definition of "federal public benefits." Federal and state funding of domestic violence

²⁴Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.*

²⁵42 U.S.C. § 3602(b).

²⁶720 F. Supp. 720, 731 (S.D. Ill. 1989).

²⁷*Id.*

²⁸*Id.*

²⁹884 F. Supp. 1169 (N.D. Ill. 1995).

³⁰*Id.* at 1173.

³¹8 U.S.C.S § 1611-1613.

Battered Immigrants' Access to Services

shelters or service programs are not “federal public benefits” and are not subject to any immigrant access restrictions.

“Federal public benefits” often include direct monetary assistance (e.g., TANF, Food Stamps, Medicaid, and SSDI). Nevertheless, not all of the benefits or services paid by federal public benefit programs count as “federal public benefits” under the law. Some benefits or services under such programs “may not be provided to an ‘individual, household, or family eligibility unit’ and, therefore, do not constitute ‘Federal public benefits’ as defined by PRWORA.”³² For example, Food Stamps are federal public benefits. However, food provided by a shelter or food bank is not a federal public benefit even if some or all of the food is purchased with federal dollars. Similarly, TANF funds that are paid to support the work of a shelter are not federal public benefits.³³

Immigration and welfare reform legislation place no new restrictions on immigrant access to other federally funded services. Since each of the programs listed below are grants awarded to nonprofit organizations and other programs that provide services to domestic violence victims, crime victims, and the homeless, federal dollars awarded by these programs are not “federal public benefits” and do not impose any restrictions on immigrant access. Programs that receive funds from any of the sources listed below must make their services available to all to avoid being in violation of federal discrimination and fair housing laws.

In addition to the specific programs listed below, funds that benefit battered immigrants are also available under the Victims of Crime Act (VOCA) programs, which are discussed separately later in this chapter. The appendix of this manual provides a list of some of the major federally funded programs that fall both within and outside the category of “federal public benefit” programs. Some federal agencies have also published guidances that list which of their programs are considered federal public benefits, which service providers may wish to consult. Programs deemed “federal public benefits” may only be accessed by battered immigrants who are qualified aliens, but programs not deemed federal public benefits are open to all immigrants without regard to immigration status.

DEPARTMENT OF JUSTICE FUNDING

The Violence Against Women Act (VAWA)

Passed in 1994 and amended in 2000, The Violence Against Women Act has designated more than \$1 billion in state grants to fund expanded shelter and related social services for battered women, a national domestic violence hotline, domestic violence research efforts, and educational programs for judges, police, prosecutors, and other court personnel.³⁴ The Victims of Trafficking and Violence Protection Act of 2000 describes underserved populations as:

“populations underserved because of geographic location (such as rural isolation), underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the State planning process in consultation with the Attorney General.”³⁵

The definition of “underserved populations” includes immigrant communities by specifically incorporating alienage status as well as cultural, ethnic, and language minority populations. Additionally, under VAWA, procedures set forth in the plan to ensure equal distribution of grant funds require states to consider the needs

³² Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³³ U.S. Department of Health and Human Services, *Policy Q's & A's – Immigrants*, available at www.acf.dhhs.gov/programs/ofa/polquest/immigran.htm (last modified Jan. 2001).

³⁴ Julie Goldscheid & Susan J. Kraham, *The Civil Rights Remedy of the Violence Against Women Act*, 29 CLEARINGHOUSE REV. 505, 506 (1995).

³⁵ Pub. L. No. 106-386, § 1103, 114 Stat. 1464, 1496, codified at 42 U.S.C. § 3796gg-2.

Battered Immigrants' Access to Services

of underserved populations. These include those immigrant populations underserved because of ethnic, racial, cultural, or geographic isolation.³⁶

Under VAWA, alienage status is included in the list of underserved populations making assistance to immigrant victims of violence eligible for VAWA funding. Programs that receive grant funding from the Department of Justice's Office on Violence Against Women (OVW) can use those funds to help clients who are immigrant victims of domestic violence, sexual assault, and trafficking. Programs are encouraged to seek funding to provide assistance to underserved populations, including immigrant victims. It is also important to note that programs receiving OVW funding can use that funding to serve immigrant victims even if such services were not highlighted in the grant application.

VAWA aims to ensure that all battered women, regardless of nationality, language ability, or immigration status, receive equal access to domestic violence services that will free them from further abuse. VAWA grants are therefore not restricted based on alienage or national origin.

The OVW administers several grant programs, including: STOP grants (Services, Training, Officers, and Prosecutors; described below), Grants to Encourage Arrest Policies and Enforcement of Protection Orders, Rural Domestic Violence and Child Victimization Enforcement Grants, Legal Assistance for Victims Grants, and Grants to Reduce Violent Crimes Against Women on Campus. Programs that receive OVW grants must provide services without immigration restrictions and can use OVW grant funds to provide assistance to battered immigrants in immigration matters.³⁷

STOP Grants

STOP grants (Services, Training, Officers, and Prosecutors) are given to states to develop and strengthen the criminal justice response to violence against women.³⁸ State grants are allocated by formula to various activities, with 30 percent of the funds dedicated to victim services, 25 percent allocated to police, 25 percent earmarked for prosecutors, 5 percent set aside for state courts, and 15 percent dedicated to a discretionary category.³⁹ The program is intended to train law enforcement officers, court personnel, and prosecutors to respond more effectively to violent crimes against women. Funds may be used for training, expanding domestic violence units, strengthening victim services, and providing assistance to victims of domestic violence and sexual assault in immigration matters.

The U.S. Attorney General has issued guidelines relating to the use of federal monies and the manner in which states disburse their allotted share. The most critical guideline for this discussion requires that states, "...recognize and address the needs of underserved populations." STOP funding is fully available to programs working to help all domestic violence victims including battered immigrants. Specifically identifying the alienage status and language barriers to many domestic violence programs, the program helps battered immigrants by improving the language accessibility of the justice system, increasing services in other languages, and developing outreach programs to be conducted in previously underserved immigrant communities.

Grants to Encourage Arrest Policies and Enforcement of Protection Orders

Grants to Encourage Arrest Policies and Enforcement of Protection Orders (Arrest Program grants) are designed to encourage state and local governments to treat domestic violence as a serious problem by requiring the coordinated involvement of the entire criminal justice system. Funds may be used for executing mandatory and pro-arrest programs, developing policies and training in criminal justice agencies for domestic violence case tracking, and educating judges about domestic violence. Special consideration is given to programs that develop innovative approaches to responding to domestic violence in categories such as outreach to traditionally underserved populations, coalitions between businesses and the criminal justice

³⁶S. REP. NO. 103-138, (1993).

³⁷Pub. L. No.106-386, § 1201, 114 Stat. 1464, 1504, codified at 42 U.S.C. § 3796gg-6.

³⁸Violence Against Women Act of 2000,. Pub. L. No. 103-322, § 40121. 108 Stat. 1796, 1911, codified at 42 U.S.C. § 3796gg-1.

³⁹Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1103, 114 Stat. 1497.

Battered Immigrants' Access to Services

system to ensure the safety of women in the community, and stopping domestic violence by police officers within the community. Applicants are required to enter into formal collaborations with nonprofit organizations serving victims of domestic violence.

Grants to Reduce Violent Crimes Against Women on Campus

The Campus Program is intended to strengthen the higher education community's response to sexual assault, stalking, domestic violence, and dating violence crimes on campuses and to encourage alliances between campuses and local criminal justice and victim advocacy organizations. The goals of the program are to assist institutions of higher learning to create a coordinated community response to end violence against women on campuses and ally themselves with local non-profit victim advocacy and civil justice organizations. Grant funds may be used for training, creation and development of victim services programs, installing data collection and communication systems, and other programs of the like. Priority consideration will be given to programs that address enumerated "special interests".

The amount of funding disbursed hinges on a variety of factors including the scope of activities proposed and the number of students served. Applicants are required to submit a copy of their application to the agency that administers STOP grants. To enhance victim safety and hold perpetrators accountable, applicants are discouraged from proposing any activities that may compromise victim safety.

Rural Domestic Violence and Child Victimization Enforcement Grants

The Rural Domestic Violence and Child Victimization Enforcement Grants are designed to enhance services available to victims and children by encouraging community involvement in developing a coordinated response to domestic violence, dating violence, and child abuse. A state is considered rural if it has a population of 52 or fewer persons per square mile or the largest county has less than 150,000 people. In rural states, eligible applicants are state and local governments and public and private entities. Non-rural states may apply on behalf of rural jurisdictions in their states. Eligible applicants also include tribal governments in rural and non-rural states. At least five percent of the funding for this program must be available for grants to Indian tribal governments.

States are encouraged to administer this program through the same agency that administers the STOP grants, unless there is a compelling reason to place responsibility for rural programs with a different agency. Again, to enhance victim safety and hold perpetrators accountable, applicants are discouraged from proposing any activities that may compromise victim safety.

HUD AND HHS GUIDANCE ON PROGRAMS FOR BATTERED IMMIGRANTS

Federal agencies that administer grant programs serving domestic violence victims- HUD and HHS- have issued guidance with respect to shelter services for battered immigrants. Since many of the federal agency grant programs are bound by the same rules discussed above, including the Title VI prohibition against discrimination on the basis of national origin, the Attorney General's list of services necessary to protect life and safety, and the definition of federal public benefit, the agency guidance generally tends to reiterate these rules and delineate how they apply to the agency's programs specifically. Thus, the HUD and HHS guidance on provision of services to immigrants are addressed only briefly here.

HUD guidance on services to battered immigrants clarifies that both emergency and short-term shelter for victims of domestic violence have been deemed by the Attorney General to be services necessary to protect life and safety. HUD emphasizes that HUD-funded programs that provide emergency shelter and transitional housing for up to two years, but that do not consider the recipient's income or resources when providing assistance, must make their services available to all needy individuals, including battered immigrants who may be undocumented and/or not qualify for other types of federal means-tested benefits.⁴⁰ HUD emphasizes that organizations that disregard the laws and guidance with respect to services for battered immigrants are

⁴⁰Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) (on file with author).

Battered Immigrants' Access to Services

subject to sanctions. Organizations receiving HUD funding who turn undocumented immigrants who are victims of domestic violence away from shelter or transitional housing risk losing federal funding.

Likewise, HHS guidance clarifies that battered immigrants are eligible for services provided by domestic violence shelters and other domestic violence programs, that receive HHS funding under the Family Violence Prevention and Services Act, community and migrant health centers, Community Services Block Grant, substance abuse, mental health, and maternal and child health programs.⁴¹ Many of these programs provide services that are considered necessary for the protection of life and safety, while others are open to all persons without regard to immigration status because they do not meet HHS's definition of federal public benefit programs.⁴²

HUD – McKinney Homeless Act Funding

In the eyes of the law, domestic violence shelters are considered homeless shelters because they help battered women who would otherwise be homeless. Some domestic violence programs receive McKinney Homeless Act funds as programs which allow homeless individuals and families to move to more permanent housing within twenty-four months...⁴³ This Act places no alienage restrictions on those persons who can access emergency shelter and short-term or transitional housing facilities, nor does it require operators of McKinney Act-funded programs to inquire into the immigration status of their residents.⁴⁴ Under the McKinney Act, shelter services must be available to all needy individuals, and shelters receiving McKinney Act funds may use those funds to serve all battered immigrants, including undocumented battered immigrants.

HHS – Family Violence Prevention and Services Act Funding

FVPSA (Family Violence and Prevention Services Act) grants are awarded to states for distribution to support programs that provide services to battered women. This funding provides services to domestic violence victims and their dependents. Funded services include shelter, counseling, preventive activities, and outreach. The Family Violence Prevention and Services Act funds the national domestic violence hotline and has at times specifically provided discretionary grants directed toward improving domestic violence services to immigrant and migrant communities. Further, FVPSA funds can be used to serve battered victims without regard to their immigration status.⁴⁵

FVPSA also urges states to devote a portion of their FVPSA funding to improve their services to underserved populations. FVPSA further allows the individual states to determine the underserved population within their borders and create better programs for that population. Consistent with the intention of Congress in passing the Violence Against Women Act, which contained amendments of FVPSA, funds may be used to serve underserved immigrant battered women. Programs serving battered women with FVPSA funds must serve any victim of domestic violence without regard to immigration status.⁴⁶ Programs that receive FVPSA funding who turn undocumented or non-citizen battered women away from receiving services risk HHS sanctions.

CONCLUSION

⁴¹ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

⁴² Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658 (Aug. 4, 1998).

⁴³ See Stewart B. McKinney Homeless Act of 1987, 42 U.S.C. § 11301.

⁴⁴ 42 U.S.C. §§ 11301-11302.

⁴⁵ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

⁴⁶ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001). ("In most cases, HHS-funded programs serving domestic violence victims are available to all immigrants who have been abused when those programs do not impose eligibility criteria, such as income. These programs include, but are not limited to, FVPSA-funded programs, community and migrant health centers, Community Services Block Grant (CSBG), substance abuse, mental health and maternal and child health programs.")

Battered Immigrants' Access to Services

Despite recent legislation that generally treats immigrants more harshly, battered immigrant women and children have been consistently singled out for additional protection by that very same legislation. An examination of current statutes and grant programs reveals that the federal government remains committed to protecting battered immigrants without regard to their immigration status.

Therefore, shelters and other domestic violence programs need not fear opening their doors to any immigrant who needs their services. In fact, shelters that do turn immigrant women away may actually open themselves up to federal enforcement actions for discrimination. Shelters and transitional housing programs that receive some form of federal funding must provide emergency shelter, transitional housing for up to two years, and other domestic violence services to all battered women, including those who are undocumented. Battered immigrant women, like battered women from other underserved populations, desperately need access to the protection provided by battered women's shelters and other social services programs. In many communities, cutting off battered immigrants from shelter programs isolates them from the only service providers in their community who are domestic violence experts. The information in this section can be used to educate other advocates, state officials, and local grant programs about keeping shelters and other social services programs open and accessible to everyone who needs them.

Access to Victims of Crime Act (VOCA) Funds

INTRODUCTION

Although all battered immigrants can legally access shelter, transitional housing, and domestic violence services, many will not qualify to access the full range of public benefits that they may need for economic survival apart from their abusers. Despite their need for economic resources, battered immigrants may be restricted in their ability to access many of the financial safety nets available to non-immigrant victims of domestic violence. These restrictions prevent many battered immigrants from being economically self-sufficient, and force them to remain in abusive relationships to survive or care for their children's needs. Crime victim compensation and assistance programs may provide one source of relief and services for battered immigrants to help them cover expenses related to their victimization by their abuser.

The Victims of Crime Act (VOCA) established two major formula grant programs for the states – one for victim compensation and the other for victim assistance. The Crime Victims Fund, derived from fines, penalty assessments, and bond forfeitures from convicted federal offenders, is the source of the federal funds provided to the states. State programs serve victims of domestic violence, sexual assault, and child abuse. Thus, battered immigrants may be eligible for VOCA services and compensation to help end the violence in their lives.

VOCA grants were created to 1) provide direct victim services including safety services (e.g., repairing broken locks), information about how they can participate and understand the criminal justice system, and funds to stabilize life circumstances, and 2) provide victim assistance funds for agencies that respond to the physical and emotional needs of crime victims.⁴⁷ VOCA provides funding that states can use to support programs, including domestic violence shelters and services that assist battered women who are crime victims.

States receiving VOCA funds are required to "identify gaps in available services [to] ... 'underserved' victims, [which include] ... non-English speaking residents ... [and] members of racial or ethnic minorities ..."⁴⁸ The requirement further notes that each state has the discretion to determine who the underserved population is within their borders. The formal grant requirements do not exclude any group of persons. In fact, this requirement allows states to incorporate undocumented immigrants into the group of persons entitled to better services due to inadequate services in the past.

⁴⁷DEPARTMENT OF JUSTICE, FINAL PROGRAM GUIDELINES, <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/vaguide.htm> (last updated June 23, 2004).

⁴⁸*Id.*

Battered Immigrants' Access to Services

In addition to these state formula grant programs, VOCA funds are also available for victims of federal crimes under the Federal Crime Victim Assistance Fund, which supports activities similar to those conducted under the state programs described below.

VICTIM COMPENSATION

Victim compensation programs vary by state, but all programs reimburse victims for crime-related expenses, including: medical costs; mental health counseling; funeral and burial costs; and lost wages. Federal funds provide a portion of the state compensation program budgets. State funds provide the remainder of the budget, and state laws govern the precise types of compensation available.

In some states, compensation is available for other domestic violence related needs, such as counseling for children who witness domestic violence or lost support (paid to a victim if reporting the crime leaves the victim without financial support from the offender). Domestic violence victims can also benefit from state compensation statutes that cover the following expenses:

- Moving expenses for victims
- Legal expenses
- Wages lost while attending legal proceedings related to the case
- Hotel rooms
- Housing and utility deposits
- Emergency expenses.

These types of financial compensation may provide victims with the temporary assistance they need to leave their abusers. Emergency financial aid payments may be particularly useful for immigrant victims of domestic violence whose economic resources are limited.

In some states, domestic violence victims may have difficulty complying with the state's conditions for receiving victim compensation. VOCA requires victim compensation programs to "promote victim cooperation with the reasonable requests of law enforcement authorities."⁴⁹ Individual states, however, have victim compensation requirements at odds with the circumstances of many victims of domestic violence. For instance, some states require victims to report the crime to law enforcement within seventy-two hours, cooperate with the police and prosecution, and submit a timely application, in order to receive victim compensation benefits.

Battered immigrants may be particularly unable to comply with strict victim compensation rules. For instance, a battered immigrant may be unaware of a seventy-two-hour reporting requirement or unable to communicate effectively in English. They are unlikely to know that they are eligible for victim compensation benefits until an informed victim advocate or immigrant rights advocate who speaks their language informs them of these laws. Alternatively, the victim may be reluctant to call the police because her abuser has said the police will deport her or because of prior experiences with repressive police forces in her home country. Similarly, battered immigrants may be afraid to work with the police or prosecutors because of misperceptions of the United States legal system, or because of language and cultural barriers. Advocates working with battered immigrants should inform them about VOCA eligibility and assist them in filing timely applications.

Battered immigrant victims of sexual assault who qualify for U-visas because they are crime victims must be willing to report the crime to law enforcement or other government officials (e.g., prosecutors and the EEOC). To qualify they must obtain a certificate from a government official stating that they have been, are being, or will be helpful in an investigation or prosecution of criminal activity. Further, U-visa crime victims will not qualify for public benefits, so victim assistance funds can provide critical financial support to help them bridge the gap between leaving abuser, and attaining work authorization, based on their U-visa, and securing employment. Advocates should conduct careful safety planning with immigrant victims whose only

⁴⁹42 U.S.C. § 10602(d)(2).

Battered Immigrants' Access to Services

option for attaining legal immigration status is thru the U-visa to help them determine whether they can safely report the crime to officials and cooperate in any resulting investigation or prosecution. If so, advocates should encourage reporting in a timely manner consistent with state VOCA eligibility rules so that the immigrant victim can also receive VOCA support based on her report of the crime to law enforcement.

Many states are revising their victim compensation policies to be more responsive to the dynamics of domestic violence. These changes are likely to benefit battered immigrants as well. Several states have changed their seventy-two-hour reporting requirements, instead requiring a report to be made within a reasonable period of time. This should enable victims of domestic violence to get to a safe place and protect themselves prior to pursuing criminal charges. In New York, victims of domestic violence may be compensated even if they do not initiate criminal cases against their abusers, but rather seek orders of protection in Family Court.⁵⁰ This policy recognizes that victims of domestic violence may have justifiable reasons for failing to prosecute. These reasons may include fear for their safety based on their abusers' threats or prior violence.

California's guidelines permit a report to be made by a battered women's shelter employee, friend, relative, neighbor, or clergy person, in addition to the victim. This provision can help battered immigrants who do not speak English, or who are unaware of victim compensation benefits, receive assistance from others in filing claims. The state also interprets "lack of cooperation" narrowly, recommending that victims receive benefits unless they actively interfere with police or prosecution efforts to hold perpetrators accountable. This standard gives greater protection to victims of domestic violence whose fears of retaliation may prevent them from testifying against their abusers in criminal cases.

Finally, in states that retain the seventy-two-hour reporting requirement, many battered immigrants may only find their way to an advocacy program after the seventy-two-hour time limit has expired. In these cases advocates should advise battered immigrants about the types of assistance available to them under VOCA, explain the seventy-two-hour reporting rules, and offer to help her file the required police report should she experience any future incident of domestic violence. In light of the on-going nature of domestic abuse, victims who may be cut off from VOCA relief for a prior domestic violence incident may apply should they be victimized in the future.

VICTIM ASSISTANCE

VOCA funds awarded to states support more than 5,000 community-based organizations serving several million crime victims each year.⁵¹ Battered immigrants may require services provided by these domestic violence shelters, rape crisis centers, and victim services programs in police departments, prosecutors' offices, hospitals, and social services agencies. Victim assistance programs provide desperately needed relief, such as crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation.

Crime victim assistance programs must certify that they provide assistance to victims of sexual assault, spousal abuse, or child abuse. Additionally, they must certify that they fund programs that serve historically underserved populations of victims of violent crime.⁵² Since battered immigrants are often underserved in their communities due to cultural or language barriers, this VOCA provision should foster the development by providers of improved programs for battered immigrants with the use of VOCA funds.

IMMIGRANT ELIGIBILITY FOR VICTIM COMPENSATION AND VICTIM ASSISTANCE

⁵⁰NY FAM. CT. ACT § 446(g) .

⁵¹Office for Victims of Crime, U.S. Department of Justice, *OVC Fact Sheet: State Crime Victim Compensation and Assistance Grant Programs* (last modified April 19, 2001);

<http://www.ojp.usdoj.gov/ovc/publications/factshts/companassist/welcome.html>

⁵²42 U.S.C. § 10603(a)(2)(B).

Battered Immigrants' Access to Services

In most states, immigration status is not a bar to receiving victim compensation benefits or victim assistance benefits.⁵³ Victim compensation administrators do not require applicants to identify their immigration status,⁵⁴ and have no duty to inquire about immigration status under either federal or state law. Rather, victims are eligible for benefits when they have been injured in the state and meet the conditions set forth in the state's guidelines.

Specifically, VOCA funds are only available to states whose victim compensation programs "make[s] compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State."⁵⁵ State victim compensation statutes cover victims injured in the particular state regardless of their residency in the state.⁵⁶ Thus, immigration status should also be irrelevant to receipt of victim compensation benefits. The VOCA guidelines confirm that:

the term 'nonresident' must, at a minimum, include anyone who is a resident in one state but victimized in another. A state may, at its discretion, broaden its definition of nonresident to include anyone victimized in the state regardless of whether the victim is a United States resident.⁵⁷

Further underscoring the legislative intent of VOCA to provide compensation and services to all victims, regardless of their national origin, the VOCA nondiscrimination provision states:

No person shall on the ground of race, color, religion, *national origin*, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.⁵⁸ (Emphasis added)

Thus, services to battered women and crime victims funded by VOCA must offer their services equally to all persons without regard to immigration status. As with VAWA- and HUD- and HHS-funded services for domestic violence victims, programs offering victims' services funded under VOCA that discriminate risk violating VOCA and other federal antidiscrimination laws. Battered immigrants and other immigrant crime victims have the same access to VOCA-funded services as all other crime victims.

Further, VOCA-funded services are among the services necessary to protect life and safety that are open to all individuals without regard to immigration status.⁵⁹ With regard to victims' compensation payments that can be made directly to crime victims, VOCA and most state victim compensation statutes do not discriminate against battered immigrants based on immigration status. Further, VOCA benefits have not been identified by either the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) or the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) as one of the "federal public benefits" programs, a designation which would restrict immigrant access. Thus, victim compensation benefits should be accessible for both battered immigrants and other immigrant crime victims without regard to immigration status.

CONCLUSION

VOCA grants are an important yet often overlooked source of funds for battered immigrants. Because many immigrants are ineligible for assistance under the primary federal public benefit programs such as TANF, Food Stamps, and Medicaid, VOCA grants can fill an important gap in the social safety net for battered

⁵³Telephone Interview with Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards (Nov. 20, 1997).

⁵⁴Telephone Interview with Laurie Schipper, Iowa Coalition Against Domestic Violence (Dec. 8, 1997).

⁵⁵42 U.S.C. § 10602(b)(4).

⁵⁶ Even if residency were an issue, state residency laws focus on where a person intends to reside permanently. These laws do not consider immigration status. See Family Law Chapter of this manual for full discussion on residency laws.

⁵⁷42 U.S.C. § 10601, *et seq.*

⁵⁸ *Id.*; See <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/voca.pdf>

⁵⁹AG Order No. 2129-97, 62 F.R. 61344 (Nov. 17, 1997); AG Order No. 2170-98, 63 F.R. 41664 (Aug. 4, 1998).

Battered Immigrants' Access to Services

immigrants who leave their abusers, allowing them to access cash assistance, medical care, and shelter during their time of need. Since VOCA program requirements vary from state to state, advocates and attorneys representing battered immigrants should become familiar with the program rules in their states. Consult the web site for the Department of Justice's Office for Victims of Crime at <http://www.ojp.usdoj.gov/ovc/> to find a listing of state contacts for victim compensation and assistance programs.

Access to Legal Services

INTRODUCTION

Currently, the availability of free or low-cost legal services for battered immigrants is somewhat limited. Nevertheless, battered immigrants seeking legal assistance do have several options. One such option is found among the loose network of stand-alone nonprofit legal services providers that assist low-income clients in cities and towns across the country. Many of these nonprofit legal assistance organizations, however, receive funding from the federal government, most notably under the auspices of the federally funded Legal Services Corporation (LSC). Although organizations that receive LSC funds are barred from using their federal dollars to assist most immigrants who are non-citizens, they may use non-LSC money to provide free legal services to certain groups of battered immigrants regardless of their immigration status. Thus, LSC-funded organizations are an important potential source of free legal assistance for immigrants who are victims of domestic violence.

A second major source of legal services for battered immigrants stems from programs that receive grants from the Department of Justice's Office on Violence Against Women (OVW). Several OVW grant programs can be used to provide legal assistance to battered immigrants. Funds from OVW's STOP, Rural, Legal Assistance for Victims, Arrest, and Campus grant programs may be used to provide immigration assistance to battered women.⁶⁰

Legal Assistance for Victims (LAV)⁶¹ grants are the most significant source of OVW funding for legal services for domestic violence victims. The Violence Against Women Act of 2000 created a LAV grant program designed to improve the legal aid available to domestic violence victims. These grants allow organizations to assist all victims of domestic violence, stalking, or sexual assault with a wide range of legal matters that arise as a result of the abuse or violence. LAV grantees are explicitly authorized to provide a broad range of legal services to battered immigrants, including representation in immigration cases to certain groups of battered immigrants. Programs that receive both LAV and LSC funding were, however, subject to LSC grant program restrictions regarding the groups of undocumented battered immigrants they can serve. Programs that receive no LSC funding or receive LAV but not LSC funding have no restrictions on providing services to undocumented battered immigrants. Both LSC- and VAWA-funded legal services for battered immigrants are discussed in greater detail below.

LEGAL SERVICES CORPORATION SERVICES FOR BATTERED IMMIGRANTS

In 1996, Congress passed a law prohibiting any organization that receives Legal Services Corporation (LSC) funding from providing legal assistance to undocumented immigrants and many lawfully present non-citizens.⁶² This law originally even prohibited a LSC-funded organization from using non-LSC funds to provide legal assistance to ineligible non-citizens. Since most legal services offices at the time relied solely or primarily on funding from the LSC, this meant that most legal services offices could no longer represent many non-citizens. LSC-funded organizations could, however, provide brief service and consultation by telephone, and normal intake and referral services to anyone, regardless of their citizenship or immigration status.⁶³

⁶⁰ For a list of OVW-funded grant programs, please visit the OVW website at <http://www.ojp.usdoj.gov/vawo/applicationkits.htm>.

⁶¹ Formerly called Civil Legal Assistance Grants.

⁶² Legal Services Corporation Appropriations Act of 1996, Pub. L.No. 104-134, § 504 (a) (11), 110 Stat. 1321 (1996).

⁶³ 45 C.F.R. § 1626.3, 1626.6(a).

Battered Immigrants' Access to Services

The following year, Congress amended this law to ameliorate some of its harsh effect on battered women and abused children.⁶⁴ The amendment permits LSC-funded organizations to use non-LSC funds to represent certain victims of domestic abuse on matters directly related to the abuse, even if these abuse victims would otherwise be ineligible for legal representation from the LSC funded organization because of their immigration status.⁶⁵ LSC-funded legal services offices can now represent non-LSC eligible battered immigrant women, regardless of their immigration status, on matters directly related to domestic abuse, if they raise non-LSC funds to do so.⁶⁶

LSC-funded organizations may only, however, represent non-LSC eligible battered immigrant women who have been battered by either a spouse, a parent, or a member of the spouse's or parent's family residing in the same household as the immigrant when the spouse or parent consented to the battery. The law allows representation only on issues directly related to the abuse. Therefore, non-LSC eligible immigrant women who are not married but who are battered by their boyfriends or the fathers of their children may not be served by a LSC-funded organization.

REPRESENTATION OF NON-CITIZENS

Battered women need to have access to the assistance of legal services program lawyers for help in obtaining protection orders, child and spousal support, child custody, divorce, and immigration benefits. In many communities, legal services lawyers are the only lawyers in the community with significant expertise and experience assisting battered women and children. Confusion about which non-citizens may receive legal assistance from LSC-funded programs and which funds governmental and non-governmental programs may use for this representation has reduced battered immigrant's access to legal services below that which is legally required. For this reason it is important for battered women advocates and immigrant rights advocates to know which non-citizens legal services programs are authorized. In order to assist clients in obtaining much needed services, advocates also need to be familiar with the broad range of services that have been deemed directly related to the abuse. Advocates should work with their local LSC-funded programs to encourage them to represent battered immigrants by using non-LSC funding. Also, advocates should consider working with legal services programs with experience representing battered women to jointly raise non-LSC funds that can be used to provide legal services to battered women and children who are non-citizens.

Many non-citizen battered immigrant women and abused immigrant children are eligible to receive legal services because they qualify for assistance under federal law. LSC-funded organizations may represent U.S. citizens and the following non-citizens using federal LSC dollars:

- Lawful permanent residents;
- Lawful conditional residents;
- Immigrants who are married to U.S. citizens and who have filed an application for adjustment of status to lawful permanent resident status where such application has not been rejected;
- Immigrants who are parents or unmarried children under the age of 21 of U.S. citizens who have filed an application for adjustment of status to lawful permanent resident status and such application has not been rejected;
- Immigrants who have been admitted as refugees or granted asylum;
- Immigrants who have been granted conditional entry pursuant to INA § 203(a)(7) as in effect on March 31, 1980 because of persecution or fear of persecution on account of race, religion, or

⁶⁴45 C.F.R. § 1626.2(g).

⁶⁵Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208, § 504(a)(11), 110 Stat. 3009 (1996).

⁶⁶*Id.*

Battered Immigrants' Access to Services

political opinion or because of catastrophic natural calamity; and

- Immigrants who are lawfully present in the U.S. as a result of withholding of deportation.

The following groups of domestic violence victims are the only other non-citizens who may receive legal representation from an LSC-funded organization regardless of their citizenship or immigration status. A victim of domestic violence may receive services if the legal assistance is directly related to the preventing or obtaining relief from the battery or cruelty and she meets the following criteria:

- The applicant has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented or acquiesced to such battery or cruelty.
- The applicant's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the immigrant or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented or acquiesced to such battery and the immigrant did not actively participate in such battery.⁶⁷

The first prong of eligibility for battered immigrant women and abused immigrant children to receive services from an LSC-funded organization requires that the client have been battered or subjected to extreme cruelty.

"Battered or subjected to extreme cruelty" is defined as including, but not limited to:

Being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that in and of themselves may not initially appear violent but that are a part of the overall pattern of violence.⁶⁸

This definition is fairly expansive. It parallels the definitions contained in immigration law and is broader than most protection order statutes because it includes some forms of emotional abuse. The definition of battering or extreme cruelty is limited however to battering or extreme cruelty that occurs within the United States.⁶⁹

To be eligible for representation by an LSC-funded organization, the battered immigrant woman or child must have suffered abuse at the hands of:

- a spouse
- a parent
- a member of the spouse's or parent's family residing in the same household as the battered immigrant⁷⁰

Note that the relationship with the abuser is the chief relationship. If the abuser is a spouse, former spouse, or parent, the battered immigrant may receive a variety of legal services on issues directly related to the abuse, regardless of whether the abuser has or does not have any form of legal immigration status.

The preamble to the LSC regulations states that the terms "spouse" and "parent" are terms of relationships that are generally regulated by state law. The LSC regulations do not expand the generally recognized legal meanings of these terms under state law, nor do they define them. The preamble directs that LSC-funded organizations should defer to the local law defining spouse and parent or the federal law that would apply in a

⁶⁷ Legal Services Corporation Appropriations Act, 104 P.L. 134, § 504(a)(11).

⁶⁸ 45 C.F.R. § 1626.2(f).

⁶⁹ 45 C.F.R. § 1626.4.

⁷⁰ Legal Services Corporation Act, § 504(a)(11).

Battered Immigrants' Access to Services

particular case.⁷¹ It is important to note that the immigration law definition of parent includes step-parents and could include children up to the age of twenty-one.⁷² This federal law definition of the parent/child relationship should be used by LSC-funded programs where it may be broader than local or state laws. Advocates should look to state definitions of spouse and parent, particularly those included in state domestic violence laws and family laws regarding common law marriages, as well as the immigration law definition, and work with their local LSC-funded legal services program to convince them to interpret these terms broadly.

The statute and the regulations offer legal services access to an immigrant who "has been" battered or subjected to extreme cruelty by a spouse or parent. The statute contains no requirement that the spousal or parent/child relationship continue to exist when the battered immigrant seeks legal assistance from a LSC-funded agency. Similarly, all state domestic violence statutes refuse to make distinctions between current and former spousal or parental relationships for the purpose of offering access to legal protection. Thus, abused immigrant spouses and children should be able to obtain legal assistance from LSC-funded programs even if the abuser's parental rights have been terminated and even if the abuser has divorced his immigrant wife.⁷³

The LSC regulations lack a definition for the meaning of a "member of the spouse's or parent's family" and instead direct LSC-funded organizations to refer to state protection order statutes where available or to other applicable local law in defining these terms.⁷⁴ This approach parallels the approach taken by the Attorney General of the United States in defining this same terminology in the welfare context. In November 1997, the Attorney General⁷⁵ provided guidance to the states for use in the welfare context on how the phrase "member of the spouse or parent's family" is to be defined. The guidance provides a definition that should also be followed by LSC funded programs. A "member of the spouse or parent's family," means:

“...any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country in which the alien, the alien’s child, or the alien’s parent received a protection order.”

This definition also sheds useful light on how this language should be interpreted in the context of access to legal services.

State protection order statutes often broadly define family to protect individuals from ongoing abuse. Under many state protection order statutes, that definition would usually include persons who are in the following relationship with the spouse or parent of the battered immigrant:

- Blood relatives
- Current and former relatives by marriage
- Current and former cohabitants
- Persons who share a common child with the victim’s spouse or parent
- People who have dated the victim’s spouse or parent
- Any other people in relationships with the immigrant victim’s spouse or parent covered in the state’s protection order statute.

Immigrant women who have been battered by individuals that have any of the above relationships with the immigrant victim’s spouse or parent should be eligible for representation by an LSC-funded organization, in accord with the definition provided by the state's protection order statute.

In order for battered immigrants who do not otherwise qualify for LSC funded services to be eligible to receive services from an LSC funded organization, they must show that the legal assistance provided is

⁷¹Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,756 (Aug. 29, 1997).

⁷²Immigration and Nationality Act, § 101(b)(1), 8U.S.C.A. § 1101.

⁷³Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (1996).

⁷⁴*Id.*

⁷⁵AG Order No. 2129-97, 62 Fed.Reg. 61344 (Nov. 17, 1997).

Battered Immigrants' Access to Services

directly related to their abuse. Legal assistance directly relating to the prevention of, or obtaining relief from, the battery or cruelty is defined as any legal assistance that will:

- Assist victims of abuse in escaping from the abusive situation
- Ameliorate the effects of abuse
- Protect against future abuse.⁷⁶

A wide array of legal assistance for which battered immigrants are eligible may be deemed related to the abuse. For example, an LSC-funded organization may use non-LSC funds to represent battered immigrant women, helping them secure housing, medical, or income assistance so that they and their children are no longer forced to depend on their abuser. Similarly, an LSC-funded organization may provide legal assistance to seek a civil protection order against the abuser or to terminate the marriage and parental rights of the abuser. The LSC program may not, however, provide adoption assistance if the victim remarries and the new spouse, who is an ineligible alien, wishes to adopt the children.⁷⁷

The preamble to the LSC regulations provides a non-exclusive list of examples of permissible legal representation and makes it clear that a broad variety of legal services are needed to assist abuse victims. According to the preamble, permissible representation includes, but is not limited to:

- Representation of a domestic violence victim in a VAWA immigration case; or
- Representation of a domestic violence victim in other immigration cases that would allow an abuse victim to stabilize immigration status, facilitate naturalization, or acquire work authorization so long as the victim can show the necessary connection to abuse.

In addition to providing assistance in immigration matters, LSC programs may provide any of the following forms of legal assistance when they are necessary to assist victims' escape from an abusive situation or ameliorate the current effects of the abuse or protect against future abuse. This legal assistance includes, but is not limited to:

- Obtaining civil protection orders
- Divorce
- Child custody
- Child and spousal support
- Housing
- Public benefits
- Employment
- Abuse and neglect
- Juvenile proceedings
- Small claims cases
- Contempt actions⁷⁸

Additionally, there are many poverty law issues a battered immigrant woman faces that affect her ability to maintain self-sufficiency and independence from her abuser. Such legal assistance is permissible as it is related to the abuse, and it includes assistance in:

- Obtaining public benefits
- Retaining the family home for the battered immigrant and her children
- Evicting the abuser from the residence

⁷⁶45 C.F.R. § 1626.2(g).

⁷⁷Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,757 (1997). This restriction parallels restrictions in immigration law which previously cut off access to VAWA relief if the abuse victim remarries. The Violence Against Women Act of 2000 deleted this restriction from immigration law.

⁷⁸Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409, 19410-11 (Apr. 21, 1997) (codified at 8 C.F.R. pt. 204).

Battered Immigrants' Access to Services

- Obtaining child and spousal support
- Maintaining health insurance from the abuser
- Staving off eviction.

REQUIREMENTS TO VERIFY IMMIGRATION STATUS

The Legal Services regulations implementing battered immigrant access to legal services provide important confidentiality protections so that immigrants who receive legal representation by LSC-funded organizations can be assured that the information about the immigration status contained in the LSC organization's records will not be provided to BCIS/BICE or used against them by immigration officials. These confidentiality provisions are extremely important in light of the onerous immigration status eligibility requirements that LSC-funded programs normally are required to undertake. Confidentiality protections were included in the regulations to allay the fears of battered immigrant women who would otherwise be deterred from seeking the legal representation they need to help them escape from their abuser.⁷⁹ The regulations recognize the need to protect from disclosure information provided to an organization by battered immigrants who may be undocumented immigrants, and by potential clients who are rejected or referred to another legal services provider because they do not qualify as eligible non-citizens.

Consequently, the regulations provide that LSC-funded organizations are not required to inquire about a domestic violence client's immigration status or to maintain records regarding her status.⁸⁰ Further, since legal assistance as defined under these regulations does not include normal intake and referral services, an organization is not required to verify citizenship or eligibility during intake and referral or when providing brief advice or consultation by telephone. LSC-funded programs do not need to document the immigration status of potential clients to whom they offer only intake and referral services or to whom they provide quick advice.⁸¹

For all other clients, except battered immigrants and clients provided only referrals or quick advice, an LSC-funded organization is required to have clients attest to their citizenship (or prove it, if there is reason to doubt it), or verify their non-citizen eligibility under LSC regulations. The organization must also maintain records sufficient to document its compliance with LSC regulations.⁸² For this reason, even battered immigrant women who fall within the group of non-citizens whom LSC is authorized to assist may prefer to apply for legal services under the special provisions for battered immigrants. Those services are available without any requirements for verification of immigration status and without producing specific immigration documents.⁸³

Practically, this means that interviewers should determine whether applicants are victims of battery or extreme cruelty by a spouse or parent, thus establishing Kennedy Amendment eligibility. Once this eligibility is established, interviewers should qualify questions related to immigration status by assuring the applicant that the questions about to be asked are asked of everyone and that all responses will be kept confidential. This is done so that the applicant is not deterred from applying for legal aid. Hence, potential clients will not be afraid to access much needed legal services provided by LSC-funded organizations.

Battered immigrants who qualify for LSC-funded legal representation using federal LSC funds may prove their eligibility by providing:

- United States passport
- Birth certificate
- Naturalization certificate
- United States Citizenship Identification Card

⁷⁹Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,757 (1997).

⁸⁰45 C.F.R. § 1626.4(b).

⁸¹45 C.F.R. §§ 1626.3, 1626.6(a), 1626.7(a).

⁸²45 C.F.R. §§ 1626.12, 1626.6, 1626.7.

⁸³This approach is not an option when the LSC-funded program has raised no non-LSC funds that can be used to represent battered immigrants who do not otherwise qualify for federally funded LSC services. Domestic violence programs should encourage local LSC-funded programs to raise and allocate non-LSC dollars for representation of battered immigrants.

Battered Immigrants' Access to Services

- Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth
- Green card
- Evidence of lawful permanent residency or conditional residency
- Application for adjustment of status
- Evidence of admission as a refugee, asylee, conditional resident, or of withholding of deportation.

An LSC-funded organization may also accept any other authoritative document, such as a document issued by BCIS, a court, or another governmental agency, that provides evidence of citizenship or qualifying immigration status. Examples include documents confirming refugee or asylee status, conditional entry, or withholding of deportation. If a person is unable to provide any of the above documents, she may submit a notarized statement signed by a third party. LSC programs may accept certified copies or photocopies of any of the documents in cases where documentation of immigration status is required.

It is also important to take note that LSC-funded programs may provide emergency legal assistance without written verification of immigration status. The LSC regulations do not define "emergency." The preamble to the LSC regulations state, however, that emergency in the legal services context would include cases in which immediate action is necessary to preserve significant legal rights or prevent significant harm to a person's family, property, or other legal interests.⁸⁴ Under these emergency provisions, LSC-funded programs should be able to assist battered immigrants in filing for and obtaining temporary protection orders and civil protection orders which remove the abuser from the family home, grant custody, and provide immediate protection. They should be able to provide this assistance without regard to immigration status to those battered immigrants who qualify under state protection order laws, but who are abused by persons who are not their spouse or parent.⁸⁵ Further representation of battered immigrants, however, is not permitted unless they are abused by a spouse or parent or can provide documentation of immigration status that qualifies them for representation.

VAWA LEGAL ASSISTANCE FOR VICTIMS

Under the Violence Against Women Act amendments passed in 2000, a new program offering legal assistance for domestic violence victims was created.⁸⁶ The Legal Assistance for Victims (LAV) grants are designed to establish projects or expand existing programs that provide legal services to victims of domestic violence, stalking, and sexual assault. Organizations that receive grants under this new program may assist victims in a range of legal services that arise as a consequence of abuse or violence, including protection orders, family law, public benefits, immigration, employment, and housing matters.⁸⁷

Under this program, domestic violence is defined broadly to include abuse by a current or former spouse, a person with whom the victim shares a child, a person with whom the victim has cohabitated as a spouse, or other people who could be covered by a protection order under the domestic violence laws of the jurisdiction in question.⁸⁸ Because the federal funding under this program is provided to nonprofit organizations, not to individuals directly, this program is not a federal public benefit program and therefore is not subject to immigrant access restrictions. Thus, organizations receiving grants under this program may provide free or low-cost legal services to battered immigrants regardless of their immigration status. Advocates working with battered immigrants in local communities should collaborate with legal services providers to encourage them to apply for LAV funding to support legal representation of battered immigrants.

ADVOCACY STRATEGIES

⁸⁴ 45 C.F.R. § 1626.8.

⁸⁵ Advocates should urge LSC funded programs in their states to represent any battered woman in a protection order case without regard to her immigration status.

⁸⁶ 42 U.S.C.S. § 3796gg-6. This law codified and made permanent the civil legal assistance grant program that had been inoperative for a few years prior to VAWA 2000.

⁸⁷ Pub. L. No.106-386, § 1103, 114 Stat. 1464, 1503-1505, codified at 42 U.S.C. § 3796gg-6.

⁸⁸ 42 U.S.C.S. § 3796gg-2.

Battered Immigrants' Access to Services

LSC management and senior attorneys should educate advocates in the domestic violence community about the Kennedy Amendment because direct service providers may assume that the law prohibits immigrants from receiving legal services. Additionally, LSC program staff should educate their own staff by including the language of the Kennedy Amendment and articles such as this one in their training manuals for new attorneys and paralegals.

Because LSC-funded programs may represent otherwise ineligible battered immigrants under the Kennedy Amendment, programs should locate community resources to which they can refer immigrant victims whose abusers fall under other categories. LSC-funded programs should, in turn, accept referrals of clients who qualify for representation. Without careful coordination, legal aid programs not receiving LSC-funding may fill their caseload with clients who also qualify for LSC-funded representation. In this event, a battered immigrant whose abuser is not her spouse, but the father of her child, will have nowhere to turn for representation in a custody case, for example.

Coordination can also fill a critical need to develop additional resources. In many communities, LSC-funded organizations are beleaguered by the demand for their services. Local advocates and LSC-funded programs should work together to compile referral lists of private attorneys and other legal agencies whose staff understand domestic violence and immigration issues. Additionally, domestic violence advocates, along with legal services programs, should consider joint efforts to raise non-LSC funds they can use to provide services to battered immigrant women and children. This joint funding can be used to support advocate/legal services attorney collaborations in which one attorney working with advocates can provide legal representation to many more battered immigrant victims than if he or she were doing all of the client interviewing and evidence collection alone. This approach works particularly well in VAWA self-petitioning cases.

A model approach to such collaboration has been developed in Albuquerque, New Mexico. In New Mexico, one attorney trained battered women's advocates across the state on VAWA's self-petitioning provisions. Working with advocates who conduct client interviews and collect evidence for VAWA immigration cases based on checklists provided by the attorney, one attorney has been able to represent large numbers of battered immigrants in VAWA self-petitioning cases with a very high success rate in securing swift approvals from CIS.⁸⁹ This approach is particularly useful for ensuring that battered immigrant victims living in rural communities gain access to immigration relief offered by VAWA.

CONCLUSION

While the law precludes LSC-funded organizations from representing many non-citizens, the law does allow LSC-funded organizations to represent many domestic violence victims, regardless of their citizenship or immigration status. Battered immigrant women who have been abused by a spouse, parent, or member of their spouse's or parent's family can receive legal assistance from an LSC-funded organization for any matter that is directly related to their abuse, so long as the organization uses non-LSC funds for the representation. Other battered immigrants may be able to obtain emergency legal assistance to obtain temporary protection orders and civil protection orders.

While the language of the regulations and the statute does limit who is eligible for representation as a victim of domestic violence, many of the restrictions are subject to flexible interpretations, which LSC-funded organizations must be encouraged to interpret broadly.⁹⁰ Battered women's advocates must encourage LSC-funded organizations not to turn away any battered immigrant women because of the restrictions on representing non-citizens until they have carefully evaluated a woman's case. Ultimately, many battered immigrant women will be eligible for representation by the LSC-funded organization. Some will be eligible for services because they fit within the categories of non-citizens whom LSC programs may represent using federal funds. Others will qualify for legal services because they have been victims of domestic violence. Programs must be encouraged to represent everyone in protection order cases and to interpret the range of services they can offer immigrants abused by a spouse, parent, or specified family member broadly.

⁸⁹ For more information on this approach developed by Mirna Torres of Catholic Charities in Albuquerque, as well as sample materials, contact the National Immigrant Women's Advocacy Project (NIWAP). (202) 274-4457, info@niwap.org.

⁹⁰The LSC regulations implementing the 1997 statute encourage a broad and flexible interpretation. 62 Fed. Reg. 19,410, 19,411.

Battered Immigrants' Access to Services

Likewise, advocates should work with all local legal services programs, both those that are funded by LSC and those that are not, to encourage them to apply for LAV funding and to inform them that both LAV funding and other sources of OVW funds (STOP, Rural, Arrest, and Campus grants) can be used to provide assistance to battered immigrants in a broad array of matters, including assistance in immigration matters. Battered immigrants are eligible for legal assistance services authorized under VAWA through OVW-funded grants regardless of their immigration status. To assure that programs funded by OVW or state STOP grant funds will actually provide the full range of services battered immigrants need, it is important that legal services and all other programs apply for OVW or STOP grant funds to provide services to immigrant victims by specifically including in their grant applications a provision stating that they intend to provide legal assistance to battered immigrants. Provisions of immigration assistance need not be the primary purpose of the grant, but to ensure that immigration assistance can be provided when needed, this form of legal assistance should be listed in the grant.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

**B. Breaking Barrier Chapter 4.2 - Public Benefits
Access for Battered Immigrant Women and
Children**

4.2

Public Benefits Access for Battered Immigrant Women and Children¹²

By Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang

Introduction

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)³ and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA)⁴ substantially altered most immigrants' eligibility to receive many public benefits. These laws eliminate eligibility for most

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² In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter PRWORA].

⁴ Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. § 1101 et seq.) [hereinafter IIRAIRA].

Battered Immigrants' Access to Services

immigrants for Supplemental Security Income (SSI)⁵ and Federal Food Stamps, limit access to certain other federal programs, and give states the discretion to determine whether immigrants can qualify for state and local public benefits programs. Furthermore, the new laws strengthen the connection between public benefits eligibility and the immigration status of an applicant. In response to the drastic changes in the Welfare Reform Act and IIRAIRA, subsequent laws have restored access to SSI and Food Stamps for very limited numbers of immigrants.⁶

Although the revised welfare laws contain provisions that deny public benefits to many immigrants, some immigrants, including some battered immigrants, either remain or have become eligible for certain critical public benefits. PRWORA grants access to some federal benefits to “qualified aliens” (hereafter referred to as “qualified immigrants”), depending on their date of entry to the United States.⁷ Additionally, guidance to the states issued by the U.S. Attorney General, and the definition of “federal means-tested public benefits” established by a number of federal agencies discussed in this chapter narrowly construe PRWORA to ensure that some public benefits remain available to some immigrants, including battered immigrants.⁸

It is important for advocates and attorneys working with battered immigrants to understand that, while PRWORA and IIRAIRA significantly reduce access to federal benefits for most immigrants, these laws also expand access to public benefits for some battered immigrants who had been previously ineligible for assistance. Two important examples are outlined below:

- Undocumented and documented immigrants who are battered by their U.S. citizen or lawful permanent resident spouses or parents can apply for some public benefits if they have filed a Violence Against Women Act (VAWA) immigration case, or certain family-based visa petitions (I-130) with CIS.
- IIRAIRA exempts many battered immigrants from “sponsor deeming” rules. These rules had previously made many battered immigrants, particularly those who had received lawful permanent resident status through a spouse or parent, economically ineligible for benefits because they were falsely presumed to have full access to the income and assets of their abusive spouse or parent. Many battered immigrants were ineligible for public benefits because their income, added to their abuser’s income, totaled an amount that exceeded the income guidelines of state and federal welfare programs. (See full discussion on “sponsor deeming” below.)

Furthermore, although PRWORA and IIRAIRA reduce access to certain federal public benefits, a wide range of other federally funded social services remain open to many immigrants, including battered immigrants, without regard to their status.

This chapter begins with a discussion of the types of immigration status relevant to a public benefits determination, including the legal requirements for qualifying as a battered “qualified” immigrant. Next follows a discussion of the other considerations relevant to public benefits eligibility, such as date of entry into the United States, eligibility bars, sponsor deeming, and the “40 qualifying quarters” exemption. The chapter continues with a description of the different categories of benefits for which battered immigrants may qualify, and a discussion of the specific eligibility rules for some important federal programs. Finally, the chapter concludes by providing guidance on several overarching issues of which attorneys and advocates for domestic violence victims should be aware when assisting battered immigrant women in applying for benefits. These issues include the need to accompany battered immigrants applying for benefits; “public charge” concerns; rules regarding inquiries into citizenship, immigration status, and Social Security numbers; and availability of non-work Social Security numbers.

⁵ SSI is a cash benefit program for low-income disabled and elderly individuals.

⁶ Agricultural Research, Extension, and Education Reform Act of 1998, Title V, Pub. L. No. 105-185, 112 Stat. 852.

⁷ While the term used in the law is “qualified aliens,” we will use the term “qualified immigrants.” Throughout this manual, except when quoting language contained in statutes, we use the term immigrants rather than aliens and “undocumented immigrants” rather than “illegal aliens.” We strongly encourage advocates and attorneys working with battered immigrants to use this same terminology.

⁸ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

Readers should be aware that many immigrant eligibility provisions and public benefit requirements discussed in this chapter are both complex and deeply intertwined. Because of this overlapping complexity, some of the information in this chapter is duplicated in more than one section when required for clarity. Our goal is to assure that advocates and attorneys using this manual can easily access the most complete information they will need to assist clients.

Immigration Status and the Eligibility of Battered Immigrants for Public Benefits

When working with battered immigrants who need to obtain public benefits, service providers need to consider four different issues:

- 1) What is the woman's immigration status?
- 2) Is she herself eligible for benefits?
- 3) Can she apply for benefits that her children qualify for although she does not?
- 4) Can the battered immigrant apply for benefits for herself and for her children in a manner that will not risk her being reported to ICE?

The law distinguishes between three kinds of immigrants:

- “qualified immigrants” who entered the United States before August 22, 1996;
- “qualified immigrants” who entered the United States on or after August 22, 1996; and
- immigrants who are not “qualified immigrants”.

It is important to distinguish between “qualified immigrants” who entered the United States before August 22, 1996 and those who entered after because those who entered on or after August 22, 1996 are subject to a five-year bar from receiving federal public benefits after their date of entry (unless they fall into an “exempt” category). This will be discussed in further detail.

WHO ARE “QUALIFIED IMMIGRANTS”?

“Qualified immigrants” are:⁹

- Lawful permanent residents (including conditional permanent residents);¹⁰
- Refugees;
- Asylees;
- Persons granted withholding of deportation or cancellation of removal;
- Cuban/Haitian entrants;
- Victims of Trafficking;
- Veterans of certain United States military actions;
- Person granted conditional entry;
- Amerasians;
- Persons paroled into the United States for a year or more;
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or certain family-based immigrant petitions before BCIS; and
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful

⁹PRWORA § 431(b), 8 U.S.C. § 1641(b).

¹⁰Conditional permanent residents are spouses of U.S. citizens who at the time of obtaining resident status were married less than two years. Therefore, CIS issues a “green card” which expires two years after their residency interview and the immigrant spouse must submit a second application to remove the conditions on her residence status 90 days before her card expires. For a full discussion of immigration options for battered immigrants with conditional residence status see Chapter 3 of this manual.

Battered Immigrants' Access to Services

permanent resident other parent, who have pending or approved VAWA cases or certain family-based petitions before CIS.

PRWORA provides that “qualified immigrants” are eligible for some, but not all, public benefits. Originally, many undocumented battered immigrants were not included in this definition. However, Congress subsequently recognized that certain immigrant women and children who were battered or subject to extreme cruelty needed access to public benefits if they were to escape abuse. Therefore, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)¹¹ expanded the definition of “qualified immigrants” to include immigrant women and children who were battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent, and who were beneficiaries of an application for relief under VAWA or a family-based immigrant visa petition filed by an abusive spouse or parent with CIS.¹²

BATTERED IMMIGRANT CATEGORY

Under IIRAIRA, immigrant spouses or children who have been battered or subjected to extreme cruelty can be considered “qualified immigrants” under certain defined circumstances.¹³ An interim guidance issued by the U.S. Attorney General¹⁴ explains eligibility and verification of “qualified immigrant” status under PRWORA. The circumstances under which battered immigrant spouses or children of U.S. citizens or lawful permanent residents can be granted “qualified immigrant” status are the following:

- 1) The U.S. Citizenship and Immigration Services (CIS) or the Executive Office for Immigration Review (EOIR) (in this situation, this means an immigration judge):
 - has approved a self-petition¹⁵ or family-based visa (filed by the spouse or parent) for the applicant; OR
 - has granted cancellation of removal; OR
 - has granted suspension of deportation; OR
 - has found that the applicant's pending petition or application sets forth a *prima facie* case for such benefit or relief;¹⁶ AND
- 2) The immigrant or the immigrant’s child has been battered or subject to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household (if the permanent resident or citizen spouse or parent consents to or acquiesces in such battery or cruelty and, in case of a battered child, the immigrant did not actively participate in the battery or cruelty); AND
- 3) There is a substantial connection between the battery or extreme cruelty and the need for public benefit sought; AND
- 4) The battered immigrant or child no longer resides in the same household as the abuser.

Requirements for Benefits Applications Based Upon Pending or Approved Applications:

- A VAWA case or qualifying family-based visa petition¹⁷ must be filed with CIS or EOIR before

¹¹IIRAIRA § 501, *amending* PRWORA by adding § 431(c).

¹²The VAWA case may be a self-petition, a cancellation of removal application or a suspension of deportation application.

¹³IIRAIRA § 501.

¹⁴Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

¹⁵Note that spouses can file a self-petition up to two years after divorce.

¹⁶A *prima facie* case is one in which CIS or an immigration judge has made initial determination that a VAWA case contains all of the necessary elements of proof.

¹⁷Which a spouse or parent must have previously filed.

Battered Immigrants' Access to Services

the immigrant can qualify for benefits.

- If the case has been filed but is not yet approved, CIS or the immigration judge must have ruled that the pending petition or application filed sets forth a *prima facie* case.¹⁸
- To prove a *prima facie* case, the applicant must have presented in her petition at least some credible evidence that provides proof of each required element of her VAWA or family-based visa petition case.
- These approved petitions or applications qualify the applicant for benefits. When applying for benefits, the battered immigrant must give the public benefits agency a copy of her approval notice from CIS or EOIR, or her notice of *prima facie* case determination.

Requirements for Benefits Applications Based Upon Being Battered or Subjected to Extreme Cruelty:

- A battered immigrant with an approved VAWA case or *prima facie* determination is not required to provide the benefits-granting agency with evidence of abuse beyond her approved petition or *prima facie* determination letter. This is because, in order to have CIS or EOIR approve her VAWA petition or enter a *prima facie* determination, an applicant under VAWA must have shown that she experienced such battery or extreme cruelty.
- A battered immigrant with a family-based petition filed by her spouse or parent must submit proof of the battery or extreme cruelty (such as a protection order, police report, photographs, a report from a counselor at a battered women's program, or medical records) along with her approval notice or *prima facie* determination to the benefits agency.

“Battery or extreme cruelty” is defined as, but not limited to:

¹⁸Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,366 (Nov. 17, 1997)(providing guidance for establishing a *prima facie* case).

... being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.¹⁹

To be a “member of the spouse or parent’s family” is defined as:

... any person related by blood, marriage, or adoption to the spouse or parent of the immigrant, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country where the immigrant resides, or the state or Indian country in which the alien, the immigrant’s child, or the immigrant child’s parent received a protection order.²⁰

The “Substantial Connection” Element of Proof

To obtain benefits a battered immigrant must demonstrate that there is a “substantial” connection between the battery or extreme cruelty and the need for the public benefit. As defined by the U.S. Attorney General’s Order, which sets forth a non-exclusive list, the following are examples of the types of circumstances in which there would be a “substantial connection” between abuse and the need for benefits:²¹

- To become self-sufficient following separation from the abuser;
- To escape the abuser or the abuser’s community;
- To ensure the safety of the victim, the victim’s child, or the victim’s parent;
- To compensate for the loss of financial support resulting from the separation;
- Because the victim lost her job or earns less because of the battery or cruelty or because of the involvement in legal proceedings relating them (child custody, divorce actions, etc.);
- Because the victim had to leave her job for safety reasons;
- Because the victim needs medical attention or mental health counseling or has become disabled;
- Because the victim loses a dwelling or a source of income following separation;
- Because the victim’s fear of the abuser jeopardizes the victim’s ability to take care of her children;
- To alleviate nutritional risk or need resulting from the abuse or following separation;
- To provide medical care during a pregnancy resulting from the relationship with the abuser, the abuse, or abuser’s sexual assault; or
- To replace medical coverage or health care services lost following the separation with the abuser.²²

Considerations when the battered immigrant or child no longer resides in the same household as the abuser:

The U.S. Attorney General’s Order notes that:

¹⁹*Id.* at 61,369. This definition is parallel to the definition of “battering and extreme cruelty” contained in the immigration regulations governing VAWA self-petitions and battered spouse waivers. Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,061, at 13,074 (Mar. 26, 1996) (codified at 8 C.F.R. pt. 204). It is important for advocates to understand that this definition is broader than the definition of domestic or family violence contained in many state domestic violence statutes in that it includes emotional abuse, which, in many states, would not lead to the issuance of a protection order. It therefore may be necessary for advocates and attorneys assisting battered immigrants to educate state benefits-providing agency staff about this more inclusive definition.

²⁰Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,369. (Nov. 17, 1997)

²¹*Id.* at 61,370. This is not an all-inclusive list.

²²The U.S. Attorney General’s Interim Guidance on “Substantial Connection” provides a detailed, broad description of the types of circumstances under which battered immigrants may access benefits. *Id.*

Battered Immigrants' Access to Services

Although a qualified applicant is not a “qualified alien” eligible for benefits until the battered applicant or child, or parent ceases residing with the batterer, applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently.²³

The Order therefore suggests that, wherever possible, the state benefits provider complete the eligibility determination process and approve the applicant for receipt of benefits prior to the time that the applicant has separated from the batterer. This ensures that the applicant will be able to receive benefits as soon as she leaves her abuser.

States have addressed this issue in two ways. Some states, like Illinois, for example, take the battered immigrant's application and complete the process of determining that she will be eligible to receive public benefits as a qualified alien. They then award her benefits immediately and give her one month to come back to the benefits-granting agency to provide them evidence that she no longer resides with the abuser. We advocate that states use this approach. Other states complete the benefits determination process, and inform the battered immigrant that she will receive the benefits as soon as she provides the benefits-granting agency with evidence that she is no longer residing with the abuser.

Evidence of separation from the abuser could include:

- “Civil Protection Order” (CPO) removing the abuser from her home;
- CPO ordering the abuser to stay away from her home;
- Letter from the landlord stating that the abuser no longer resides there;
- Letters from family members, friends, neighbors, or victim advocates stating that the abuser no longer resides in her household;
- Affidavit from victim asserting that abuser no longer resides with her;
- New lease agreement evidencing that she is not residing with abuser;
- Utility bills evidencing that she is no longer living in abuser's home.

Other Considerations Relevant to Public Benefits Eligibility

Once a battered immigrant qualifies for benefits under VAWA, she is legally entitled to access a much wider array of services and benefits than she would be able to receive if she was not a qualified immigrant. Nevertheless, several other factors are still relevant to determining which benefits programs she can access. These considerations, which also affect the eligibility of other immigrants and are described in detail below, include date of entry into the United States, eligibility bars to access, sponsor deeming, and the 40 qualifying quarters exemption.

WHEN THE IMMIGRANT ENTERED THE UNITED STATES: PRE- VS. POST-AUGUST 22, 1996 ENTRANTS

Advocates should be aware that immigrant eligibility for certain benefits depends in part upon the immigrant's date of entry into the United States. Immigrants who are or become “qualified immigrants,” and who entered the United States before August 22, 1996, are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, except for SSI.²⁴ Further, states may choose to restrict some of the public benefits available to “qualified immigrants.”

Immigrants who become “qualified immigrants” and who entered the United States *on or after* August 22, 1996, however, are barred from receiving federal means-tested benefits during the first five years after obtaining

²³*Id.* at 61,370.

²⁴Immigrants who entered before August 22, 1996, are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants, were lawfully residing in the United States, and were receiving SSI on August 22, 1996.

Battered Immigrants' Access to Services

qualified immigrant status. They may, however, receive, during this five-year period, federal public benefits that are not deemed to be "federal means-tested public benefits." With respect to both federal public benefits and federal means-tested public benefits, most immigrants are subject to income deeming rules that may continue to make them ineligible for such benefits (see discussion on sponsor deeming and the battered women's exception below).²⁵

A few groups of post-August 22, 1996, entrants are exempt from this five-year bar. These immigrants include:

- Refugees;
- Asylees;
- Victims of Trafficking;
- Amerasians;
- Cuban/Haitian entrants;
- Veterans and aliens on active military duty, their spouses (and unremarried surviving spouses), and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
- Immigrants granted withholding of deportation;
- Certain immigrants without sponsors.

INDEFINITE, TEMPORARY, AND OPTIONAL BAR ON BENEFITS ELIGIBILITY

Under PRWORA, there are several different types of bars that prevent certain immigrants from accessing benefits. The three main bars are of varying durations and fall into the following categories: (1) indefinite bar, (2) temporary bar, and (3) optional state bar.

THE INDEFINITE BAR TO SSI

The indefinite bar applies to non-qualified immigrants, as well as to qualified immigrants who entered the United States after August 22, 1996. These immigrants, unless they later fall into a different category, are indefinitely barred from receiving SSI. However, certain exceptions to the indefinite bar on SSI apply to qualified immigrants under the following circumstances: (1) refugees, asylees and other "exempt" categories of qualified immigrants are exempt from the bar for the first seven years after gaining their status as refugees or asylees; (2) immigrants who meet the 40 qualifying quarter requirement are exempt; and (3) veterans or active duty military members and their spouses and unmarried dependent children are also exempt.²⁶

THE TEMPORARY FIVE-YEAR BAR TO "MEANS-TESTED PUBLIC BENEFITS"

The temporary bar prevents qualified immigrants who are post-August 22, 1996, entrants from accessing federal means-tested public benefits for a period of five years. (The term "federal means-tested public benefits" has a technical meaning and is described in a separate section below.) Similar to the indefinite bar, qualified immigrants who are "exempt," including refugees, asylees, or who are veterans or active duty military members and their spouses and unmarried dependent children, are exempt from the five-year bar on accessing federal means-tested public benefits.²⁷ Nonqualified immigrants are also barred from accessing federal means-tested public benefits.

OPTIONAL STATE BAR

The optional state bar exists in two forms. First, PRWORA gave states the option to deny TANF, Medicaid, and the Title XX Social Services Block Grant to qualified immigrants. The exceptions to this optional state bar are identical to the exceptions to the permanent bar on SSI and Food Stamps.²⁸ As a result of this bar, states may deny

²⁵In all other respects, the rights and limitations on post-August 1996 immigrants to receive public benefits do not differ from the rights and limitations of "qualified immigrants" who entered the U.S. before August 22, 1996.

²⁶8 U.S.C. § 1612(a)(2).

²⁷*Id.* § 1613.

²⁸*Id.* § 1612(b)(2).

Battered Immigrants' Access to Services

benefits under TANF, Medicaid, and the Social Services Block Grant to qualified immigrants even when those immigrants have surpassed the five-year bar on accessing federal means-tested public benefits.

Second, PRWORA gave the states the option to override the bar that prevents non-qualified aliens, including undocumented immigrants, from receiving state or local public benefits. To do so, a state must enact, after August 22, 1996, a new law that provides for such eligibility.²⁹

“SPONSOR DEEMING”

For any person to qualify to receive public benefits, the benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. “Sponsor deeming” rules control how the income eligibility determination is made for many non-citizens who apply for public benefits. Under immigration law, when an immigrant’s family member sponsors him or her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with CIS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant’s sponsor.³⁰ When an immigrant with an affidavit of support filed on her behalf applies for public benefits, sponsor deeming rules require that the benefits-granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsors ineligible to receive public benefits.

Sponsor deeming poses grave problems for battered immigrants who received their lawful permanent residency through U.S. citizen or lawful permanent resident spouses. In the past, deeming rules cut off many battered immigrant lawful permanent residents from public benefits when they fled their abusive sponsoring spouses. IIRAIRA created an exemption to sponsor deeming rules for the following immigrants:

- Qualified battered immigrant spouses and children (with certain limitations discussed below);
- Refugees;
- Asylees;
- Those granted withholding of deportation under Section 243 of the Immigration and Nationality Act (INA);³¹
- Lawful permanent residents who have earned or can be credited with 40 quarters of employment;³² and
- Lawful permanent residents at risk of hunger or homelessness.

THE BATTERED IMMIGRANT DEEMING EXEMPTION

Battered qualified immigrants who first entered the United States prior to August 22, 1996, may receive public benefits without being subject to the five-year bar and are exempt for one year from deeming requirements. Battered immigrants who need benefits beyond one year will either need a judicial or CIS determination of abuse, or they will be subject to deeming requirements. If they are required to satisfy deeming requirements after the expiration of the one-year period, they, like other lawful permanent residents, may count the qualifying quarters earned by their spouse or parent in order to qualify despite deeming.

Immigration law now specifically exempts most qualified battered immigrants from satisfying deeming requirements for 12 months³³ if the battery or extreme cruelty took place in United States; if the abuser was the spouse, parent, or member of spouse’s or parent’s family; if there is a "substantial connection" between the battery or extreme cruelty and the need for the public benefit; and if the victim no longer resides with the abuser.

²⁶ *Id.* § 1621(d).

³⁰ Immigration and Nationalization Act (INA) § 212(a)(4)(C)&(D), 8 U.S.C. § 1182(a)(4)(C)&(D); INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1).

³¹ 8 U.S.C. § 1253.

³² In certain circumstances, quarters of employment earned by a spouse or parent may be credited to the immigrant.

³³ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

Battered Immigrants' Access to Services

The following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:

- VAWA self-petitioners (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- VAWA cancellation of removal or VAWA suspension of deportation applicants (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
- Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition (whether or not the child has been abused);
- Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before and/or after obtaining lawful permanent residency; and
- Certain indigent immigrants whom the benefits provider determines to be unable to obtain food and shelter in the absence of assistance.

Notably, IIRAIRA recently created a new type of affidavit of support (the I-864) with much more stringent income-deeming rules than previous affidavits. Battered immigrants with I-864 affidavits of support submitted after December 5, 1997, are explicitly exempted from the I-864 deeming rules for 12 months.³⁴ After the one-year exemption expires, a battered immigrant applicant may continue to be exempted from the deeming requirements if she can demonstrate:

- that an order of a judge or a prior CIS determination has recognized the battery or cruelty; AND
- that there continues to be a substantial connection between the abuse and battery suffered and the need for the benefits sought.³⁵

Judicial determinations of abuse that would be sufficient to meet this requirement might be made in a protection order case, a criminal case, a custody case, a divorce and property division case, a self-petitioning or battered spouse waiver immigration case, a suspension of deportation case, or a cancellation of removal case.³⁶

However, subsequent immigration legislation, aimed at preserving access to greater benefits for persons who received lawful permanent residency before IIRAIRA, may have undermined the deeming exemption for battered immigrant women.³⁷ Whether battered lawful permanent residents with old I-134 affidavits of support are exempt from deeming is now unclear. Generally, the battered immigrant exemption to deeming requirements applies to all battered immigrants who qualify for benefits. However, this issue is not fully settled. In the meantime, attorneys and service providers working with battered immigrants should determine whether an I-134 or I-864 was filed for a battered immigrant. In states that have adopted the Family Violence Option (FVO) battered immigrants with old affidavits of support, I-134, may succeed in getting the state welfare agency to use the FVO to waive deeming.

In addition to some battered immigrants, certain categories of “other qualified immigrants” are exempt from sponsor deeming in all federal means-tested programs:

Post August 22, 1996, Entrants Exempt From Sponsor Deeming
Those who have become U.S. citizens; Persons with 40 quarters of work history in the United States Persons married to U.S. citizen or lawful permanent residents with 40 quarters of work history; Certain battered immigrants (for up to 12 months or longer if there has been a judicial finding regarding domestic violence);

³⁴ *Id.*

³⁵ *Id.*; IIRAIRA § 552, amending PRWORA § 421(f)(1)(B).

³⁶ 8 U.S.C. § 1631(f); see also NATIONAL IMMIGRATION LAW CENTER, *Alien Eligibility of Federal Benefits*, in IMMIGRANTS AND WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 1-9 (1998).

³⁷ Balanced Budget Act of 1997 § 5505(e), Pub. L. No. 105-33, codified at 42 U.S.C. § 608(f).

Immigrants facing hunger or homelessness (for up to 12 months) Immigrants whose sponsor is deceased.

COUNTING OF 40 QUARTERS OF EMPLOYMENT IN THE UNITED STATES

In general, qualified immigrants who entered the country after August 22, 1996, are indefinitely ineligible for Food Stamps and SSI, and are ineligible for federal means-tested public benefits for five years after attaining their qualified immigrant status. However, there are several exceptions to this rule, one of which applies to qualified immigrants who meet a forty work-quarter (10 year) requirement.³⁸ In order to satisfy the work requirement, the qualified immigrant must pass a test by achieving 40 quarters of qualifying work. A “qualifying quarter” is a three-month work period with enough income to qualify as a Social Security quarter and, with respect to periods beginning after 1996, during which the worker did not receive Federal means-tested assistance.³⁹

The 40-quarter test works in the following way: a “qualifying quarter” is calculated upon the basis of how much a person earns in a calendar year. Each year, the required amount is determined by the Social Security Administration (SSA). Up to four quarters of credit may be earned yearly. All work done in the United States will be counted toward qualifying quarter credits. One does not necessarily have to work during all four calendar quarters. Instead, the SSA counts qualifying quarters solely based upon the total amount earned. For example, in 2001, a qualifying quarter was credited for every \$830 earned. This amount changes yearly based upon inflation. Because the maximum number of qualifying quarters that may be achieved each year is four, qualified immigrants must have worked for all or part of each year for at least ten years in order to attain their 40 qualifying quarters of work and to overcome the five-year bar on benefits eligibility. If an immigrant receives federal means-tested public benefits at any time during a quarter, the individual will not receive credit for that quarter of work.

Any work done by a parent prior to the applicant’s eighteenth birthday may be counted. Similarly, if the immigrant is married or widowed, any work done by the spouse during the marriage may be counted toward establishing a qualifying quarter. However, after divorce, immigrant spouses lose the ability to count quarters earned by their spouses during the marriage.

As noted above, immigrants who can prove 40 quarters of work credit may be eligible to receive public benefits for which they otherwise would be ineligible due to the permanent or five-year bar on certain types of assistance. For example, persons with 40 quarters of work credit can receive SSI, the primary program that is otherwise indefinitely unavailable to qualified immigrants. Similarly, persons with 40 quarters can avoid the five-year bar on receiving federal public benefits, and can escape other state restrictions on benefits to immigrants. Even if qualified immigrants are subject to the five-year bar, but have not accumulated enough qualifying work quarters to overcome that restriction, qualified immigrants may count work during those five years to establish qualifying quarters. Thus, if a person with only seven years of work credit becomes a qualified immigrant and if they work for three more years after attaining qualified immigrant status, they will only be barred from access to benefits for three rather than five years.

An immigrant may also count work done in the United States without authorization toward his or her 40 quarters. However, when an immigrant wishes to count quarters in which he or she worked illegally, he or she may have to share information with the Social Security Administration and possibly to CIS and the Internal Revenue Service, which could result in tax and immigration consequences. Immigrants considering using work credit should pay back taxes for those years worked illegally (if taxes on those wages have not been paid) and should consult an immigration lawyer before reporting work without legal authorization to ensure that using such quarters to qualify for benefits will not undermine access to legal immigration status in the long run.

QUICK TIPS

- Meeting the 40-quarter requirement depends upon the number of years worked. Determine how

³⁸ The other exceptions to both the permanent and five-year bars on receiving certain benefits apply to refugees, asylees, and veterans or active duty military members and their spouses and unmarried dependent children.

³⁹ Social Security Act, title II, 42 U.S.C. §§ 401, *et seq.*

Battered Immigrants' Access to Services

many years the battered immigrant, the battered immigrant's spouse (during their marriage if still married, or if spouse is deceased, but not if the spouses are divorced), or the battered immigrant's parents (while the alien was under 18 years of age) lived or worked in this country. If the answer is a total of less than five to ten years, the alien cannot meet the 40-quarter requirement.⁴⁰

- A battered immigrant who has resided in the United States for over five years may be able to meet the 40 quarter requirement if she was married during the entire five-year period and both she and her spouse worked and earned sufficient money each of those five years to count towards 40 quarters. The five years of work credit of the spouse and the five years of work credit of the immigrant may be added together to equal ten years of work credit as long as the battered immigrant and her spouse remained married. Similarly, if the marriage was for seven years and the spouse had four quarters of work credit for each of the seven years and the immigrant spouse had an additional 12 quarters (three years) of work credit during those seven years, she could also claim a total of 40 quarters. The immigrant, however, loses the ability to count the spouse's quarters once she and the spouse are divorced
- The term "quarter" means the three-calendar-month period ending on March 31, June 30, September 30, or December 31 of any year.⁴¹
- Social Security credits called "quarters of coverage" are earned by working at a job or as a self-employed individual as long as Social Security taxes are paid to SSA (either through employer withholding or direct payment by the immigrant). Each earner can be credited with a maximum of four quarters each year.⁴²
- Credits are based solely upon the total yearly amount of earnings. (For example, in 2001 a qualifying quarter totaled \$830).⁴³ Thus, an immigrant would qualify for four quarters in 2001 if at any time during 2001 the immigrant earned a total of \$3320.00.
- The current quarter may be included in the 40-quarter computation.⁴⁴
- Qualifying quarters must be verified by the benefits-granting agency through the Social Security Administration.
- The law provides that the worker's own quarters and quarters worked by a parent while the immigrant was under age 18, by a spouse during the marriage if the immigrant remains married to the spouse or the marriage ended by the death of the spouse, may also be credited to the individual in determining the number of qualifying quarters.
- A battered immigrant who relies on her husband's forty quarters of work credit may only use these quarters if they are still married when she applies for benefits.
- If they divorce after qualifying for benefits, a battered immigrant will be able to continue receiving benefits only until she is required to recertify her ongoing qualification for benefits. At recertification, she can no longer count her husband's quarters.

What Benefits May Battered Immigrants Receive?

The types of *federal* benefits available to battered immigrants can be divided into three categories: (1) "federal

⁴⁰Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,412 (Nov. 17,1997).

⁴¹*Id.* at 61,413.

⁴²*Id.*

⁴³*Id.*

⁴⁴*Id.*

Battered Immigrants' Access to Services

means-tested public benefits,” (2) “federal public benefits,” and (3) other federally funded social service programs that do not fall within the definition of “federal public benefit” or “federal means-tested public benefits”. These categories are listed according to the severity of their immigrant eligibility rules (from most to least restrictive):

- Federal means-tested public benefits are generally open to many qualified immigrants, although immigrants who entered the country after August 22, 1996, are subject to certain restrictions;
- Federal public benefits, on the other hand, are open to all qualified aliens without limitation;
- Unlike federal means-tested public benefits and federal public benefits, which are closed to non-qualified immigrants, federally funded social services are open to all immigrants, including battered immigrants, regardless of their immigration status.

Each of these categories of federal benefits is described in detail below. Attorneys and advocates should also be aware that battered immigrants may be eligible for other nonfederal public benefits that are provided by state or local governments. (See the “State and Local Public Benefits” section later in this chapter for details on state benefit program restrictions.)

FEDERAL MEANS-TESTED PUBLIC BENEFITS

Federal means-tested public benefits consist mostly of cash, cash-equivalent or medical services provided directly to individuals and are generally the most difficult benefits to access. Under PRWORA, qualified immigrants who entered the country on or after August 22, 1996, are ineligible for this category of benefits for a period of five years,⁴⁵ unless they meet certain specified exceptions.⁴⁶ Immigrants entering the United States before August 22, 1996, who are or later become qualified immigrants, are eligible for federal means-tested public benefits to the same extent as U.S. citizens (except for SSI), subject to deeming rules and state restrictions.⁴⁷

Although there is no single federal definition, the term “federal means-tested public benefit” has thus far been interpreted by the Department of Health and Human Services (HHS),⁴⁸ the Department of Agriculture (USDA),⁴⁹ the Department of Housing and Urban Development (HUD),⁵⁰ and the Social Security Administration.⁵¹ These agencies consistently have defined the term “federal means-tested public benefit” to *apply only to mandatory spending programs in which eligibility for the program’s benefits, or the amount of such benefits, or both, are determined on the basis of the income, resources, or financial need of the individual, household, or family unit seeking the benefit.*

The HHS programs that constitute federal means-tested public benefits under PRWORA are Medicaid and TANF,⁵² while the Food Stamp program and the food assistance block grant program in the U.S. territories are the only programs that USDA has determined to be federal means-tested public benefits.⁵³ HUD has concluded that none of its programs falls within the definition of federal means-tested public benefit,⁵⁴ while SSA has identified

⁴⁵PRWORA § 403, 8 U.S.C. § 1613.

⁴⁶The exceptions to the five-year bar on federal means-tested public benefits apply to: refugees and asylees; veterans, active duty military personnel, or their spouses or unmarried dependant children; and qualified immigrants who meet the 40-quarter work requirement.

⁴⁷Immigrants entering the United States before August 22, 1996, are subject to pre-August 22, 1996 deeming rules. Deeming rules do not apply to VAWA eligible battered immigrants and battered immigrants with pending spouse-based petitions or battered immigrants who obtained lawful permanent residency status through a VAWA self-petition or spouse-based petition.

⁴⁸Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256, at 45,257 (Aug. 26, 1997).

⁴⁹Federal Means-Tested Public Benefits, 63 Fed. Reg. 36,653, at 36,654 (Jul. 7, 1998).

⁵⁰Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions to Federal Means-Tested Public Benefits, 65 Fed. Reg. 49,994 (Aug. 16, 2000).

⁵¹Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Federal Means-Tested Public Benefits Paid by the Social Security Administration, 62 Fed. Reg. 45,284 (Aug. 26, 1997).

⁵²Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256, at 45,257 (Aug. 26, 1997).

⁵³Federal Means-Tested Public Benefits, 63 Fed. Reg. 36,653 (Jul. 7, 1998).

⁵⁴Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions no Federal Means-Tested Public Benefits, 65 Fed. Reg. 49,994, at 49,994 (Aug. 16, 2000).

Battered Immigrants' Access to Services

only one program, SSI, that constitutes a federal means-tested public benefit.⁵⁵ Advocates should be aware that, although SSI is, as a federal means-tested public benefits, theoretically available to qualified immigrants who are new entrants after the five-year bar has elapsed, in fact, a separate bar on SSI permanently prohibits non-exempt qualified immigrants from receiving assistance under these programs. (See chart on federal means-tested public benefits below.)

PRWORA explicitly exempted the following programs from the definition of “federal means-tested public benefit:”

- Emergency Medicaid,
- Short-term in-kind emergency disaster relief,
- Assistance under the National School Lunch Act or the Child Nutrition Act of 1966,
- Public health assistance for immunizations and for testing and treatment of communicable diseases,

Federal Means-Tested Public Benefits Available to Qualified Alien Battered Immigrants

Temporary Assistance to Needy Families (TANF)⁵⁶

- Persons who first entered the United States on or after August 22, 1996, are barred for the first five years after they become “qualified immigrants,” unless “exempt.”⁵⁷

Medicaid⁵⁸

- Persons who first entered the United States on or after August 22, 1996, are barred for the first five years after they become “qualified immigrants,” from all non-emergency Medicaid including parental care, and children’s health, unless “exempt.”

SSI

- Benefits are open only to those qualified immigrants who entered the United States before August 22, 1996 and who are “exempt.” However, qualified immigrants who entered before August 22, 1996 and who were reviving SSI on August 22, 1996 or who are or subsequently become disabled are also eligible.⁵⁹
- Theoretically, individuals who entered the UNITED STATES on or after August 22, 1996 are barred for the first five years after they become “qualified immigrants,” unless “exempt.” However, a separate, permanent bar on SSI also applies to non-“exempt” qualified immigrants who are post-August 22, 1996, entrants, making them ineligible.

- Foster Care and Adoption Assistance (if the parent is a qualified alien),
- Programs and services at the community level necessary for the protection of life and safety designated by the U.S. Attorney General (see below),
- Student assistance under Title IV, V, IX, and X of the Higher Education Act and Title III, VII, and VIII of the Public Health Service Act,
- Means-tested programs under the Elementary and Secondary Education Act,
- Head Start, and

⁵⁵Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Federal Means-Tested Public Benefits Paid by the Social Security Administration, 62 Fed. Reg. 45,284 (Aug. 26, 1997).

⁵⁶Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of “Federal Means-Tested Public Benefits,” 62 Fed. Reg. 45,256 (Aug. 26, 1997).

⁵⁷Exempt groups include: veterans and active duty military personnel and their spouses, unremarried surviving spouses or children; refugee categories: persons who have one of the following immigration statuses refugee, asylee, withholding or removal/deportation, Amerasian immigrants, and Cuban or Haitian Entrants; individuals who meet the 40 quarters exemption; and Native Americans born outside of the United States.” NATIONAL IMMIGRATION LAW CENTER, IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS, Chart (Dec. 1998). See www.nilc.org for more information.

⁵⁸*Id.*

⁵⁹Balanced Budget Act of 1997 § 5301, Pub. L. No. 105-33, 11 Stat. 251. See also, Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, 32, 112 Stat. 2926.

Battered Immigrants' Access to Services

- Benefits under Title I of the Workforce Investment Act of 1998.⁶⁰

Some, but not all, of these programs are also exempted from the definition of “federal public benefit.” See the “Federal Public Benefits” section for a list of programs that are exempted from that definition.

Detailed descriptions of each of these federal means-tested public benefits programs and the degree of their accessibility for battered immigrants are discussed separately later in this chapter. Advocates should note that despite the similarity in terminology, there is a legal distinction between “federal means-tested public benefits” and “federal public benefits,” which are described in the next section. Indeed, battered immigrants can receive federal public benefits even if they do not qualify for federal means-tested public benefits because qualified immigrants are eligible for federal public benefits without regard to their date of entry into the United States. See the separate section on date of entry requirements for a more detailed discussion of this issue.

FEDERAL PUBLIC BENEFITS

As distinguished from “federal means-tested public benefits,” “federal public benefits” have less strict immigrant eligibility rules than the programs described in the previous section of this chapter and are open to all qualified immigrants without restriction, regardless of their date of entry. In general, the only individuals who are not eligible for any of the benefits in this category are non-qualified immigrants (including undocumented immigrants) with certain exceptions described below.

Only certain benefits are defined as “federal public benefits” under the Welfare Act.⁶¹ The statutory definition includes:

- Grants, contracts, loans, and professional or commercial licenses provided by, or funded by, a U.S. agency;
- Benefits for retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, and unemployment, provided by or funded by a U.S. agency.

Programs are only considered federal public benefits when payments are made or assistance is provided *directly* to:

- an individual
- a household or
- a family eligibility unit.

If payments of federal funds are being made to a state in the form of block grant money, to a shelter, to a hospital or to other entities, these are not considered “federal public benefits” and are not subject to restrictions on immigrant access.⁶² The U.S. Attorney General’s Guidance clarifies this by stating:

⁶⁰8 U.S.C.S. § 1613(c).

⁶¹NATIONAL IMMIGRATION LAW CENTER, *Alien Eligibility of Federal Benefits*, in IMMIGRANTS AND WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 1-9, 17-18 (1998).

⁶²*Id.* at 18.

Battered Immigrants' Access to Services

Although the Act prohibits certain aliens from receiving non-exempted "federal public benefits," it does not prohibit governmental or private entities from receiving federal public benefits that they might then use to provide assistance to aliens, so long as the benefit ultimately provided to the non-qualified alien does not itself constitute a "federal public benefit."⁶³

Federal Means-Tested Public Benefits Available to Qualified Alien Battered Immigrants		
<ul style="list-style-type: none"> • Food Stamps 		
Current Law	Food Stamp Reauthorization Act (Pub. L. 107-171, Section 4401)	Effective Date
<p>Qualified Immigrants who entered after August 22, 1996 are not eligible to receive Food Stamps for five years unless they are otherwise exempt.*</p> <p>Immigrants have an additional requirement of demonstrating 40 qualifying quarters of employment.</p>	<p>Restores food stamp benefits for qualified immigrants who have lived in the UNITED STATES under qualified immigrant status for at least five years. Qualified immigrants are: lawful permanent residents, refugees, asylees, trafficking victims (T visa holders), veterans, Amerasians, individuals granted withholding of deportation or removal, Cuban/Haitian entrants, individuals paroled in the US for at least one year, conditional entrants, and VAWA applicants who have received a <i>prima facie</i> determination or whose case has been approved. This provision took effect April 1, 2003.</p>	<p>April 1, 2003</p>
<p>Qualified immigrant children are eligible for food stamps only if they were lawfully residing in the UNITED STATES on or before August 22, 1996 or they are otherwise exempt.*</p>	<p>Qualified immigrant children under 18 years of age are eligible to receive food stamps regardless of their date of entry (i.e.- eliminates five year bar). Qualified immigrant children are also not subject to deeming requirements. This provision took effect October 1, 2003.</p>	<p>October 1, 2003</p>
<p>Qualified disabled immigrants are eligible to receive food stamps only if they were lawfully residing in the UNITED STATES on or before August 22, 1996 and if they are currently receiving benefits for their condition or they are otherwise exempt.*</p>	<p>Qualified disabled immigrants are eligible to receive Food Stamps, regardless of date of entry, if they are receiving benefits for their condition. Sponsor deeming does apply to qualified disabled immigrants. This provision took effect October 1, 2002.</p>	<p>October 1, 2002</p>
<p>* Refugees, Asylees, Trafficking victims with T visas, Amerasians, Cuban/Haitian Entrants, and immigrants granted withholding of deportation are exempt from the five-year bar.</p>		

⁶³Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,361(Nov. 17, 1997).

Battered Immigrants' Access to Services

Thus, if a local agency receives a "grant" to provide shelter to domestic violence victims, fire protection, or crime victim counseling, or services that do not meet the strict statutory definition of "federal public benefits," these services may be provided to any person regardless of immigration status, because immigrant restrictions do not apply.⁶⁴ This remains true even when the federal program funds would be deemed a "federal public benefit" if the grant was made to an individual, household, or family unit.

The federal government as a whole has not issued regulations defining "federal public benefits." Five years after enactment of PRWORA, only one federal agency, the Department of Health and Human Services (HHS), has issued a notice interpreting the term "federal public benefit" and identifying which of its programs provide such benefits.⁶⁵ In order to reach its conclusion, HHS issued a detailed analysis of the phrase "individual, household, or family eligibility unit." According to HHS, the phrase "individual, household, or family eligibility unit" refers to:

benefits that are (1) provided to an individual, household, or family, and (2) the individual, household, or family must, as a condition of receipt, meet specified criteria (e.g., a specified income level or residency) in order to be conferred the benefit, that is, they must be an "eligibility unit." Such benefits do not include benefits that are generally targeted to communities or specified sectors of the population (e.g., people with particular physical conditions, such as a disability or disease; gender; general age groups, such as youth or elderly).⁶⁶

No federal agency other than HHS has issued a notice defining "federal public benefit." Although the HHS interpretation should give some guidance as to whether certain programs in other federal agencies are considered federal public benefits, advocates who have battered immigrant clients who are not yet qualified immigrants should consult with experts on battered immigrants and welfare to determine whether or not a given program is a federal public benefit off-limits to non-qualified aliens before recommending that non-qualified battered immigrants apply for such benefits.⁶⁷

Finally, some programs that may otherwise appear to meet the definition of a federal public benefit were explicitly exempted by PRWORA from immigrant restrictions.⁶⁸ Because these programs are exceptions that remain open to qualified and non-qualified immigrants alike, they are discussed in the following section of this chapter.

FEDERALLY FUNDED SOCIAL SERVICES AVAILABLE TO NON-QUALIFIED IMMIGRANTS

Generally "not-qualified immigrants" are ineligible for federal, state, and local public benefits.⁶⁹ Such benefits, however, tend to have a narrow, technical definition, and non-qualified immigrants remain eligible to receive a wide array of public benefits, even those that are funded with federal dollars. (State and local benefits are discussed in a separate section below.)

This category of benefits is particularly critical for battered immigrants who have not yet attained, or who cannot attain, qualified immigrant status. Unfortunately, some battered immigrants who are legally entitled under VAWA to access public benefits face procedural barriers that make attaining qualified immigrant status more difficult. Groups of battered immigrants who may not be able to access federal public benefits include:

⁶⁴*Id.*

⁶⁵Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, at 41,660 (Aug. 4, 1998). The chart at the end of this section provides a partial list of some of the programs that HHS and other federal agencies consider to be federal public benefits. In addition, readers seeking a more detailed list of federal public benefit programs should consult the appendix.

⁶⁶*Id.* at 41,659. Battered immigrants who are qualified immigrants under VAWA, battered immigrants with approved family-based visa petitions (I-130), and battered lawful permanent residents abused by a spouse, parent or member of the spouse or parent's family however, are always eligible for all benefits in this category.

⁶⁷Contact the National Immigrant Women's Advocacy Project (NIWAP) at (202) 274-4456 or info@niwap.org with questions concerning battered immigrant access to benefits.

⁶⁸PRWORA § 401(b), 8 U.S.C. § 1611(b).

⁶⁹The definition of which programs are considered "federal, state or local public benefits" has not been settled. Advocates and attorneys are encouraged, until a definition is issued, to urge benefits providers to narrowly define those benefits that are off limits to non-qualified immigrants.

Battered Immigrants' Access to Services

- Battered immigrant self-petitioners who filed self-petitions with the Vermont Service Center without the assistance of an attorney or trained advocate, and failed to include sufficient evidence in their self-petition to be awarded a *prima facie* determination⁷⁰;
- Battered immigrants who only qualify for VAWA cancellation of removal, and who have been unable to file for this relief because the ICE has not placed them in removal (also known as deportation) proceedings; and
- Battered immigrants whose spouses filed an I-130 family-based visa petition for them that has not been approved, and who need a *prima facie* determination in that case.⁷¹

Undocumented battered immigrants who do not qualify to file a self-petition to attain lawful permanent residency, those who do not qualify to file for cancellation of removal through VAWA, U (crime victim) visa applicants, and battered immigrants who qualify for VAWA protection but who face procedural barriers to access to public benefits, are all still eligible to receive a limited set of services and benefits funded by federal and state governments.

Some Significant Federal Public Benefit Programs Available to All Qualified Immigrants⁷²

Administration on Developmental Disabilities (ADD) (direct services only)⁷³
Child Care and Development Fund
Independent Living Program
Job Opportunities for Low Income Individuals (JOLI)
Low-Income Home Energy Assistance Program (LIHEAP)
Medicare
Postsecondary Education Loans and Grants
Public and Assisted Housing
Refugee Assistance Programs
Section 8 Subsidized Housing
State Children's Health Insurance Program (CHIP)
Title IV Foster Care and Adoption Assistance Payments (if parents are "qualified immigrants")
Title XX Social Services Block Grant Funds

Federally Funded Programs

There are several federally funded social service programs that are not subject to restrictions on the basis of immigration status, and are therefore available to all immigrants – both documented and undocumented immigrants as well as qualified immigrants. One group of programs that fall into this category are programs that otherwise might meet the definition of "federal public benefit" but that were exempted by PRWORA:⁷⁴

- Emergency Medicaid;⁷⁵

⁷⁰In such cases, it is recommended that the advocate or attorney assisting the battered immigrant who originally filed a *pro se* case explain the urgent need for benefits, and inquire about what additional evidence would need to be submitted to get a *prima facie* determination.

⁷¹There is currently no mechanism to obtain a *prima facie* determination in a family-based visa case. Applicants must wait until the family-based visa petition is finally adjudicated. One option in such cases is for the abused spouse to file a self-petition under VAWA through which she can obtain a *prima facie* determination, which requires an additional filing fee.

⁷²For a more detailed list of federal public benefits, please refer to the appendix.

⁷³The Administration on Developmental Disabilities operates four programs that provide services to individuals with developmental disabilities. They are: State Councils on Developmental Disabilities; State Protection and Advocacy Agencies; National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Services; and Projects of National Significance. Although any portion of these programs that provides direct services to individuals is considered to be a "federal public benefit" off-limits to non-qualified immigrants, any benefits or services that flow to individuals through states, schools or universities, or other nonprofit organizations, are not federal public benefits and are therefore open to all immigrants regardless of immigration status.

⁷⁴PRWORA § 401(b), 8 U.S.C. § 1611(b).

⁷⁵Emergency medical assistance must be provided to all immigrants regardless of their status. Emergency Medicaid is

Battered Immigrants' Access to Services

- Short term, in-kind emergency disaster relief programs;
- Public health assistance for immunizations and for testing and treatment of communicable diseases;
- Programs and services at the community level necessary for the protection of life and safety designated by the U.S. Attorney General;⁷⁶
- Programs for housing or community development assistance to the extent that the immigrant is receiving such assistance on August 22, 1996;
- School lunch and breakfast programs.

Nonprofit and Charitable Organizations Providing Services.

In addition, not all of the benefits or services provided by federal means-tested public benefits programs or federal public benefits programs count as federal means-tested public benefits or federal public benefits. Some benefits or services under such programs may not be provided to an “individual, household, or family unit” and therefore do not constitute federal means-tested public benefits or federal public benefits.⁷⁷ For example, Food Stamps are federal means-tested public benefits. However, food provided by a shelter or food bank is not a federal means-tested public benefit, even if some or all of the food is provided with federal dollars. Similarly, TANF funds that are paid to support the work of a shelter are not federal means-tested public benefits.⁷⁸

Furthermore, all immigrants have access to benefits provided by organizations that are both nonprofit and charitable. These organizations are exempt from immigration status verification and reporting, even if they receive federal, state, or local funding.⁷⁹ IIRAIRA eliminated the requirement that nonprofit charitable organizations either seek an applicant’s confirmation that she is a qualified immigrant, or have a separate entity verify the applicant’s status before providing federal, state, or local benefits.⁸⁰ Thus, nonprofit charitable organizations providing federal, state, or local public benefits are not required to determine, verify, or otherwise require proof of an applicant’s eligibility for such benefits on the basis of the applicant’s citizenship or immigration status. Nonprofit entities may not be penalized for failing to verify citizenship or immigration status, or for providing federal public benefits to an individual who is not a U.S. citizen, U.S. non-citizen national, or qualified immigrant.⁸¹ Nonprofit service agencies are barred from providing services that are defined as “federal public benefits” directly to particular individuals in their program only when an agency that is not exempt from verification requirements (such as a state government agency) has performed verification of the individual’s qualification to receive federal public benefits and found that the individual is not a “qualified alien”.⁸² This is true even if the nonprofit entity is providing federal public benefits like TANF to individuals. However, if an organization required to verify eligibility presents verification to the nonprofit charitable organization about the not-qualified immigration status of an undocumented person, the nonprofit charitable organization may not continue providing services that would be deemed “federal public benefits” to that undocumented individual. This does not mean that the individual would be removed from the shelter or other program; rather, it means that services to that immigrant would have to be provided with other funds. Thus, it is critical that advocates and attorneys carefully interview immigrant clients to determine eligibility before sending them to apply for any public

available in all cases where the patient needs treatment for medical conditions with acute symptoms that could jeopardize the patient’s health, impair body functions, or cause dysfunction of any bodily organ or part. 42 U.S.C. § 1396(b)(v)(3). This definition includes all labor and delivery.

⁷⁶Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613 (Jan. 16, 2001).

⁷⁷Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658 (Aug. 4, 1998). See full discussion of such programs in Chapter Four of this manual and discussion below.

⁷⁸Department of Health and Human Services, *Policy Q’s & A’s - Immigrants*, at <http://www.acf.dhhs.gov/programs/ofa/polquest/immigran.htm> (last updated Jan. 2001).

⁷⁹Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,345-46 (Nov. 17, 1997).

⁸⁰IIRAIRA § 508, Pub. L. No. 104-208, 110 Stat. 3009, 3673 (codified at 8 U.S.C. § 1642(d)).

⁸¹Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,346 (Nov. 17, 1997).

⁸²*Id.* at 61345-46; Immigration and Naturalization Service, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662, at 41,664 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

Battered Immigrants' Access to Services

benefits. This is very important because benefits-granting agencies must verify the applicant's status. If an immigrant is applying for benefits for her child, only the immigration status of the child is to be verified. Since benefits granting agencies are required to verify immigration status of applicants applying for TANF and certain other benefits like Food Stamps, it is important that advocates and attorneys accompany battered immigrants who will be filing for benefits for themselves or their children or both to ensure that the benefits workers only ask immigration status questions of the person on whose behalf benefits will be provided. Accompanying battered immigrants also allows the advocate or attorney to document how the battered immigrant applicant is treated if benefits are wrongly denied.

Attorney General's List

As noted above, PRWORA authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status.⁸³ To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, not based on the individual's income or resources, and necessary to protect life or safety.⁸⁴

The following programs have been designated as available to all without regard to immigration status by the U.S. Attorney General:

- Crisis counseling and intervention programs;
- Services and assistance relating to child protection;
- Adult protective services;
- Violence and abuse prevention;
- Victims of domestic violence or other criminal activity;
- Treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children⁸⁵;
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens;
- Community food banks;
- Senior nutrition programs and other nutritional programs for persons requiring special assistance;
- Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety;⁸⁶
- Activities designed to protect the life and safety of workers, children and youths or community residents; and
- Any other programs, services, or assistance necessary for the protection of life or safety.⁸⁷

According to the Attorney General,

⁸³Immigration and Naturalization Service, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662 (Aug. 4, 1998); Interim Guidance, 62 Fed. Reg. 61,346, *et seq.* See also, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613 (Jan. 16, 2001).

⁸⁴Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61, Att'y Gen. Order No. 2129-97, (Nov. 17, 1997).

⁸⁵HUD and HHS have defined "short-term housing assistance" as emergency shelter, short-term shelter and transitional housing for up to two years. See Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001). See also, Office for Civil Rights, U.S. Department of Health and Human Services, *Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence*, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (last modified Jan. 30, 2001). Readers should also refer to the chapter on access to programs and services that can help battered immigrants, elsewhere in this manual, for more details on the HUD and HHS memos.

⁸⁶This definition includes: Immunizations for children and adolescents; AIDS and HIV services and treatment; tuberculosis services; and treatment for sexually transmitted diseases. (See Claudia Schlosberg, *Not Qualified Immigrants' Access to Health Services After the Welfare Law*, in IMMIGRANTS AND WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3B-13 (National Immigration Law Center ed., 1998).

⁸⁷See Attorney General's list included in the Appendix to this Manual.

Battered Immigrants' Access to Services

a service provider should not assume that it must verify citizenship or immigration status simply because its program or service is not exempted by [the Attorney General's] Order. Service providers and other interested parties should refer to benefit-granting agencies' interpretations of the term "federal public benefit" ... in order to determine whether their program is a federal public benefit and therefore subject to the alienage restrictions.⁸⁸

Thus, a broad range of programs that benefit battered immigrants and their children are to be fully available to all domestic violence victims without regard to their immigration status. Providers of services included in the Attorney General's list may not ask questions about immigration status of recipients or applicants for services. The Attorney General's order further clarifies that the services included on this list are not the only programs that can be provided without immigration restrictions. Only programs that fit the legal definition of "federal public benefits" and "federal means-tested public benefits" require verification.

Through the mechanisms discussed above, battered immigrants who are not qualified aliens remain eligible to receive a wide array of assistance. A subsequent section of this chapter provides more specific information on immigrant eligibility rules for some important federal programs.

STATE AND LOCAL PUBLIC BENEFITS

PRWORA significantly restricted the ability of states and local governments to provide benefits to immigrants who *do not* fall within one of the following groups:

- "Qualified immigrants";
- "Non-immigrants" as defined by the Immigration and Nationality Act; and
- Parolees for less than one year under section 212(d)(5) of the Immigration and Nationality Act.⁸⁹

Prior to the passage of PRWORA, local governments could grant access to general assistance and state-funded benefits programs to battered undocumented immigrants who were not qualified to receive federal benefits. As a result of PRWORA, states can only provide benefits to undocumented or other non-qualified immigrants if the state legislature passes a law specifically authorizing qualified immigrant access. States that had such laws in place prior to August 22, 1996, cannot rely on pre-existing laws to provide state benefits to immigrants. These states must pass a post-August 22, 1996, new law authorizing immigrant access to these benefits.⁹⁰

Several states have passed laws after August 22, 1996, authorizing state-funded benefits programs for certain categories of immigrants. These state benefits can provide important access to public benefits for battered immigrants who are subject to the five-year bar on federal benefits, or may not qualify for immigration relief under VAWA. Many states that do offer access to these benefits do so with restrictions. (For a list of the state-funded benefits available to immigrants in your state, see the National Immigration Law Center's charts on states providing benefits to immigrants on their website: http://nilc.org/immspbs/sf_benefits/index.htm).

The PRWORA definition of "state public benefits" is similar to that of "federal public benefits." However, the terms "federal public benefits" and "state public benefits" are mutually exclusive. A program can be either a state public benefit or a federal public benefit, but it cannot be both. State public benefits are defined as benefits provided by an agency of a state or local government (or by appropriated funds of a State or local government) to an individual, household or family eligibility unit.⁹¹ They may constitute a grant or loan, a contract, professional or commercial license, retirement benefits, welfare benefits, health benefits, disability benefits, public or assisted housing, postsecondary education, food assistance, unemployment benefits, or any other similar benefits.

The following qualified immigrants are eligible without any immigration restriction for any state public benefits:⁹²

⁸⁸Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, at 3614 (Jan. 16, 2001).

⁸⁹PRWORA § 411(a), 8 U.S.C. § 1621(C).

⁹⁰*Id.* § 411(d), 8 U.S.C. § 1621(d).

⁹¹*Id.* § 411(c)(1), 8 U.S.C. § 1621(c)(1).

⁹²*Id.* § 412(b), 8 U.S.C. § 1622(b).

Battered Immigrants' Access to Services

- Refugees, asylees, trafficking victims and those granted withholding of deportation under INA section 243, for the first five years after their date of admission (Medicaid is provided for the first seven years);
- Permanent resident immigrants who have worked for 40 quarters as defined by the Social Security Act, and their spouses or children (who can use some or all of the lawful permanent resident's 40 quarters to qualify);
- Immigrants who are veterans on active duty, or the spouses or dependent children of such persons;
- Spouses and children of U.S. citizens (who can use some or all of their U.S. citizen spouse's or parents' 40 quarters to qualify).

Certain state and local public benefit programs were specifically exempted by PRWORA and are therefore open to all persons without immigration restrictions. These include:

- Emergency medical care;
- Short term, in-kind emergency disaster relief programs;
- Public health assistance for immunizations and for testing and treatment of communicable diseases;
- Programs and services at the community level necessary for the protection of life and safety designated by the U.S. Attorney General.⁹³

Specific Rules For Some Important Federal Benefit Programs

This section describes the specific eligibility rules for some of the federal programs that are most likely to benefit battered immigrant women. In general, programs are listed from most restrictive to least restrictive number. Readers should note that some public benefits have their own program-specific immigrant eligibility restrictions and therefore may not be accessible to some immigrants, regardless of the program's PRWORA classification as a certain type of benefit (e.g., federal means-tested public benefit, federal public benefit, or other federally funded social services program).

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The Balanced Budget Act of 1997 restored eligibility to receive SSI for most of the categories of immigrants who had been eligible before August 22, 1996.⁹⁴ The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

The best chance most battered immigrants might have to obtain SSI is if they can qualify for the 40 quarters work credit exception category. A battered immigrant would qualify only if she, her spouse, or a parent had, individually or collectively, worked for 40 quarters. If SSI eligibility is based upon qualifying quarters earned by a spouse, the battered immigrant must be married to her abusive spouse at the time of the eligibility determination to have her husband's quarters credited to her. If she is divorced from her abusive spouse after she has been deemed eligible and has begun receiving SSI benefits, she may continue to qualify for the benefits already awarded.⁹⁵ If, however, she is divorced when she must be recertified to continue to receive benefits, she will no longer qualify, as she cannot continue to use any of her husband's quarters to meet the 40 quarters exception after divorce. Five states have created programs to provide state benefits to immigrants who are no longer eligible to

⁹³Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613 (Jan. 16, 2001).

⁹⁴NATIONAL IMMIGRATION LAW CENTER, *Summary of the Immigrant Provisions of the Balanced Budget Act*, in IMMIGRANTS AND WELFARE RESOURCE MANUAL, Tab 1-1 (1998)

⁹⁵NATIONAL IMMIGRATION LAW CENTER, *Program Operations Manual System*, in IMMIGRANTS & WELFARE, STATUTES, REGULATIONS & ADMINISTRATIVE SOURCE MATERIALS § SI 00502.100 (1998).

Battered Immigrants' Access to Services

receive SSI: California, Illinois, Maine, New Hampshire, and Oregon; other states have pre-existing disability programs for those ineligible for SSI. (See National Immigration Law Center state by state chart included in the Appendix to this manual).

FOOD STAMPS

The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. The Balanced Budget Act of 1997 restored Food Stamps access for a small number of qualified immigrants. (See chart in federal means-tested public benefits section for details.) Under current law, very few battered immigrant women will qualify for Food Stamps. Qualified immigrants who entered the United States after August 22, 1996 are barred for five years unless they are otherwise exempt. In addition, qualified immigrants must demonstrate that they have 40 qualifying quarters of employment. Battered immigrants will usually need to count both their own work quarters and those of their abusive husbands. As with SSI, battered immigrants can be credited with all of the qualifying quarters worked by a spouse during the marriage, as long as they remain married. If, after qualification, they are divorced, the battered immigrant woman will be able to continue receiving benefits only until recertification. Battered immigrants who are divorced from their abusers and who lack sufficient qualifying quarters will lose Food Stamps upon recertification when they must reapply for Food Stamps.⁹⁶

On May 13, 2002 President Bush signed into law the Food Stamp Reauthorization Act.⁹⁷ This law restores Food Stamp benefits to approximately 400,000 qualified immigrants. The Food Stamp Reauthorization Act restores eligibility to three groups of immigrants:

- Qualified immigrant children under 18, regardless of date of entry. The provision takes effect October 1, 2003.
- Qualified immigrants who receive a disability benefit, regardless of the date of entry. This provision takes effect October 1, 2002. Qualified immigrants who entered the United States after August 22, 1996, are not eligible to receive SSI, however qualified immigrants who receive disability-related Medicaid or other disability benefits for their condition would be able to receive food stamps.
- Qualified Immigrants living in the United States for five years under qualified immigrant status. This provision takes effect April 1, 2003.

Despite restrictions on Food Stamps eligibility, both qualified and non-qualified immigrants retain eligibility for emergency food assistance. Moreover, states can choose to provide state-funded food stamps to immigrants who were made otherwise ineligible by the federal welfare reform law. Sixteen states have chosen to provide food assistance to immigrants with state funds: California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Rhode Island, Texas, Washington, and Wisconsin. Some states have restored the benefits for all immigrants who meet all the requirements for eligibility for Food Stamps except for their immigration status. Others have chosen to provide food assistance for specified categories of immigrants (children, elderly, or disabled) or provide benefits to immigrants who otherwise would not qualify under federal law at a lower benefit level. Some States have purchased federal food stamp coupons for legal immigrants: California, Florida, Maryland, Nebraska, New Jersey, New York, Rhode Island, and Washington. Other states run their own Food Stamps programs.⁹⁸ (See National Immigration Law Center state by state chart included in the Appendix to this manual.)

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

TANF provides cash payments, vouchers, social services, and other types of assistance to families in need.

⁹⁶ *Food and Nutrition Service National office, Cumulative Questions and Answers on Certification and Work Issues in PRWORA*, at <http://www.usda.gov/fcs/stamps/cumula3.htm> (visited Jan. 23, 1998).

⁹⁷ Pub. L. 107-171, § 4401, 116 Stat. 134 (2002).

⁹⁸ See NATIONAL CENTER OF IMMIGRATION LAW, *State Strategies to Assist Legal Immigrants Losing Federal Food Stamp Benefits*, in IMMIGRANTS & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3A-19, 19-22 (1998).

Battered Immigrants' Access to Services

PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.⁹⁹ Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits regardless of immigration status.¹⁰⁰ Nineteen states have created substitute TANF programs that provide benefits during the five-year bar: California, Connecticut, Georgia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming.¹⁰¹ (See National Immigration Law Center state by state chart included in the Appendix to this manual).

Battered immigrants who were not required to file affidavits of support because they are self-petitioners, and certain other battered immigrants with affidavits of support, are exempt from sponsor deeming in the TANF program. (See deeming discussion above.) Other immigrants who apply for TANF and other public benefits are subjected to "deeming restrictions" which may make them ineligible for benefits until they become U.S. citizens or have worked for 40 quarters.

In addition, the Family Violence Option (FVO) included in the Welfare Act of 1996 permits states to grant "good cause waivers" of certain TANF program requirements.¹⁰² Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and service plans in order to protect battered immigrants from: "...immediate dangers, [to] stabilize their living situations and explore avenues for overcoming dependency."¹⁰³ These family violence option waivers are temporary in nature, but the actual length is defined broadly as "so long as necessary."¹⁰⁴ This definition gives welfare administrators the discretion to determine the period during which the waiver will apply, and renew the waiver on a case-by-case basis.¹⁰⁵

Advocates should work to ensure that their states formally adopt the Family Violence Option. Under HHS regulations, states that formally adopt the Family Violence Option do not have to pay penalties if they do not meet work targets or exceed time limitations because of waivers granted to battered women. Only states that formally choose the Family Violence Option will be allowed to eliminate cases of battered women from the calculations that states must submit to the federal government on work requirements and time limitations. The state must include the family violence option in its state TANF plan to avoid penalties. To date, 30 states, including the District of Columbia and Puerto Rico have adopted the Family Violence Option.

Advocates should also work to ensure that the Family Violence Option protections are implemented to take into account the needs of battered immigrants. This may include screening in the appropriate language and referrals to appropriate services, as well as waivers of sponsor deeming requirements. In states that have adopted the FVO, battered immigrants with old affidavits of support (I-134) may be able to successfully ask the state welfare agency use the FVO to waive deeming so that they have the same access to benefits as battered immigrants with new I-864 affidavits of support.

MEDICAID

⁹⁹ NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

¹⁰⁰ "Permanently Residing Under Color Of Law"-Prior to the passage of PRWORA, those who were permanently residing in the United States under color of law (PRUCOL's) were eligible to receive federal public benefits. This group consisted of immigrants whom BCIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded TANF for PRUCOL's. See NATIONAL IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

¹⁰¹ Wendy Zimmerman & Karen C. Temlin, *Key Substitute Programs by State*, in PATCHWORK POLICIES: STATE ASSISTANCE FOR IMMIGRANTS UNDER WELFARE REFORM 66 (Urban Institute, May 1999).

¹⁰² PRWORA § 402(a)(7), 8 U.S.C. § 1612(a)(7).

¹⁰³ Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,128 (Nov. 20, 1997) (to be codified at 40 C.F.R. pts. 270-5). State authorities are required to maintain the confidentiality of the victims.

¹⁰⁴ 42 U.S.C. § 607(a)(7).

¹⁰⁵ Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,131 (Nov. 20, 1997) (to be codified at 45 C.F.R. § 270.30).

Battered Immigrants' Access to Services

The Medicaid program provides health insurance to low-income individuals. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants. According to the Health Care Financing Administration (HCFA), an "...immigrant who loses SSI cash benefits would continue to be eligible for Medicaid until the State conducts a Medicaid eligibility redetermination ... and has found that the individual does not qualify for Medicaid by any other means."¹⁰⁶ Thus, immigrants who lose SSI benefits due to restrictions based upon their immigration status may also ultimately be denied Medicaid.

PRWORA allows states to choose to deny Medicaid to qualified immigrants who were in the United States before August 22, 1996.¹⁰⁷ To do so, the state must file a state plan amendment with HCFA. However, most states have continued offering Medicaid benefits to qualified immigrants who entered the United States before August 22, 1996. A few states provide full medical services to immigrants. Other states have funded medical assistance for some specific purposes, including prenatal care, nursing home resident care, child care, and for persons residing in long-term care or residential facilities. The fourteen states that provide some form of Medicaid assistance to immigrants cut off by PRWORA are: California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Pennsylvania, Rhode Island, Virginia, and Washington.¹⁰⁸ States cannot use Medicaid funds to pay for immunizations, or for testing and treatment of communicable diseases for non-qualified immigrants. In order to determine whether an immigrant is eligible for TANF or Medicaid, advocates and service providers should learn what laws their particular state has decided to enact concerning these benefits.

Emergency Medicaid

Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient's health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.¹⁰⁹ This definition includes all labor and delivery. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

PUBLIC HOUSING FOR QUALIFIED BATTERED IMMIGRANT WOMEN¹¹⁰

Battered immigrant women who are or who become "qualified immigrants" are eligible to receive public or assisted housing.¹¹¹ PRWORA and IIRAIRA clearly by law grant access to publicly assisted housing for "qualified immigrants," including battered immigrants. Although statutory eligibility for public and assisted housing for qualified immigrants is clear, the U.S. Department of Housing and Urban Development (HUD) has not yet amended its regulations to reflect these statutes. Additionally, since HUD does not directly administer its programs at a state or local level, local housing administrators may be unaware that certain battered immigrants are eligible for housing benefits. Therefore, we strongly recommend that advocates and attorneys accompany battered "qualified immigrant" applicants to housing interviews to ensure that they are granted access to public and assisted housing. Advocates and attorneys should take with them a copy of 8 U.S.C. § 1641, which is included in the appendix to this manual, to demonstrate to housing program administrators that battered immigrants qualify under the statute.

An immigrant with a pending VAWA application may have problems reserving a place in line on the public housing waiting list if she does not have a Social Security Number (SSN). However, SSNs are *not* required to access public housing, so public housing authorities should not require them of applicants. Additionally, some battered immigrants who are qualified, have difficulty accessing public and assisted housing because local public

¹⁰⁶Letter from Dept. of Health and Human Services, Health Care Financing Administration, to State Medicaid Directors (Oct. 4, 1996).

¹⁰⁷PRWORA § 402(b)(1), (3), 8 U.S.C. § 1612(b)(1), (3).

¹⁰⁸Washington State has recently replaced its state-funded medical assistance program with a sliding scale health insurance plan. Wendy Zimmerman & Karen C. Temlin, *Key Substitute Programs by State*, in PATCHWORK POLICIES: STATE ASSISTANCE FOR IMMIGRANTS UNDER WELFARE REFORM 66 (Urban Institute, May 1999).

¹⁰⁹42 U.S.C. § 1396b(v)(3).

¹¹⁰Prepared with the help of Tara Pappas, a policy intern with Ayuda.

¹¹¹8 U.S.C. § 1641(c)(2)(A).

Battered Immigrants' Access to Services

housing agencies (PHAs) use the SAVE system¹¹² to verify immigration status eligibility. Battered immigrant women who are qualified immigrants are not entered into the SAVE system by immigration authorities for confidentiality reasons. Hence, an alternate verification system is being developed. This fax-back system will allow PHAs and other public benefits granting agencies to contact the VAWA unit of the Vermont Service Center to verify eligibility of battered immigrants for benefits including public and assisted housing.¹¹³

Battered Immigrant Women Receiving Public or Assisted Housing on August 22, 1996

Some battered immigrants who were already receiving public or assisted housing benefits on August 22, 1996, may be able to continue receiving this benefit. The PRWORA only affects new applicants requesting benefits after August 22, 1996. Since some battered immigrants may be living in public or assisted housing with their abusers, advocates should be aware of how actions in a domestic violence case of a battered immigrant woman may affect her continued access to public or assisted housing.

A battered immigrant woman who is qualified, apart from her abuser, for public or assisted housing, can continue to receive public or assisted housing because she is a qualified immigrant under the PRWORA and she already lives in the unit. If she is residing in that unit with her abuser, she should be able to obtain a protection order removing her abuser from the public or assisted housing unit and continue to reside in that unit. After the abuser is vacated, advocates can work with local housing authorities to transfer the unit to the battered immigrant's name if she is a "qualified immigrant." This avoids her having to reapply for public housing, and being put back on the public housing waiting list.

If a battered immigrant woman who is not a qualified immigrant is living with her abuser and another qualified family member who is a member of her family, the battered immigrant woman should be able to remain in the housing unit. She should also be able to obtain a protection order removing her abuser from the family home, provided that the other qualified immigrant will allow her to continue living there. If the other qualified immigrant is her family member, this should not be a problem. If that family member is a relative of the abuser, this may be more problematic. A battered immigrant who is dependent upon her abuser or her abuser's family to remain in public or assisted housing might consider obtaining a protection order allowing them to continue to reside together, but prohibiting him from physically abusing her.

An undocumented battered immigrant woman living with and married to a U.S. citizen or a lawful permanent resident abuser may wish to consider preparing and submitting a VAWA application and obtaining a *prima facie* determination in her VAWA case before having the abuser removed from the public or assisted housing unit. Once she has received a *prima facie* determination making her a "qualified immigrant," she could obtain a protection order removing her abuser from the public or assisted housing unit that she shares with him while obtaining her eligibility to reside in that unit.

Housing Options Open to "Not-Qualified" Battered Immigrants

If the parties are not married and are cohabiting, the undocumented battered immigrant would have no access to "qualified immigrant" status, and would not be able to remain in the public housing unit if her abuser were ordered to vacate. A "not-qualified" battered immigrant (such as an undocumented battered immigrant who is married to an undocumented abuser, or an undocumented battered immigrant abused by her cohabitating U.S. citizen boyfriends) may qualify for housing under "opt-out" provisions established by IIRAIRA for public housing agencies (PHAs).¹¹⁴ PHAs are responsible for the approval of applications for public or assisted housing.¹¹⁵ Under "opt-out" provisions, PHAs can grant public housing to individuals without verifying immigration status. These provisions also permit PHAs to allow a "not-qualified immigrant" to reside with a family headed by a

¹¹² The Systematic Alien Verification for Entitlements (SAVE) Program is an information-sharing initiative designed to allow Federal, state, and local benefit providers to verify an applicant's/recipient's immigration status. For more information, please see <http://uscis.gov/graphics/services/SAVE.htm>.

¹¹³ For more information, please contact NIWAP.

¹¹⁴ Pub. L. No. 104-208, §§ 571-577, 110 Stat 3009 (1996); IIRAIRA § 575 created a new PRWORA § 214(h)(2), which is the opt-out provision for PHAs.

¹¹⁵ See generally HOUSING L. BULL., vol. 26 (1996).

Battered Immigrants' Access to Services

citizen or "qualified immigrant" while allowing the rent to remain fully subsidized.¹¹⁶ These provisions include language that HUD will not override the PHA's decision to "opt out."¹¹⁷ PHAs may be hesitant to opt out because HUD bears no financial burden if the applicant is found to be ineligible. However, advocates working with particularly compelling cases of domestic violence may be able to obtain public housing for battered immigrant women by urging state housing officials to opt out of verifying immigration status.¹¹⁸

Nutrition Programs

Under PRWORA, any immigrant who is eligible to receive free public education benefits (see "Education" section below) is also eligible to receive benefits under both the School Lunch program and the School Breakfast program, regardless of immigration status.¹¹⁹ Thus, states may not deny these benefits to any immigrant children, whether documented or undocumented, on the basis of their citizenship or immigration status.

PRWORA also gave states the option to provide assistance under certain federally funded nutrition programs to any immigrant in the state without regard to immigration status.¹²⁰ These programs include:

- Summer Food program;
- Child and Adult Care Food program;
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Special Milk program;
- The Emergency Food Assistance Program (TEFAP);
- Commodity Supplemental Food Program;
- Food Distribution Program on Indian Reservations.

Although many of these nutrition programs could potentially be considered federal public benefit programs that are subject to limitations on immigrant eligibility, PRWORA does not specify whether the programs fall within or outside of this category. Instead, PRWORA exempts the School Lunch and School Breakfast programs entirely from restrictions on immigrant eligibility for federal public benefits, and allows states to determine immigrant eligibility for the remaining nutrition programs as they see fit.

EDUCATION

Battered immigrant women who seek education for themselves or their children should be aware that immigrant eligibility for federal education benefits varies greatly depending upon the program in question. Public elementary and secondary education programs, for example, are open to all immigrant children, whether documented or undocumented. On the other hand, higher education programs, especially student financial aid programs, are much more restrictive.

Battered immigrant women who are not yet "qualified immigrants" may enroll their children in elementary or secondary school without fear of the school reporting to the U.S. Immigration and Customs Enforcement (ICE). Since the Supreme Court decision in *Plyler v. Doe* in 1982, undocumented immigrant children have been guaranteed the right to a free public education.¹²¹ In *Plyler*, the Court struck down a Texas state law that barred the use of state funds for the education of undocumented immigrant children, holding that such laws violated the Equal Protection Clause of the Fourteenth Amendment.¹²² Meanwhile, when Congress enacted PRWORA, they directed that nothing in the Act "may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe*."¹²³

¹¹⁶*Id.*

¹¹⁷HUD Reg. § 5.501(c).

¹¹⁸In addition, the legislative history suggests that Congress intended to grant this opt out provision because it was added to many drafts and Congress had ample time to remove this provision had it been incorrect.

¹¹⁹PRWORA § 742(a), 8 U.S.C. § 1615(a)

¹²⁰*Id.* § 742(b), 8 U.S.C. § 1615(b).

¹²¹*Plyler v. Doe*, 457 U.S. 202 (1982).

¹²²*Id.*

¹²³8 U.S.C. § 1643(a)(2).

Battered Immigrants' Access to Services

As a consequence of the directives in *Plyler* and PRWORA, public elementary and secondary schools are prohibited from doing the following:

- Denying admission to a student due to undocumented status;
- Engaging in disparate treatment in order to determine residency;
- Engaging in “chilling” actions that deter immigrants from accessing schools due to fear that their status will be discovered;
- Requiring parents or students to reveal or document their immigration status;
- Exposing the immigration status of students or parents;
- Requiring Social Security numbers.¹²⁴

In addition, the Family Educational Rights and Privacy Act prohibits schools from providing information about immigration status to any organization, including ICE.¹²⁵

Public Charge Concerns

Any immigrant who is likely at any time to become a “public charge” is ineligible to be granted lawful permanent residency in the United States.¹²⁶ Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, CIS or immigration judge must determine that the person is likely to become a public charge *in the future*. A number of factors must be considered including age, health, family status, assets, resources and financial status, education, skills, and the totality of the applicant’s circumstances.¹²⁷ Note that, although public charge is a “future-looking” determination, the regulations permit consideration of a number of present and past factors in making the public charge determination. Recent immigration and welfare reform laws have generated considerable confusion and concern about whether a non-citizen who is eligible to receive certain federal, state, or local public benefits may face adverse immigration consequences of being considered a public charge for having received public benefits.

On May 26, 1999, the Immigration and Naturalization Service issued proposed regulations and field guidance on the issue of public charge.¹²⁸ The field guidance was to go into effect immediately. While overall these regulations are helpful (i.e., not relevant to battered immigrants specially) to a certain extent for some battered immigrants, CIS has not issued final regulations and is still considering whether or not battered immigrants who apply for relief under VAWA will be exempt from or subject to the overall public charge ground of inadmissibility.¹²⁹ Until this issue is resolved attorneys representing battered immigrants should become familiar with the public charge proposed regulations and field guidance that apply to all immigrants.

Subsequent to publication of the proposed regulations, which are discussed in greater detail below, Congress amended the Violence Against Women Act to clarify the effect of the public charge provisions on battered immigrant women.¹³⁰ The statutory language guarantees that if an applicant for lawful permanent residence through adjustment of status or an immigrant visa has an approved VAWA self-petition, and that applicant has received or is receiving post-August 22, 1996, benefits, then CIS and consular officials are barred from considering the receipt of those benefits for public charge purposes. Evidence of use of IIRAIRA-authorized benefits must not be solicited, accepted, or considered by CIS officers or consular officials adjudicating adjustment of status or visa applications from self-petitioners or abused widows with approved self-petitions (I-

¹²⁴Susan C. Morse, and Frank S. Ludovina, *Responding to Undocumented Children in the Schools*, EDUCATIONAL RESOURCES INFORMATION CENTER (Sept. 1999), available at http://www.ed.gov/databases/ERIC_Digests/ed433172.html.

¹²⁵20 U.S.C. § 1232(g).

¹²⁶INA § 212(a)(4)(A)

¹²⁷INA § 212(a)(4)(B); Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rules and Notice, 64 Fed. Reg. 28,676, at 28,682, § 212.104 (May 26, 1999).

¹²⁸*Id.* at 28676 *et. seq.*

¹²⁹Immigration and Naturalization Service, *Questions and Answers -- Public Charge, Question 32*, at http://www.ins.usdoj.gov/public_affairs/news_releases/public_cqa.htm.

¹³⁰Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464 (2000).

Battered Immigrants' Access to Services

360s). IIRAIRA-authorized benefits require that the applicant prove that she is a domestic violence victim, and that the need for benefits is substantially connected to the abuse (see above).

Because the VAWA amendments were enacted after the CIS issued the proposed public charge regulations, the proposed rule does not reflect these changes. The proposed regulation, however, does clarify the circumstances under which any non-citizen can receive public benefits without becoming a public charge. The only benefits that are to be relevant to the public charge determination are public cash assistance for income maintenance, and institutionalization for long-term (but not short-term) care at government expense.¹³¹ Benefits that fit under this definition for public charge purposes are SSI, TANF, state and local cash assistance for income maintenance and government-paid costs for institutionalization for long-term care.¹³²

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not to be considered in making a public charge determination.¹³³ Although some of these programs may provide cash benefits, they are not relevant to the public charge determination if the purpose of such benefits is not for income maintenance but to avoid the need for on-going cash assistance for income maintenance. Examples of public benefits that cannot be considered for public charge purposes include, but are not limited to: Food Stamps, Medicaid, State Children's Health Insurance Program, nutrition programs, housing benefits, child care services, energy assistance transportation vouchers, educational assistance, and job training programs.¹³⁴

The rule and the guidance also state that an alien's receipt of cash assistance for income maintenance, or being institutionalized for long-term care, which are among the criteria for being deemed public charge, does not *automatically* make her or him inadmissible, ineligible to adjust status to legal permanent residence, or deportable on public charge grounds. The law requires that CIS and Department of State (DOS) officials consider several additional issues as well,¹³⁵ including the totality of the applicant's circumstances,¹³⁶ the duration and, on a case-by-case basis, circumstances under which benefits were received,¹³⁷ and whether the immigrants spouse, parent or child received public benefits.¹³⁸ Therefore, temporary reliance on public benefits does not necessarily result in a determination that the battered immigrant is a public charge, even if the assistance received was provided based on eligibility that was not related to the domestic violence.¹³⁹ Cash benefits received by a child or other relative will not be attributed to a battered immigrant or other immigrant unless the benefits represent the sole support for the family.¹⁴⁰

Though self-petitioning, battered immigrant women are exempt from the requirement of providing an affidavit of support, and CIS is not allowed to consider post-August 22, 1996, benefits use, until further regulations are issued by CIS that specifically address public charge in the cases of battered immigrant women, such individuals may be required to show that they are not likely to become a public charge in the future. Under the proposed CIS rule, they will need to show that they have not become or are not likely to become "primarily dependent on the government for subsistence as demonstrated by receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."¹⁴¹

Until the Justice Department issues further regulations that incorporate the new statutory changes regarding public charge and battered immigrants, when battered immigrants cannot clearly meet the exceptions to the public charge definition set out in the proposed public charge rule and the VAWA 2000 amendments, attorneys working with

¹³¹ Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,676, at 28,685 (May 26, 1999).

¹³² Immigration and Naturalization Service, *Questions and Answers—Public Charge, Question 6*, at http://www.ins.gov/graphics/publicaffairs/factsheets/public_cfs.htm.

¹³³ Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,676, at 28,681-82, §§ 212.102, 212.103(c), 212.105 (May 26, 1999).

¹³⁴ *Id.* at 28,682, § 212.105.

¹³⁵ *Id.* at 28,678.

¹³⁶ *Id.* at 28,682, § 212.104.

¹³⁷ *Id.* at 28,683, § 212.106(b).

¹³⁸ *Id.* § 212.109(a). Benefits provided to a family member will not make an alien inadmissible unless the evidence shows that the alien individually is likely to become a public charge.

¹³⁹ *Id.* § 212.106(b).

¹⁴⁰ *Id.* at 28,683 & 28,686, §§ 212.109(b) & 237.18(b).

¹⁴¹ *Id.* at 28,677.

Battered Immigrants' Access to Services

battered immigrants should assist them to use benefits and move off welfare as quickly as possible. It is best if battered immigrants can show some work history and some ability to sustain themselves and their children. Once the client's self-petition has been approved by the CIS, the battered immigrant should move quickly to obtain work authorization and employment by the date of her adjustment interview.

Battered immigrants who have received cash benefits for themselves in order to flee their abuser, or who received public benefits for their children that were the sole source of support for the household, should, if possible, delay filing for adjustment of status to lawful permanent residence until they have secured employment. If this is not possible, battered immigrants on public benefits should be prepared to demonstrate that the benefits they are using are IIRAIRA-related and cannot be considered under VAWA in the 2000 public charge determination, or that their use of benefits is temporary, and has been necessary to help the battered immigrant become self-reliant apart from her abuser. Attorneys should present evidence that the battered immigrant is a domestic violence victim, that her benefits use was authorized under IIRAIRA, that she can sustain herself in the future, and that the totality of the circumstances favor awarding her lawful permanent residence status. Battered immigrants considering seeking lawful permanent residence while receiving IIRAIRA-authorized benefits related to the abuse should seek child support awards from their abusers before applying for lawful permanent residence.

Applications on Behalf of Children Who Qualify for Benefits

Just as misunderstandings about public charge requirements may deter some battered immigrants from applying for benefits to which they are entitled, many immigrants are also reluctant to apply for public benefits because they fear that authorities will inquire about citizenship, immigration status, and social security numbers (SSNs) of family members who are not seeking assistance. Frequently, such fears center on whether such information will be reported to the ICE or used to deport undocumented family members. In fact, there are a number of federal laws and policies that are designed to ensure that all eligible individuals have access to federal benefit programs, and that limit inquiries into citizenship, immigration status, and SSNs to accomplish this goal.

Concerned that eligible members of immigrant families are not receiving all the benefits for which they are eligible, the Department of Health and Human Services and the Department of Agriculture issued joint guidance regarding inquiries into citizenship, immigration status, and SSNs, in state applications for Medicaid, State Children's Health Insurance Program (SCHIP), TANF, and Food Stamps. According to the guidance:

Under federal law, states are required to establish the citizenship and immigration status of applicants for Medicaid (except emergency Medicaid), SCHIP, TANF and Food Stamps. However, states may not require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigration status.¹⁴²

This policy permits all eligible members of an immigrant family to apply for and receive benefits without fearing that their actions will jeopardize the immigration status or lead to the deportation of immigrant family members. It also specifically allows immigrant parents who are ineligible for public benefits to apply for benefits that their U.S. citizen children are eligible to receive. Therefore, for example, a battered immigrant woman who has not yet attained qualified immigrant status or who will not qualify for such status because her abuser is not her husband may seek Medicaid on behalf her U.S.-born children without revealing her own immigration status and without providing her own SSN. In this type of case (i.e., where benefits are sought only for the child), the child is considered the applicant, and the state is required to establish the citizenship and immigration status only of the child, not the child's parents. If the child is otherwise eligible, the state may not deny benefits simply because the child's parents have failed to provide information regarding their citizenship, immigration status, or their SSN.

¹⁴²Department of Health and Human Services and Department of Agriculture, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/triagency.html> (last modified Sept. 21, 2000).

Battered Immigrants' Access to Services

Although each federal benefit program has its own rules regarding eligibility determinations, there are two major federal laws that limit the states' ability to make certain eligibility inquiries: Title VI of the Civil Rights Act limits inquiries into the citizenship and immigration status of non-applicants, and the Privacy Act of 1974 restricts the state's ability to require SSNs from non-applicants.

States that require non-applicants to reveal their citizenship or immigration status when such information is not legally required risk violating Title VI of the Civil Rights Act, which prohibits discrimination based upon race, color, or national origin by recipients of federal funds.¹⁴³ According to the HHS-USDA guidance,

to the extent that states' application and requirements and processes have the effect of deterring eligible applicants and recipients who live in immigrant families from enjoying equal participation in and access to these benefit programs based on their national origin, states inadvertently may be violating Title VI.¹⁴⁴

Meanwhile, Section 7 of the Privacy Act of 1974 generally prohibits states from denying benefits to individuals who refuse to disclose their SSNs, unless the disclosure is required by federal statute.¹⁴⁵ Only a few federal benefits programs require that applicants for benefits have SSNs. Although federal law requires applicants for Medicaid,¹⁴⁶ SCHIP, TANF, and Food Stamps to provide their SSNs, states risk violating the Privacy Act if they require non-applicants to disclose their SSNs as a condition for approving the applicant's eligibility for the benefits. While states are not prohibited from requesting the SSNs of non-applicants, states that do so are required under the Privacy Act to inform the non-applicant whether the disclosure is voluntary or mandatory and what uses will be made of any SSN provided.¹⁴⁷

Although federal policy, Title VI, and the Privacy Act all govern state inquiries into citizenship, immigration status, and SSNs, actual application procedures vary from program to program and state to state. For example, as a general rule, Medicaid and SCHIP allow individual children to apply for, and receive, benefits. For these programs, therefore, states must require disclosure of the citizenship, immigration status, or SSN only of the person for whom benefits are being sought, and the immigration status of other household members is irrelevant to the applicant's eligibility.¹⁴⁸

On the other hand, under TANF and Food Stamps, families or households are generally required to apply for benefits as a unit. Under Food Stamps, if a household member does not establish his or her citizenship or immigration status, or provide a SSN, that household member is determined to be ineligible to receive benefits, but the state agency cannot deny benefits to otherwise-eligible household members. The amount of the benefit will be reduced to reflect a smaller family size or household unit, and the benefit that the household or family will ultimately receive will be less than if all family or household members qualified. Similar voluntary or mandatory opt-out provisions are available under TANF in some states.¹⁴⁹ In other words,

in Medicaid, SCHIP and Food Stamps, states cannot deny benefits to otherwise eligible family or household members because other family or household members have failed to disclose their

¹⁴³42 U.S.C. § 2000d, *et seq.*

¹⁴⁴Department of Health and Human Services and Department of Agriculture, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/triagency.html> (last modified Sept. 21, 2000).

¹⁴⁵Department of Health and Human Services, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/finalqa.html>, (last modified Sept. 20, 2000).

¹⁴⁶This requirement is for Medicaid, not Emergency Medicaid.

¹⁴⁷Department of Health and Human Services, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, <http://www.hhs.gov/ocr/immigration/finalqa.html>, (last modified Sept. 20, 2000).

¹⁴⁸*Id.*

¹⁴⁹*Id.*

Battered Immigrants' Access to Services

immigration status or provide an SSN. In TANF, states have the flexibility to adopt policies and procedures to ensure that eligible family members are not denied benefits because ineligible family members do not disclose this information.¹⁵⁰

With respect to other federal and state benefits programs, the general rule is that states may only require information about citizenship or immigration status if the program's authorizing statute limits eligibility on such grounds, or if the program provides a federal, state, or local public benefit. Advocates seeking public benefits for battered immigrant clients should consult the specific program requirements before assisting their clients in applying for aid. Only applicants who qualify for benefits should be encouraged to apply for them.

Obtaining Work-Related And Non-Work Social Security Numbers¹⁵¹

Battered immigrants who have approved VAWA self-petitions receive deferred action status. This status means that ICE is aware of their presence in the United States and has made the decision to not start deportation proceedings against them. Persons who receive deferred action status are eligible to apply for, and receive, work authorization. Once VAWA-approved battered immigrants receive work authorization, they will need to apply for a work-authorized SSN. In order to receive a work-authorized social security number, an individual must be a U.S. citizen or must be an immigrant authorized to work in the United States.

If an individual is not authorized to work in the United States but has a valid non-work reason for applying for a number, the Social Security Administration will issue a non-work social security number. Such social security numbers may be required for undocumented battered immigrants or lawfully present battered immigrants without work authorization to apply for public benefits. A SSN may be assigned for a non-work purpose to an immigrant who cannot provide evidence of immigrant status that allows them to work under 20 C.F.R. § 422.107(e), if the immigrant meets certain conditions, including proof of residence either in or outside the United States, or a territory of the United States, and proof that a social security number is required by law as a condition of the immigrant receiving a federally funded benefit to which the immigrant has an established entitlement.¹⁵²

Individuals seeking Medicaid (except Emergency Medicaid), SCHIP, TANF, and Food Stamps are required under federal law to provide a social security number (SSN) when applying for such assistance. Some states may also require SSNs for other federal, state, or local benefits, even though these requirements, when not federally mandated, could pose Privacy Act or Civil Rights Act violations discussed above.

Advocates need to understand the process by which an undocumented immigrant can obtain a non-work SSN in order to better serve undocumented battered immigrant women and their children who qualify for benefits under VAWA based on a *prima facie* determination or an approved petition. In general, if an applicant for Medicaid, TANF, or Food Stamps does not have a social security number, the state agency must assist the individual in applying for one.¹⁵³ Advocates, however, are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are actually provided a non-work SSN, because caseworkers may not fully understand the process and eligibility requirements involved in issuing non-work SSNs, and may have no knowledge of battered immigrant eligibility under VAWA.

ELIGIBILITY

¹⁵⁰ *Id.*

¹⁵¹ We wish to gratefully acknowledge the contribution of Edna Yang of American University's Washington College of Law in preparation of this section.

¹⁵² Non-work social security numbers are also issued to immigrants if the state government requires a social security number to administer statutes governing the issuing of a driver's licenses and the registering of motor vehicles. It can also be argued that in jurisdictions where the courts ask for social security numbers of parties applying for divorce, child support, paternity, and marriage licenses, non-work social security number should be issued. See *Memorandum regarding §466(a)(13) of the Social Security Act*. See also SSA Program Operations Manual System, Records Manual 00203.510, available at <http://policy.ssa.gov/poms.nsf/lnx/0100203510!opendocument>.

¹⁵³ *Id.*

Battered Immigrants' Access to Services

A non-work SSN will be processed for undocumented immigrants who are entitled to the following public benefits:¹⁵⁴

- Temporary Assistance to Needy Families (“TANF”);
- Medicaid;
- Food Stamps;
- Supplemental Security Income (SSI);
- Social Security Disability Insurance (SSDI);
- Old Age Survivors Disability Insurance (OASDI);
- Benefits for end-stage renal disease patients under Title XVIII.

A SSN will not be processed for any undocumented immigrant who:¹⁵⁵

- Is ineligible for benefits or payments under the programs listed above (TANF, Medicaid, Food Stamps, SSI, SSDI, OASDI, and Title XVIII);
- Is an SSI-ineligible spouse, parent, or child;
- Is appointed a representative payee for an SSDI, OASDI, or SSI beneficiary;
- Is eligible only for emergency services under Medicaid, since emergency Medicaid is open to all immigrants and having a SSN is not a condition of eligibility for emergency Medicaid;
- Alleges a need for a SSN for tax or similar purposes.

APPLICATION PROCEDURES

Work-Authorized SSN

In order to obtain a work-authorized SSN, the applicant must be: (1) a US citizen (US-born or foreign-born), or (2) an immigrant (either US-born or foreign-born) who is authorized to work in the United States. The applicant must also be able to prove the following:

- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital record for birth, or a passport;¹⁵⁶
- Identity, through documents including, but not limited to, a driver’s license, identity card, school record, medical record, marriage records, passport, or Immigration and Naturalization Service document;¹⁵⁷
- U.S. citizenship or work authorized lawful immigrant status.¹⁵⁸

Non-Work SSN

In order to obtain a non-work SSN, the applicant must prove:

- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital record for birth, or a passport;¹⁵⁹
- Identity, through documents including, but not limited to, a driver’s license, an identity card, a school record, a medical record, marriage records, a passport, or an Immigration and Naturalization Service document;¹⁶⁰

¹⁵⁴*Id.* at 00203.560(A)(2), available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>.

¹⁵⁵*Id.* at 00203.560, available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>.

¹⁵⁶20 C.F.R. § 422.107(b).

¹⁵⁷*Id.* § 422.107(c).

¹⁵⁸*Id.* § 422.107(d). Approved VAWA self-petitioners with deferred action status and work authorization from BCIS have “work authorized lawful immigrant status.”

¹⁵⁹*Id.* § 422.107(b).

¹⁶⁰*Id.* § 422.107(c).

**C. Breaking Barrier Chapter 4.3 - Barriers to
Accessing Services: The Importance of Advocates
Accompanying Battered Immigrants Applying For
Public Benefits**

Battered Immigrants' Access to Services

- The legal requirement for a SSN as a condition of the applicant receiving a federally funded benefit or service;¹⁶¹ OR
- That the state government requires a SSN to administer statutes governing the issuing of driver's licenses, the registration of motor vehicles, and the issuance of divorce decrees, child support orders, and paternity actions.¹⁶²

It is strongly recommended that advocates and attorneys help battered immigrants gather the documentation they will need to file for a work-authorized SSN or a non-work SSN, and that advocates and attorneys accompany battered immigrants to the Social Security Administration Office when their battered immigrant clients apply. Advocates and attorneys should bring with them a copy of both the section of the regulations and the Program Operations Manual System (POMS) that govern issuance of work-related or non-work SSNs, whichever is applicable. Copies of the regulations and the POMS have been included in the appendix to this manual.

LOSS OF NON-WORK SOCIAL SECURITY CARD

Once a battered immigrant obtains a non-work SSN, an attorney or advocate *must* stress the importance of her keeping the card in a safe place where she will not lose it. The Social Security Administration will not issue replacement non-work social security cards for undocumented immigrants. For battered immigrants, the original non-work SSN card must be kept at the home of a trusted relative or friend or kept for her by her advocate or attorney. This will ensure that the card will be in a place where the abuser cannot take it away from her or destroy it.

If an immigrant's non-work SSN card has been lost, stolen, or destroyed and she needs evidence of her SSN for an allowed purpose (including payment of a federally funded benefit, obtaining a driver's license, or filing for divorce) the advocate or attorney should contact the Social Security Administration and provide them with the name and phone number of the benefits case-worker, the court clerk, or the third-party agency that needs to know the immigrant's non-work SSN. The Social Security Administration will then contact the third-party agency and notify them of the immigrant's SSN. No replacement card will be issued.

SSNs FOR U.S.-BORN CHILDREN

With respect to SSNs for the U.S.-born children of battered immigrant clients, advocates should be aware that the Social Security Administration automatically assigns a Social Security Number (SSN) to children at birth under its "Enumeration at Birth" (EAB) Project, *regardless* of whether or not the parents have a valid social security number.¹⁶³ Some Social Security Administration staff members have been erroneously advising parents who do not have social security numbers themselves that they cannot apply for a social security number for their U.S. citizen children. If an immigrant client is going to have a child, she should be informed that her child can and should be assigned a social security number regardless of whether she has one. If the hospital does not mention this, she should speak to the hospital worker who fills out the form for the birth certificate.

Conclusion

Providing battered immigrants and their children with access to the welfare safety net is essential to fulfill VAWA's original intent. Battered immigrant spouses and children will only be able to take action to protect

¹⁶¹ *Id.* § 422.107(e). The traditional legal requirements for non-work SSNs have not included state statutes requiring social security numbers for the issuance of divorce decrees, child support orders, and paternity actions. These requirements, however, are a logical extension of the use of non-work SSNs, because they are located in the same state statutes, and fulfill the same purposes, as the legal requirement of a SSN as a prerequisite for driver's licenses and motor vehicle registration.

¹⁶² *Id.*

¹⁶³ SSA Program Operations Manual System, Records Manual 00202.142, available at <http://policy.ssa.gov/poms.nsf/lnx/0100202142!opendocument>.

Battered Immigrants' Access to Services

themselves and their children from ongoing abuse if they can survive independently of their abuser's economic control. Thus, battered women's advocates and attorneys who understand immigrant eligibility rules for public benefit programs will be better prepared to advocate for battered immigrants and will be able to secure more successful outcomes in resolving public benefits problems. If you or a member of your staff needs technical assistance with public benefits problems in your state, contact the National Immigrant Women's Advocacy Project at info@niwap.org.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · mailtoniwap@wcl.american.edu · wcl.american.edu/niwap

4.3

Barriers to Accessing Services: The Importance of Advocates Accompanying Battered Immigrants Applying For Public Benefits¹²

By Anna Pohl, Hema Sarangapani, Amanda Baran, and Cecilia Olavarria

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or Welfare Reform Act) and The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) substantially reduced unqualified immigrants' access to certain federal benefits programs.³ Despite these laws, many immigrants remain eligible for critical public benefits. Numerous systemic barriers keep battered immigrant women and their children from accessing the benefits to which they are actually entitled, however. These barriers include:

- language barriers,
- confusion or misunderstanding about eligibility for benefits:

¹ "This Manual is supported by Grant No. 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women." We would like to gratefully acknowledge the assistance Nadia Firozvi of the University of Baltimore School of Law in the creation of this chapter.

² In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ For more information on this topic, visit <http://niwaplibrary.wcl.american.edu/public-benefits>.

Battered Immigrants' Access to Services

- on the part of the immigrant victim,
- on the part of the state eligibility workers,
- fear of deportation or other negative BCIS action,
- fear that receiving benefits will result in denial of lawful permanent residence on grounds that the immigrant is a “public charge.”

The Impact of Welfare Reform on Immigrant Families

Welfare reform has had a chilling effect on immigrants' access to public benefits. Research demonstrates that between 1994 and 1999, non-citizen use of public benefits not only substantially declined, but did so at a faster rate than citizens' use of public benefits.⁴ Although welfare use declined among both citizens and non-citizens, the decreases for non-citizens were greater than for citizens.⁵ Among families with one or more adult(s) who are legal permanent residents, there was a significant decline in use of TANF, SSI, food stamps, and Medicaid benefits from 1994 through 1999.⁶ Legal permanent residents' participation in TANF decreased 60 percent from 1994 to 1999,⁷ and non-citizens use of food stamps decreased 48 percent.⁸ Legal permanent residents' participation in SSI decreased 32 percent.⁹ The least dramatic change was the 15 percent decrease in Medicaid use.¹⁰ Furthermore, the overall declines in participation rates for legal permanent resident families exceeded the declines demonstrated by citizen families for TANF, SSI, and food stamps, although not for Medicaid.¹¹

These declines *are not* accounted for by changes in benefits eligibility after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) or increases in income among immigrant populations.¹² Rather in 1999, half of immigrant families were poor, poor legal immigrants were far more likely to be uninsured than similarly situated citizens and children of immigrants were more likely to be without food than children of citizens.¹³

Welfare reform not only reduced benefit use by non-citizens, but also reduced participation among U.S. citizen children who live in immigrant families. Families that include children and parents of different citizenship and immigration statuses are “mixed-status” families. About one in 10 American children live in a household where at least one parent is a non-citizen and at least one child is a citizen.¹⁴ For example, families may include U.S. citizen children, one legal permanent resident parent and a second parent who may be a legal immigrant or undocumented. Three-quarters of all children living in immigrant-headed households are U.S. citizens.¹⁵ All children born in the U.S. are eligible for public benefits on the same terms and extent as all other children, whether they are children born to citizens, legal residents, or undocumented parents. Among low-income immigrant families with U.S. citizen children, only 7.8 percent received TANF in 1999, compared with 11.6 percent of low-income citizen families with children.¹⁶ Similarly, only 19.8 percent of mixed-status low-income families received food stamps in 1999, compared with 27.9 percent of low-income citizen families.¹⁷ For both programs, the participation of mixed-status families declined significantly from

⁴ See Michael Fix & Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, THE URBAN INSTITUTE (2002), available at <http://www.urban.org/url.cfm?ID=410412>.

⁵ *Id.* at 12.

⁶ *Id.* at 15.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Randy Capps, *Hardship among Children of Immigrants: Findings from the 1999 National Survey of America's Families*, No. B-29, THE URBAN INSTITUTE: ASSESSING THE NEW FEDERALISM POLICY BRIEF SERIES B (2001).

¹⁴ Michael Fix & Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, THE URBAN INSTITUTE (2002), available at <http://www.urban.org/url.cfm?ID=410412>.

¹⁵ *Id.* at 17 (citations omitted).

¹⁶ *Id.* at 18

¹⁷ *Id.*

Battered Immigrants' Access to Services

1994-1999.¹⁸ Medicaid participation rates among mixed-status low-income families remained essentially the same, however, with 42.7 percent in 1994 versus 43.4 percent in 1999.¹⁹

Welfare reform has had a particularly devastating effect on low-income refugees, even though refugees are a protected population under PRWORA, and are exempted for five to seven years from the law's bars on federal public benefits.²⁰ Before PRWORA, participation rates for low-income refugee families with children were much higher than the rates for citizen or legal permanent resident families.²¹ Between 1994 and 1999, participation rates for low-income refugees decreased 78 percent for TANF, 53 percent for food stamps, and 36 percent for Medicaid.²² By 1999, rates for refugee families were roughly at the same level as those of citizens for TANF, food stamps, and Medicaid.²³

The stable Medicaid use rates for low-income legal resident and refugee families are at least in part explained by three important factors. These are the introduction of expanded health care coverage under the State Children's Health Insurance Program (SCHIP), increased state and local outreach for child health insurance, and the impact of new federal guidance clarifying that the use of health benefits would not be a bar to obtaining legal permanent residence or citizenship.²⁴ However, the generally high and sustained levels of Medicaid and SCHIP participation by low-income families was not found for low-income working-age individuals. Between 1994 and 1999, Medicaid use by working-age persons decreased 8 percent among citizens, 23 percent among legal permanent residents, and 58 percent among refugees.²⁵ Increases in the proportion of each population without health insurance were accounted for almost entirely by these decreases in Medicaid use. Reductions in Medicaid use are not being offset by other forms of health insurance, but are leading to total loss of coverage.²⁶

Between 1994 and 1999 there was a substantial increase in the number of naturalized citizen families in the U.S.²⁷ The rise in naturalizations was accompanied by a significantly greater increase in the number of naturalized families receiving some benefits.²⁸ The share of the naturalized population receiving benefits remained relatively modest, however, and the increases account for only a small fraction of the reductions in usage among legal permanent residents.²⁹ In addition, rising incomes were generally not the cause of the significant decreases in benefits use among legal immigrants.³⁰

Barriers

Welfare reform has created complex application procedures and other barriers that deter many immigrants who are eligible to receive benefits from applying for and receiving them. Lack of access to welfare benefits is particularly harmful for qualified immigrant victims of domestic violence for whom access to the benefits safety net is critical. Immigrants who have limited English proficiency face barriers when communicating with intake caseworkers and other staff at state social service agencies. Limited fluency with and comprehension of English often results in significant agencies who interact with battered immigrants are neither bilingual nor adequately trained in assisting battered immigrants with limited English proficiency.³¹ As a result, battered immigrants with limited English proficiency are often turned away by the agency office

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 18.

²¹ *Id.* at 18-19.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 22.

²⁵ *Id.* at 23.

²⁶ *Id.* at 23-24.

²⁷ *Id.* at 29.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ OFFICE FOR CIVIL RIGHTS, DEP'T OF HEALTH AND HUMAN SERV., POLICY GUIDANCE: TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AS IT AFFECTS PERSONS WITH LIMITED ENGLISH PROFICIENCY 1 (2001), available at <http://www.hhs.gov/ocr/lep/guide.html> [hereinafter *OCR LEP Policy Guidance*].

Battered Immigrants' Access to Services

staff or intake workers and forced to find their own interpreter, subjected to extensive waits in agency offices, or required to make repeated visits to the benefits office until an interpreter is available.³²

The rules that determine whether an immigrant is eligible for public benefits are complex. Therefore, many immigrants are unaware of their eligibility to receive certain benefits. For example, a battered immigrant woman may not know that even if she is personally ineligible for benefits, she may still apply for benefits for her U.S. citizen children. Given the complexity of benefits rules and the high importance of such benefits to battered immigrant women, serious problems arise when caseworkers in benefits offices misunderstand, or are unclear about or unaware of, the special eligibility of battered immigrants for certain public benefits.

Lack of access to the benefits safety-net locks battered immigrants into abusive relationships by robbing them of any means to survive economically and to support their children when they have an abusive relationship. Congress granted benefits access to VAWA-eligible battered immigrant spouses and children of citizens and lawful permanent residents with pending and approved immigration cases so that victims would be freed from economic dependence on their abusers.³⁰

It is essential that advocates be familiar with the rules and guidelines for accessing public benefits so that they are better able to assist battered immigrant clients to obtain the full range of benefits to which they and their children are entitled. This chapter explains policy guidance from the Department of Health and Human Services relating to both agency requests for disclosure of citizenship, immigration status and/or social security numbers during the benefits application process and the prohibition on discrimination against persons with limited English proficiency. The chapter will prepare advocates to anticipate barriers that their clients may face during the benefits application process, and to intervene with agency staff and caseworkers to ensure their clients receive the benefits to which they are entitled.

Department of Health and Human Services Guidance:

HANDLING QUESTIONS ABOUT CITIZENSHIP, IMMIGRATION STATUS, AND SOCIAL SECURITY NUMBERS DURING THE BENEFITS APPLICATION PROCESS

Many battered immigrant women, including those who, as a matter of law, are eligible for public benefits, fear that applying for benefits will lead to their deportation. A Social Security Number and information on citizenship or immigration status are required in order to obtain certain public benefits, but can only be required for the person who will be receiving such benefits. States often unlawfully require the disclosure of citizenship or immigration status information and/or Social Security Numbers for all family or household members of persons applying for benefits. Many eligible immigrants, and mothers of U.S. citizen children applying on behalf of their children, are deterred from applying for benefits because they are concerned about disclosing the Social Security Numbers of immigration status of non-applicant family or household members during the benefits-application process. State Welfare workers should not, as a matter of law, be making these inquiries.

In September 2000, the U.S. Departments of Health and Human Services (HHS) and Agriculture (USDA) issued a policy guidance³¹ (“HHS Policy Guidance”) clarifying when states may or may not request information about citizenship, immigration status, and/or Social Security Numbers on applications for TANF, SSI, Medicaid, or food stamps benefits. The policy guidance also clarifies when states may or may not deny benefits when an applicant does not provide information that state welfare workers are authorized to request by the policy guidance..

³² *Id.* At § A.

³⁰ Leslye E. Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next steps*, 7 WM. & MARY J. WOMEN & L. 597, 621 (2001).

³¹ DEP'T OF HEALTH & HUMAN SERVICES & DEP'T OF AGRICULTURE, POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html> [hereinafter *HHS Policy Guidance on Citizenship*].

Battered Immigrants' Access to Services

HHS issued the policy guidance after finding that many states require non-applicants for public benefits to disclose immigration status and/or Social Security Numbers, even though this information is not legally required. HHS further found that U.S. citizen children and other eligible persons who live in immigrant families are deterred from applying for benefits out of fear that states will request information about non-applicant family members' immigration status, and provide such information to immigration authorities.³² To the extent that states' application requirements and processes have the effect of deterring eligible benefits applicants and recipients who live in immigrant families from enjoying equal participation in, and access to, these benefit programs, states may be inadvertently violating the prohibition on national origin discrimination contained in Title VI of the Civil Rights Act of 1964.³³

Advocates must understand that, under federal law, states are required to establish the citizenship or immigration status and Social Security Numbers of applicants for Medicaid (except emergency Medicaid), State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food stamps. However, under federal law, states may not require applicants to provide Social Security Numbers or information about the citizenship or immigration status of any non-applicant family or household member who will not also be applying for, or receiving, additional benefits for themselves. States may not deny benefits to an applicant because a non-applicant family or household member has not disclosed her or his Social Security Number or citizenship or immigration status.³⁴ The rules regarding who is "an applicant" vary depending upon the benefit program. Advocates need to be familiar with these rules so they can help their clients access the benefits to which they are entitled. The rules for each program are outlined below.

Medicaid and SCHIP

Individual children are encouraged to apply for and receive benefits under Medicaid and SCHIP. For both Medicaid and SCHIP, states are required to establish the citizenship or immigration status of *only* those individuals who will be receiving the benefits.³⁵ Parents must be able to apply for Medicaid and SCHIP benefits for their children. If a mother is applying for Medicaid or SCHIP benefits on behalf of her child and not for herself, the state may only ask immigration statuses of the applicant child. States cannot require a mother to disclose her citizenship or immigration status or the status of anyone else in the household who is not applying for, and will not be receiving, the benefits. In addition, the state may not deny benefits to an eligible applicant because the applicant or a person acting on behalf of the applicant did not certify or document the citizenship or immigration status of people in the applicant's household, if those people are not themselves seeking benefits.³⁶ The child's application for benefits cannot be denied because the mother did not disclose her immigration status or that of any other household member.

As with immigration status, under federal law, states are required to obtain Social Security Numbers *only* for applicants and recipients of Medicaid and Medicaid expansion programs under SCHIP.³⁷ States have the option of requiring a Social Security Number for applicants requesting benefits in separate, non-Medicaid-related, child health care programs under SCHIP.³⁸ If an applicant who qualifies for Medicaid or SCHIP does not have a Social Security Number, the state must assist that person to apply for one. States may ask non-applicants for their Social Security number if they clearly indicate that providing a Social Security Number is voluntary, and explain how the information will be used. States may not deny benefits because an applicant did not provide Social Security Numbers of family or household members who are not applying for or receiving benefits.³⁹

In accompanying battered immigrants applying for Medicaid or SCHIP benefits for themselves or their children, advocates or attorneys need to tell benefits workers that they are not to ask immigration status

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Battered Immigrants' Access to Services

questions about non-applicant family members. If benefits workers ask for Social Security Numbers of non-applicants, advocates should ask benefits workers to disclose how that information will be used, and inform both the benefits worker and the battered immigrant client that answering Social Security Number questions with regard to persons, including the battered immigrant, who are not themselves applying for benefits is voluntary, and cannot legally impact the outcome of the benefits award.

Emergency Medicaid Services

Applicants for emergency Medicaid are not required to provide a Social Security Number or proof of citizenship or immigration status. States may not deny emergency Medicaid benefits to an applicant who does not provide a Social Security Number or information about citizenship or immigration status. States may only ask for a Social Security Number if they clearly inform the applicant that providing the number is voluntary. The benefits worker and the victim's advocate should inform clients that failing to provide a Social Security Number cannot result in denial of emergency Medicaid benefits. States which request voluntary disclosure whether or not a client has a social security number must inform the applicant about all the ways that state will use that information.⁴⁰

Food Stamps

Food stamp eligibility and benefits are based on the circumstances of *all* household members. Therefore, all household members must demonstrate their citizenship or food-stamp eligible immigration status.⁴¹ If a household member does not demonstrate citizenship or eligible immigration status, the state agency may declare that household member ineligible for benefits, but *may not deny* benefits to eligible citizens or qualified immigrant household members. The federal Department of Health and Human Services (HHS) encourages states to allow individual household members to declare early in the application process that they are not applying for Food Stamps for themselves, and wish to be excluded from calculation of the Food Stamp benefits amount. Such persons will not need to disclose their Social Security Number or citizenship or immigration status.

One of the key reasons advocates and attorneys need to accompany immigrant victims applying for Food stamps for their children and/or themselves is to make sure victims are able to immediately inform Food Stamp eligibility workers that the victims themselves and/or any ineligible household members are declaring that they are not seeking Food Stamp benefits. Advocates may then also need to intervene to prevent workers from seeking Social Security Numbers, citizenship, or immigration-status information about these ineligible family members. Non-applicant household members, however, will still be required to answer questions on matters that affect the eligibility of applicant household members, such as income, resources, striker status,⁴² and intentional program violations.⁴³ States cannot, however, deny benefits to otherwise eligible household members simply because non-eligible members have chosen not to disclose their Social Security Number, citizenship, or eligible immigration status.⁴⁴

Temporary Assistance to Needy Families (TANF)

Like Food Stamps, as a general rule, TANF eligibility and the level of TANF benefits are based upon the circumstances of all household members. All household members who will be receiving benefits must demonstrate their citizenship, or eligible immigration status. States have considerable flexibility in administering TANF, however, and may have policies that provide for the mandatory or voluntary exclusion of family members. Excluded family members would be “non-applicants” who do not need to provide

⁴⁰ *Id.*

⁴¹ See Chapter 5 for a discussion of immigrants eligible to receive food stamps.

⁴² While definitions may vary by state, a “striker” is anyone involved in a strike or concerted stoppage of work by employees.

⁴³ While definitions may vary by state, an “intentional program violation” generally occurs when a benefits recipient intentionally misrepresents, conceals, or withholds facts in an attempt to receive benefits to which they are not entitled.

⁴⁴ See HHS Policy Guidance, note 31.

Battered Immigrants' Access to Services

Social Security Numbers, or documentation of citizenship or immigration status. Twenty-one states require some adults who are not parents or caretakers, such as stepparents who are not legally responsible for a stepchild, to be included in the assistance unit. Twenty states allow some adults who are not parents or caretakers, such as essential persons and caretakers' spouses, to be included in the assistance unit at the family's adoption.⁴⁵ All states allow for "child-only" cases, where needy children are eligible to receive TANF benefits even if the other family members are non-applicants or ineligible. Family members may be non-applicants for TANF because they are not applying for benefits themselves, because they are not qualified, or because they are qualified immigrants who are subject to a five-year bar from participation in federal means-tested public benefits and therefore, TANF ineligible. These "child-only" policies are an example of how TANF programs operate for families that include members with differing citizenship and immigration statuses.

States may ask non-applicants for a Social Security Number only if they clearly indicate that provision of Social Security information is voluntary. Further, they must indicate how Social Security Number information, or information that an applicant lacks a Social Security Number will be used. Since a factor in TANF eligibility is household income, non-applicant family members who cannot be asked immigration status questions and who cannot be required to provide Social Security information must still provide income information as part of the TANF application for TANF-qualified family members. States may require non-applicants to provide information on factors that affect the family's finances or other eligibility factors, such as income received by non-applicant parents through any type of employment, property rentals, prize-winnings, etc.⁴⁶ States, however, may not deny benefits to eligible family members because a non-applicant did not provide a Social Security Number or documentation of citizenship or immigration status.⁴⁷

Joint Application Forms

Most states have consolidated their application forms and use joint applications for Medicaid, SCHIP, TANF, food stamps and other benefits, which eliminates duplication, and helps ensure that applicants receive all the benefits to which they may be entitled. HHS recommends an approach that reflects an understanding that many families will include household members who qualify for some or all benefits programs and other family members who will not due to immigration status or other reasons. HHS urges states to design their joint application forms so that families and households complete the information needed to apply for Medicaid and/or SCHIP first, since neither of these programs requires a family or household to apply as a unit.

This assures that children and other household members who qualify for Medicaid SCHIP receive much-needed health care without regard to whether they or other family members qualify for other federal public benefits. States should inform families and households that families and individual family members may apply for individual benefits programs independent of other programs. Eligibility for one program will not be affected if the family or individual chooses not to apply for other programs.⁴⁸ A family or individual family member may apply for any combination of benefits for which they qualify. For example, the applicant may qualify for and receive SCHIP and TANF, but not Food Stamps. States should designate the information that is mandatory for each individual benefit program.⁴⁹ In addition to state efforts, advocates should continue to accompany clients applying for benefits to help them understand and complete the forms. HHS provides recommended sample language that clarifies which information must be provided in order for applicants to receive specific benefits.⁵⁰ Advocates should accompany clients to assist them in completing the Joint

⁴⁵ State Policy Documentation Project, *Categorical Assistance for TANF Cash Assistance*, available at <http://www.spdp.org/tanf/categorical/categsumm.htm>.

⁴⁶ See, e.g., DC Department of Health and Human Services available at http://www.dhs.dc.gov/pdfs/benefit_app/part_c.pdf.

⁴⁷ HHS Policy guidance, note 31.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ DEP'T OF HEALTH & HUMAN SERVICES & DEP'T OF AGRICULTURE, POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS: SAMPLE NOTICE (2000), available at <http://www.hhs.gov/ocr/nationalorigin/sample.html>

Application Forms, since the variations in information required by each program makes completion of the forms confusing.

**Policy Guidance from the Department of Health and Human Services:
Facilitating Access to Public Benefits for Persons with Limited English
Proficiency**

Battered immigrant women with limited-English-proficiency are frequently unable to obtain basic information on how to access public benefits. Many intake workers and other front-line employees are neither bilingual, nor trained in assisting people who have limited English proficiency (LEP).⁵¹ LEP persons are often turned away from public benefits agencies, forced to wait substantial periods of time, forced to find her own interpreter who may not be qualified to interpret, or required to make repeated visits to an agency's office until an interpreter is available to assist in conducting the interview. As a result, battered immigrant women may be denied necessary benefits to which they are entitled, or may experience significant delays in obtaining such benefits.

Legal Protections for Persons with Limited English Proficiency

Courts have held that persons with limited English proficiency are protected under Title VI of the Civil Rights Act of 1964,³³ and the Title VI regulations against national origin discrimination. Further, on August 11, 2000, President Clinton issued Executive Order 13166, directing agencies to ensure access by persons with limited English proficiency to federally funded programs.³⁴ The failure of a federally funded state agency to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI, as well as HHS's own implementing regulations. Department of Health and Human Services' regulation requires all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.³⁵ "Federal financial assistance" includes grants, training, use of equipment, donations or surplus property, and other assistance.³⁶

The Department of Health and Human Services' (HHS) Office for Civil Rights has released a Policy Guidance to assist state benefits agencies, among others, in providing services to LEP persons without discriminating against applicants on the basis of LEP status/national origin. The LEP Policy Guidance has two goals: (1) ensuring that federal public benefits programs do not exclude individuals simply because they face language barriers to communicating in English, and (2) finding methods of minimizing the financial and administrative burdens of LEP requirements on small businesses, small local governments, and small, federally assisted non-profits.³⁷

To achieve this goal, the Policy Guidance suggests the use of the following four part balancing test to determine whether the agency is in compliance with LEP policy: The agency is to consider (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity, or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the

⁵¹ OCR LEP Policy Guidance, note 28, at 1.

³³ 42 U.S.C.S. § 2000d (2003).

³⁴ Exec. Order No. 13166 (August 11, 2000).

³⁵ 45 C.F.R. 80.3(b)(2)(3) (2001).

³⁶ Includes hospitals, nursing homes, home health agencies, and managed care organizations; universities and other entities with health or social service research programs, state, county, and local health agencies; state Medicaid agencies; state, county and local welfare agencies; programs for families, youth, and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians and other providers who receive Federal financial assistance from HHS.

³⁷ OCR LEP Guidance, note 28, at § F.

Battered Immigrants' Access to Services

recipient's program, activity, or service; (3) the nature and importance of the recipient's program, activity, or service, balanced against the resources available to the agency and administrative costs.³⁸

In putting forth this balancing test, HHS states a commitment to limiting burden on smaller recipients of federal financial assistance while providing meaningful access to benefits for LEP persons may be achieved. HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed-care organizations, and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches to fulfilling the HHS mandate.³⁹ An interagency working group on services to LEP individuals has developed a Web site⁴⁰ to assist in disseminating policy information to federally funded state agencies, federal agencies, and the communities being served.⁴¹

What is Required of Agencies? Compliance with LEP Requirements

To avoid discrimination on the basis of national origin, state benefits agencies must provide the language-assistance necessary to ensure meaningful access for LEP persons, at no cost to the individual.⁴² The type of language-assistance that agencies are required to provide depends upon a variety of factors, including the size of the agency, the frequency with which particular languages are encountered, and the frequency with which LEP persons come in contact with the program.⁴³ The key to providing meaningful access for LEP persons is to ensure that the agency and the individual can communicate effectively. The agency must ensure that an LEP person is given adequate information, is able to communicate the relevant circumstances of her situation is able to understand the benefits available, and is able to receive benefits to which she is entitled.⁴⁴

Availability of translated agency materials and oral interpretive services are the most common policy issues that agencies must confront to comply with LEP guidelines. The Policy Guidance provides specific examples of documents that may be considered "vital" for purposes of facilitating agency access for LEP individuals, and for which translations, therefore, are required in order to comply with Title VI. A document will be considered "vital" if it is crucial for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; and letters or notices that require a response from the beneficiary or client.⁴⁵ For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. "Non-vital" information includes documents that are not critical to access such benefits and services. Vital documents must be translated when a significant number of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively.

Similarly, the OCR LEP Guidance recognizes oral communication between LEP clients and agencies as a necessary part of the exchange of information. Thus, an agency that limits its language assistance to simply providing written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."⁴⁶ Agencies may take a number of steps to ensure oral communication between the LEP individual seeking services and the agency. They range from hiring competent bilingual staff or staff interpreters, to contracting with qualified in-person or telephonic interpreter services, to arranging formally for the services of qualified community volunteer interpreters who are bound by confidentiality agreements. It is generally not acceptable for agencies to rely upon an LEP individual's family members or friends to

³⁸ OFFICE FOR CIVIL RIGHTS, DEP'T OF HEALTH AND HUMAN SERV., POLICY GUIDANCE: TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AS IT AFFECTS PERSONS WITH LIMITED ENGLISH PROFICIENCY: APPENDIX A QUESTIONS AND ANSWERS 1 (2001), <http://www.dhhs.gov/ocr/lep/finalproposed.html>.

³⁹ *Id.*

⁴⁰ See Meaningful Access for People Who Are Limited English Proficient at <http://www.lep.gov>.

⁴¹ *Id.* See www.lep.gov for further discussion of LEP requirements.

⁴² See OCR LEP Policy Guidance, note 28, § C.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Battered Immigrants' Access to Services

provide the interpretive services.⁴⁷ The agency should supply competent language services free of cost to be in compliance with the requirements of Title VI and Executive Order 13166. The particular option an agency takes will depend upon the resources of the agency, and the frequency with which an agency encounters a particular language.

While the Department of Health and Human Services has taken steps towards ending discrimination on the basis of national origin against persons with limited English proficiency and improving access to the critical federal benefits application process, there is little data concerning enforcement of state-agency compliance with LEP policies. Advocates for LEP clients should be aware of the requirements for state benefits in agencies in providing appropriate language services to LEP persons, and should coordinate with agencies to ensure that languages encountered in the community are adequately served. It is crucial that advocates accompanying battered immigrant women during the benefits application process be knowledgeable of the HHS Policy guidance, be vigilant of the extent to which agencies comply with the guidelines described above, and be prepared to intervene and demand adequate services for the LEP clients from public benefits agencies.

Steps for Advocates: Accompanying Battered Immigrants to Benefits Agencies

- ACCOMPANY BATTERED IMMIGRANT CLIENTS APPLYING FOR PUBLIC BENEFITS FOR THEMSELVES AND/OR THEIR CHILDREN TO AGENCY OFFICES.

Battered immigrant women applying for benefits face numerous difficulties during the benefits application process that make accompaniment by the knowledgeable advocates essential. Advocates can ease these difficulties by accompanying battered immigrant women to public benefits agencies when they are applying for benefits on behalf of their children and/or themselves as qualified immigrants under the Violence Against Women Act.

- ANTICIPATE AND PREPARE YOUR CLIENT FOR BARRIERS SHE MAY FACE DURING THE BENEFITS APPLICATION PROCESS.

During the benefits-application process, battered immigrant women may face linguistic and/or cultural barriers to accessing benefits agencies, discomfort with disclosing immigration status due to fear or deportation, complicated application forms and/or procedures, lack of awareness or training on issues of domestic violence or immigration on the part of the benefits agency staff, or confusion over the differing requirements for various benefits programs.

- DETERMINE THE BENEFITS TO WHICH YOUR CLIENT AND/OR HER CHILDREN ARE ENTITLED.

When accompanying their clients, advocates should use the information in the Public Benefits chapter of this manual to determine whether the child or the battered immigrant herself qualifies for Medicaid, SCHIP, TANF, Food Stamps, and/or Child Care. Advocates should take copies of any documentation showing that their clients qualify for the benefits listed above.

- UNDERSTAND AND USE WITH AGENCY CASEWORKERS HS POLICY GUIDANCE ON DISCLOSURE OF IMMIGRATION STATUS AND SOCIAL SECURITY INFORMATION.

When accompanying their clients to benefits agency offices, advocates should have with them a copy of the HHS Policy Guidance with respect to disclosure of immigration status/Social Security Numbers and be prepared to intervene should their clients feel coerced into “voluntary” disclosure of such information for any non-applicant family member. Confusion over disclosure requirements

⁴⁷ *Id.*

Battered Immigrants' Access to Services

and/or benefits eligibility of battered immigrant women may be common among agency caseworkers; intervention by advocates may prevent incorrect denial or delay of benefits.

- UNDERSTAND AND USE WITH HHS OCR LEP GUIDANCE TO ENSURE ADEQUATE ACCESS TO THE BENEFITS APPLICATION PROCESS FOR CLIENTS WITH LIMITED ENGLISH PROFICIENCY.

Advocates should also take to benefits agency officers a copy of the OCR LEP guidance on providing agency access to individuals with limited English proficiency, and prepared to demand competent, expedient interpretive services for their LEP clients. Generally, advocates for bilingual clients should work with local benefits agencies to ensure appropriate translation or interpretive services or LEP individuals.

- BE PREPARED TO RESPOND IF YOUR CLIENT IS DENIED BENEFITS APPROVAL.

If the battered immigrant woman is turned away from the agency without benefits approval, advocates should insist that the application be accepted, demand an explanation for the denial, document names of agency workers and their action or inaction with the application, and be prepared to file an appeal.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

**D. In Empowering Survivors: Legal Rights of
Immigrant Victims of Sexual Assault- Chapter 16 -
Access To Programs And Services That Can Help
Victims of Sexual Assault (2013)**

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence¹²

By Soraya Fata, Leslye E. Orloff and Monique Drew

What Benefits May Immigrant Victims of Sexual Assault or Domestic Violence Receive?³

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) or Welfare Reform Act⁴ and the Illegal Immigration Reform and Immigration Responsibility Act of 1996

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² In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ For helpful information regarding the training of public benefits personnel at the state level see *Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers*, Leslye E. Orloff, Leandra Zarnow, and Yiris Cornwall.

⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter PRWORA].

(IIRAIRA)⁵ substantially altered the public benefits framework in the United States. Specifically, this legislation placed restrictions on immigrant eligibility to receive certain categories of public benefits.⁶ Under PWRORA, Congress added a requirement that non-citizens applying for certain federal public benefits programs establish that they are “qualified immigrants.”⁷

Congress recognized that immigrant women and children who were battered or subject to extreme cruelty needed access to public benefits in order to escape abuse. Therefore, in passing IIRAIRA later in 1996, Congress included immigrant women and children who were battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent in the definition of “qualified immigrants.” IIRAIRA also gave qualified immigrant status to immigrant victims of sexual assault and domestic violence whose abusers were family members, including extended family members under specified circumstances articulated in the statute.⁸ Moreover, while this new requirement to establish “qualified immigrant” status imposed restrictions on access to certain benefits, it is important to note that other categories of state and federally funded benefits and services remained unrestricted. Battered immigrants and victims of sexual assault may be eligible for a wide array of programs and services even when they are not considered qualified immigrants.⁹ These provisions underscore Congress’ commitment to ensuring that immigrant victims have broad access to services and protection from ongoing abuse.

This chapter will summarize those government funded benefits and services programs that are available to assist immigrant victims of sexual assault. The benefits available will be discussed in the context of federal and/or state restrictions on non-citizen eligibility for public benefits. The first set of benefits discussed will be those deemed “federal public benefits” that the smallest group of immigrants victims will be able to access. . As the chapter progresses, it will discuss progressively discuss less restricted benefits. The chapter will culminate with a discussion of federally and state and locally funded programs and assistance that are open to all immigrant victims without regard to immigration status. Victims of sexual assault are eligible for to receive varying degrees of federal, state, and local public benefits depending on several factors, including:

- The victim’s immigration status;
- How long he or she has been in the United States;
- The state/community where he or she resides; and
- Who perpetrated the sexual assault?

Specifically, this chapter will discuss the following four avenues of eligibility open to many and in some cases all immigrant victims of violence against women:

- I. Federal public benefits open to all qualified immigrants without limitation. This section will include a description of who is considered a qualified immigrant as well as which programs require qualified immigrant status.

⁵ Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. §§ 1101 et seq.) [hereinafter IIRAIRA].

⁶ While this legislation affected both documented and undocumented immigrant access to federal programs, it actually had the greatest impact on immigrants with lawful status. Immigration and Immigrants: Setting the Record Straight, Michael E. Fix and Jeffrey S. Passel (May 1, 1994), available at <http://www.urban.org/publications/305184.html> (last visited July 22, 2009).

⁷ This chapter uses the term “qualified immigrants” to refer to immigrants whom PRWORA and IIRAIRA categorize as “qualified aliens.”

⁸ 8 U.S.C. 1641(a)(1) (The statutory language “has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the immigrant” requires residence in the same household currently, at the time of filing, or at the time of the battering or extreme cruelty. This protects immigrant victims who leave the home after the assault as well as those who are assaulted and then have the abuser move into their household.)

⁹ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613, 3,616 (Jan.16, 2001); Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

- II. Federal means-tested public benefits (Supplemental Security Income (SSI), Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, and the State Child Health Insurance Program (SCHIP)) open to certain qualified immigrants depending on applicants meeting enhanced program requirements and the immigrants' date of first entry into the United States.
- III. State funded public benefits open to immigrant victims. This section will discuss the extent to which states offer state funded benefits to immigrants and/or immigrant victims who may or may not qualify to receive federal public benefits
- IV. Programs open to all victims regardless of immigration status. Benefits in this category may include, but are not limited to, emergency Medicaid, temporary public and assisted housing, urgent cash and food assistance...

I. ACCESS TO FEDERAL PUBLIC BENEFITS FOR QUALIFIED IMMIGRANT SEXUAL ASSAULT VICTIMS

INTRODUCTION

In 1996, PRWORA and IIRAIRA substantially reduced immigrant access to federal, state, and local public benefits.¹⁰ PRWORA restricted access to federal public benefits and federal means-tested public benefits to immigrants who were “qualified immigrants.”¹¹

QUALIFIED IMMIGRANTS

In general, only qualified immigrants are eligible to receive the assistance from the types of federal public benefits programs listed above. Immigrant victims of sexual assault who fit within one of the following categories are considered qualified immigrants, and are therefore eligible to receive federal public benefits:

- Lawful permanent residents¹²
- Conditional permanent residents¹³
- Asylees¹⁴
- Refugees¹⁵
- Persons paroled into the United States for a period of at least one year¹⁶
- Persons granted withholding of deportation¹⁷
- Persons granted conditional entry¹⁸
- Cuban and Haitian entrants¹⁹

¹⁰ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) (hereinafter PRWORA); Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-547 (codified as amended at 8 U.S.C. section 1101 et seq.) (hereinafter IIRAIRA).

¹¹ While the term “qualified alien” is used in PRWORA, we will use the term “qualified immigrant.” Throughout this manual, except when quoting language contained in the statute, we use the term “immigrant” rather than “alien,” and “undocumented” rather than “illegal.” We strongly encourage advocates and attorneys working with immigrant sexual assault victims to use this same terminology.

¹² PRWORA § 431(b)(1).

¹³ PRWORA § 431(b)(1). Conditional permanent residents are spouses of U.S. citizens who were married for less than two years when they obtained residency status. Conditional permanent residents receive a “green card” that expires after two years, and must submit an application to remove the conditions of residence 90 days before the card expires. Once the conditions are removed, the spouse becomes a lawful permanent resident.

¹⁴ PRWORA § 431(b)(2).

¹⁵ PRWORA § 431(b)(3).

¹⁶ PRWORA § 431(b)(4).

¹⁷ PRWORA § 431(b)(5).

¹⁸ PRWORA § 431(b)(6).

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Amerasian immigrants²⁰
- A victim of human trafficking who has filed for, had a prima facie determination or has been awarded a T-visa under INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).²¹
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application.²²
- Parents of children have been battered or subject to extreme cruelty by the other U.S. citizen or lawful permanent resident, and who have VAWA self-petitions or petitions for suspension of deportation or cancellation of removal pending or approved and their undocumented immigrant children listed as dependents in their VAWA self-petition application.²³

Benefits Access for Certain Native Americans Born Outside of the United States

Two groups of Native Americans qualify for access to certain specified federal public benefits. These include:

- Native Americans of certain federally recognized tribes born outside the United States;²⁴ and
- Certain Canadian born Native Americans.²⁵

¹⁹ IIRAIRA § 501; 8 U.S.C.S. § 1641(c); 8 U.S.C. § 1641(b)(7). Cuban and Haitian entrants are nationals of Cuba or Haiti who were paroled into the United States, applied for asylum, or who are in exclusion or deportation proceedings but have not received a final order of exclusion or deportation. Refugee Education Assistance Act of 1980 (REAA), Pub. L. No. 96-422 § 501(e) (Oct. 10, 1980).

²⁰ Pub. L. No. 102-232, Title III, § 307(n)(8)(c), 105 Stat. 1757. An Amerasian immigrant is a person born in Vietnam after January 1, 1962 and before January 1, 1976, fathered by a U.S. citizen. The category also includes the child's mother, the mother's spouse and other children, or someone who has acted as the child's mother, father or next of kin. *Id.* at § 307(n)(8)(b).

²¹ 8 U.S.C. § 1641(c)(4). T-visa applicants were made qualified immigrants by the Trafficking Victims Protection and Reauthorization Act of 2008 § 211(a).

²² 8 U.S.C. § 1641(c). VAWA petitioners' eligibility is discussed below, in the section on Access to Public Benefits for Immigrant Sexual Assault Victims.

²³ IIRAIRA § 501; 8 U.S.C. § 1641(c). VAWA petitioners' eligibility is discussed below, in the section on Access to Public Benefits for Immigrant Sexual Assault Victims.

²⁴ A Native American "who is a member of an Indian tribe," as defined by § 25 U.S.C. 450b(e), has access to SSI benefits and food stamps. PRWORA § 402(a)(2)(G)(ii), 8 U.S.C. § 1612(a)(2)(G); PRWORA § 402(a)(3), 8 U.S.C. § 1612(a)(3). "A member of an Indian tribe" is defined by 25 U.S.C. 450b(e) as

"any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([85 Stat. 688](#)) [[43 U.S.C. § 1601](#) et seq.] , which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Members of these tribes who were born in the United States are also eligible to receive Medicaid benefits. PRWORA § 402(b)(2)(E), 8 U.S.C. § 1612.

For a full listing of "Indian tribes" currently recognized as being eligible for this exception to the exclusion from federal benefits, see 67 Fed. Reg. 46327-33 (July 12, 2002), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=46328&dbname=2002_register (last visited Apr. 17, 2009).

Native Americans born outside of the United States seeking to access public benefits must meet the definitions described above or must be lawful permanent residents or have another qualifying immigration status to gain access to public benefits.

See UNITED STATES DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES POLICY ANNOUNCEMENT, No. TANF-ACF-PA-2005-01 2 (Nov. 15, 2005), *available at* <http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2005/pa2005-1.htm> (last visited Apr. 16, 2009) for a more in depth discussion of this requirement.

²⁵ Canadian Born Native Americans are not mentioned specifically in PRORWA as "qualified immigrants." However, Canadian born Native Americans are exempted under the PRWORA from otherwise applicable immigrant restrictions on access to enumerated benefits programs under sections 402(a)(2)(G) and (b)(2)(E). Section 402(a)(2)(G) (8 U.S.C. § 1612(a)(2)(G)) exempts any individual, who is an American Indian born in Canada to whom the provisions of section 289 of the INA apply from Supplemental Security Income Program and food stamps (8 U.S.C. § 1612(a)(3)). Additionally, PRWORA section 402(b)(2)(E) provides access to Medicaid for Canadian born Native Americans who meet the requirements of INA section 289 (8 U.S.C. § 1612(b)(2)(E)). The requirements set forth in section 289 of the INA, by which Canadian born Native Americans receive the statutory right of entry and access to the aforementioned benefits, are, the immigrant: must have been born in Canada and must have at least 50 per centum of blood of the American Indian race (8 U.S.C. § 1359). In order to

Victims of severe forms of trafficking in persons in addition to being qualified immigrants are eligible to receive federal public benefits to the same extent as refugees because the Trafficking Victims Protection Act of 2000 recognized the need for protection and assistance for victims of severe forms of trafficking. This includes both T-Visa holders and trafficking victims who have been granted continued presence.²⁶

The law distinguishes between those qualified immigrants who first entered the United States before August 22, 1996, and those who entered on or after that date.²⁷ Qualified immigrants who entered the United States on or after August 22, 1996 cannot receive federal means-tested public benefits²⁸ for five years following entry with an immigration status included in the definition of “qualified immigrant,”²⁹ unless the immigrant falls within an exempt category.³⁰

FEDERAL PUBLIC BENEFITS

Certain immigrant sexual assault victims, particularly those who are victims of domestic violence and trafficking, lawful permanent residents, and those with certain other types of immigration status may be considered qualified immigrants.³¹

Only two types of benefits are considered federal public benefits. The first category of federal public benefits includes programs that provide a “grant, contract, loan, professional license or commercial license” to an individual, either through a Federal agency or with federally appropriated funds.³²

The second category of federal public benefits includes programs that provide one of the following types of benefits:

- Retirement benefits;
- Welfare benefits;
- Health benefits;
- Disability benefits;
- Public or assisted housing;
- Postsecondary educational grants and loans;
- food assistance benefits;
- unemployment benefits;
- any similar benefit.³³

receive any federal benefits, beyond Medicaid, SSI and food stamps the immigrant must become a lawful permanent resident. For a complete discussion of Canadian born Native Americans' access to federal benefits, see UNITED STATES DEP'T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES POLICY ANNOUNCEMENT, No. TANF-ACF-PA-2005-01 2 (Nov. 15, 2005), *available at* <http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2005/pa2005-1.htm> (last visited Apr. 16, 2009).

²⁶ See Section 107 of Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 § 107(b)(1)(A). Trafficking victims will have Department of Health and Human Services certifications of benefits eligibility if they have been awarded continued presence or a T-visa.

²⁷ August 22, 1996 marks the passage of PRWORA into law.

²⁸ Federal means-tested public benefits are defined in section II of this chapter.

²⁹ PRWORA § 403(a). Some states have chosen to extend these same means-tested benefits to federally ineligible immigrants through state-funded programs. For more information, see the section on state-funded benefits in this chapter.

³⁰ Exempt categories include refugees and asylees, certain lawfully residing veterans, and Cuban and Haitian entrants.

PRWORA § 403(b), (d).

³¹ PRWORA, § 401, 8 U.S.C. § 1611.

³² PRWORA § 401(c)(1)(A), 8 U.S.C. § 1611(c)(1)(A); see also Department of Justice, Verification of Eligibility for Federal Public Benefits 63 Fed. Reg. 41,662, 41,664 (Aug. 4, 1998); Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (interpreting this provision to apply only to “agreements or arrangements between Federally funded programs and individuals”).

³³ PRWORA § 401(c)(1)(B); 8 U.S.C. § 1611(c)(1)(B).

To constitute a federal public benefit within this second category, the benefit must be provided by a federal agency or by federally appropriated funds, and must be provided to “an individual, household or family eligibility unit.”³⁴ HHS has interpreted the requirement of an eligibility unit to apply to individuals, households and families, meaning that that the “individual, household or family must, as a condition of receipt, meet specified criteria (e.g. a specified income level or residency) in order to be conferred the benefit . . .”³⁵

Although PRWORA provides a definition of the term “federal public benefit,”³⁶ individual federal benefits-granting agencies bear the ultimate responsibility for determining which of their programs are to be considered federal public benefits.³⁷ The Department of Justice has repeatedly affirmed the government’s preference for deferring to each federal agency’s own interpretation of the term “federal public benefit.”³⁸ The Department of Health and Human Services (HHS) has published an exhaustive list of programs it considers to provide federal public benefits.³⁹ The list includes 31 programs and services that HHS deems federal public benefits when the benefits is provided to an individual, household or family eligibility unit. Since the following programs have been deemed federal public benefits by HHS, they can only provide assistance to immigrants who are “qualified immigrants.”⁴⁰ Qualified immigrants are legally eligible to access the following programs funded by:

The Department of Health and Human Services

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)-State Developmental Disabilities Councils (direct services only)
- ADD-Special Projects (direct services only)
- ADD-University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare
- Medicaid (except assistance for an emergency medical condition)⁴¹

³⁴ PRWORA § 401(c)(1)(B), 8 U.S.C. § 1611(c)(1)(B); *see also* Department of Justice, Verification of Eligibility for Federal Public Benefits 63 Fed. Reg. 41,662, 41,664-65 (Aug. 4, 1998).

³⁵ 63 Fed. Reg. at 41,659.

³⁶ PRWORA 401(c).

³⁷ *See, e.g.* 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (Department of Health and Human Services interpretation of “federal public benefit”).

³⁸ *See* A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, *also available at* <http://www.legalmomentum.org/assets/pdfs/attorneygeneralsorder.pdf>, 66 Fed. Reg. 3613, 3614 (“the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit”); A.G. Order No. 2170-98, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41.6662, 41.664 (“The Service will give all appropriate deference to benefit granting agencies’ applications of the definition to the programs they administer, or to applications provided by another Federal agency that oversees or administers a Federal benefit program”).

³⁹ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) *also available at* <http://www.legalmomentum.org/assets/pdfs/prwora.pdf>; Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴⁰ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) *also available at* <http://www.legalmomentum.org/assets/pdfs/prwora.pdf>; Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴¹ *See* Chapter 17 of this manual *Access to Health Care for Immigrant Victims of Sexual Assault* for an overview of immigrant victim eligibility for subsidized health care. The appendices to that chapter include state by state charts on access to

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)⁴²

The Department of Agriculture

- Food Stamps⁴³
- Federal Crop Insurance⁴⁴

The Department of Housing⁴⁵

- Public and Assisted Housing
- Public Housing Operating Fund⁴⁶
- Public Housing Capital Fund⁴⁷
- Public Housing Neighborhood Networks (NN) Program⁴⁸
- Public Housing Homeownership (Section 32)⁴⁹
- Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)⁵⁰
- Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)⁵¹
- Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)⁵²
- Renewal of Section 8 Project-Based Rental Assistance⁵³
- Housing Choice Voucher Program⁵⁴
- Homeownership Voucher Assistance⁵⁵

emergency Medicaid, forensic examinations, post-assault health care and pre-natal care for immigrant victims of sexual assault and domestic violence.

⁴² Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

⁴³ U.S. Department of Agriculture, Non-Citizen Requirements in the Food Stamp Program, *Eligibility Determination Guidance*, 1 (January 2003), available at http://www.fns.usda.gov/FSP/Rules/Legislation/pdfs/Non_Citizen_Guidance.pdf.

⁴⁴ U.S. Department of Agriculture, Eligibility for Federal Crop Insurance Benefits for Non-Citizens without a Social Security Number (SSN), May 26, 2005 **BULLETIN NO: MGR-05-008** available at: <http://www.rma.usda.gov/news/managers/2005/PDF/mgr-05-008.pdf>

⁴⁵ For a listing of all Public and Assisted Housing programs through HUD see Appendix XX. The first section of the appendix lists programs that are only available to "qualified immigrants." The second section lists the remaining programs that are available to all immigrants regardless of their status.

⁴⁶ Department of Housing and Urban Development, *Programs of HUD*, U.S., 80 (2006).

⁴⁷ *Id.* at 81.

⁴⁸ *Id.* at 82.

⁴⁹ *Id.* at 84.

⁵⁰ *Id.* at 22.

⁵¹ *Id.* at 57.

⁵² *Id.* at 70.

⁵³ *Id.* at 74.

⁵⁴ *Id.* at 75.

⁵⁵ *Id.* at 78.

- Project-Based Voucher Program⁵⁶

ACCESS TO FEDERAL PUBLIC BENEFITS FOR IMMIGRANT SEXUAL ASSAULT VICTIMS

Advocates and attorneys who work with immigrant victims of sexual assault, rape, incest or other sexual abuse should broadly consider whether a client's immigration status or options the victim has to obtain legal immigration status could provide eligibility for federal public benefits. All victims should be screened to determine whether they have an immigration status that already makes them eligible for benefits qualified immigrants. When assisting victims of sexual assault finding out some of the following information about the immigrant sexual assault survivor will help determine what government funded benefits they may be eligible to receive, service providers should consider:

- The victim's immigration status;
- When the victim received that immigration status;
- Whether the victim is eligible for immigration relief under the Violence Against Women Act⁵⁷, or the victim is certified by HHS as a victim of a severe form of trafficking in persons under the Trafficking Victim's Protection Act;⁵⁸
- Whether the victim's children qualify for benefits that she is not eligible for;⁵⁹ and
- Practices at local welfare departments that may result in the victim or her children being denied benefits they qualify for or being asked questions that could lead the welfare office to report to DHS victims who are applying for benefits for their citizen children and not for themselves.

Carefully evaluate the sexual assault victim's immigration status to ascertain whether their immigration status is on the "qualified immigrant" list or if they are a trafficking victim or otherwise exempt from the benefits access restrictions. Although, all immigrants can access the many government funded benefits, programs and services described later in this chapter, only qualified immigrant sexual assault victims will be able to access "federal public benefits."

To become a qualified immigrant most victims will have had to file for some form of legal immigration status with the Department of Homeland Security as a prerequisite to becoming a qualified immigrant. Advocates working with immigrant sexual assault survivors should interview clients early on to screen immigrant victims to determine if they have, are in the process of applying for or have received legal immigration status. If so these victims may also be able to access various forms of federal or state funded public benefits beyond those open to all immigrants. The remainder of this chapter discusses in detail which immigrant sexual assault victims will qualify for which federally and state funded benefits. The following victims are examples of sexual assault victims who will likely be eligible for some types of "federal public benefits."

- Victims battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse, parent or step-parent;
- Child victims of sexual assault or incest perpetrated by a U.S. citizen or lawful permanent resident spouse, parent or step-parent;
 - A child abused while under the age of 21 has until before the child turns 25 to file their VAWA self-petition;
- Victims of a severe form of trafficking in persons;
- Victims who entered the U.S. as a refugee, (based on a well-founded fear of persecution if returned to her home country);

⁵⁶ *Id.* at 79.

⁵⁷ INA § 204(a)(1), 8 U.S.C. § 1154(a)(1) (eligibility for VAWA self-petitioners), INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (eligibility for VAWA cancellation of removal), INA § 244(a)(3) (as in effect on March 31, 1997) (eligibility for VAWA suspension of deportation), INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (T-visa for victims of human trafficking).

⁵⁸ Trafficking Victims Protection Act of 2000, Pub.L. 106-386, 114 Stat. 1464 (codified in scattered sections of 22 U.S.C. and 18 U.S.C.).

⁵⁹ This includes children who become qualified immigrants as dependents on their parent's self-petition.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Victims granted asylum in the U.S. (based on a well-founded fear of persecution if returned to her home country);
- Victims with lawful permanent residency;⁶⁰
- Victims with conditional permanent residence;
- Child victims of sexual assault or incest perpetrated by U.S. citizen and lawful permanent resident parent whether or not the child has runaway to escape ongoing abuse;
- Child victims of sexual assault or incest perpetrated by a family member residing in the victim's household, where the child's citizen or lawful permanent resident parent filed a family based visa petition on the child's behalf.⁶¹

U-Visa Holders

Many sexual assault victims may be eligible for U-Visa immigration relief.⁶² When an immigrant receives a U-visa, he or she receives lawful immigrant status, protection from deportation and permission to be lawfully employed.⁶³ U-visa applicants and recipients, however, are not “qualified immigrants” eligible for federal public benefits. Some immigrant victims may qualify as U-visa victims, and may also qualify for other forms of immigration relief. If a U-visa victim is eligible for multiple forms of relief, it may be that a T-visa or VAWA self-petition is preferable to the U-visa, because it also offers federal public benefits eligibility. Victims who only qualify for the U-visa are not eligible to receive federal public benefits, but may still have access to some state funded public benefits beyond those open to all undocumented immigrants.⁶⁴ In addition the U.S. U.S. Attorney General is statutorily required to provide all U-visa recipients with a referral to organizations that provide immigration and other assistance to victims.⁶⁵

T-Visa Holders

The Trafficking Victim's Protection Act (TVPA) grants immigration relief to certain victims of human trafficking.⁶⁶ The law provides a special immigration status, the T visa, as well as a path to permanent residency for victims of “a severe” form of trafficking. Law enforcement officials in trafficking cases can request continued presence for victims of severe forms of trafficking.⁶⁷ T-visa applicants may request immigration benefits both for themselves and certain of their family members. Spouses and minor children of T-visa victims can receive T-visas upon proof of the requisite family relationship.⁶⁸ Parents and under 18 year old siblings of child trafficking victims (under the age of 21) may also be granted T-visas.⁶⁹

In addition to providing immigration relief, the TVPA provides that victims of a severe form of trafficking in persons are eligible to access certain federal benefit programs.⁷⁰ Trafficking victims are afforded access to benefits to the same extent as refugees.⁷¹ They are directly eligible for the major

⁶⁰ There are a variety of paths through which the victim may have obtained lawful permanent residency including through a family member or through employment.

⁶¹ 8 U.S.C. 1641(a)(1) (“has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the immigrant”) This relief is accessible to both adults and children.

⁶² See U Visa Relief for Immigrant Victims of Sexual Assault, Chapter 10 of this Manual.

⁶³ 8 U.S.C. § 1184(p)(3)(B).; For more information on the U-visa and other forms of immigration relief, please see Chapter 10 of this manual.

⁶⁴ See the Section V later in this chapter for a full discussion of state funded benefits.

⁶⁵ 8 U.S.C. § 1184(p)(3)(A).

⁶⁶ Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000).

⁶⁷ Trafficking Victims Protection Act of 2000, Pub.L. 106-386, 114 Stat. 1464 (codified in scattered sections of 22 U.S.C. and 18 U.S.C.). ...

⁶⁸ See 67 Fed. Reg. 4783, 4783-820 (Jan. 31, 2002) (upon a showing of extreme hardship). See also, National Immigration Law Center, *DOJ Issues Regulations for T Visas, Available to Victims of Trafficking*, Immigrants' Rights Update, Vol. 16, No. 1, February 28, 2002, available at: <http://www.nilc.org/immlawpolicy/obtainlpr/oblpr071.htm#eligibility>.

⁶⁹ *Id.*

⁷⁰ 22 U.S.C. § 7105(b)(1).

⁷¹ 22 U.S.C. § 7105(b)(1)(A) (2008). Refugees and trafficking victims are eligible for benefits including SSI and Medicaid eligibility for the first 7 years after they enter as refugees or are certified for benefits as trafficking victims. At the end of the 7

federal programs (Supplemental Security Income (SSI), Temporary Aid to Needy Families, food stamps, Medicaid, and State Child Health Insurance Program (SCHIP)) without having to wait 5 years.⁷² Trafficking victims who are not eligible for TANF or Medicaid can receive Refugee Cash Assistance and Refugee Medical Assistance for the first 8 months for the date of certification as a trafficking victim.⁷³

The trafficking victim must be certified by Health and Human Services. Adult victims, or those over 18, must also be willing to assist in the investigation and prosecution of the trafficker. There are several ways to be certified (1) as a minor; (2) continued presence; (3) receiving a bona fide determination in a T-visa case; or (4) being granted a T-visa.⁷⁴ Family members of victims who receive bona fide determinations or T-visas are also eligible to access benefits.⁷⁵

VAWA Self-Petitioners, VAWA Cancellation of Removal and VAWA Suspension of Deportation Applicants

Some victims whose assault occurs within the context of family violence may be considered qualified immigrants under the Violence Against Women Act. In 1996, Congress made immigrant spouses and children who had been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent eligible to access federal public benefits that would help them escape, survive, overcome or prevent ongoing abuse.⁷⁶ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)⁷⁷ also included in definition of “qualified immigrants” certain abused immigrants and sexual assault victims whose spouses or parents had filed family based immigration petitions on the victim’s behalf.⁷⁸ Many immigrant victims of sexual assault whose abusers are their spouse, parents or other members of their household can meet the definition of qualified battered immigrants. Here we will discuss in some detail what steps victims of sexual assault must take to become qualified battered immigrants.

Sexual Assault within the family includes:⁷⁹

- 1) Immigrant victims of domestic violence who have been battered or subjected to extreme cruelty by a current or former spouse or parent who is a United States citizen or legal permanent resident.
- 2) Immigrant victims whose United States citizen or legal permanent resident Spouse or parent filed an I-130 Family Based Visa Petition for them and the immigrant victim has been abused by another family member of the U.S. citizen or lawful permanent resident spouse or parent who is residing in the same household.

year period they lose access to benefits unless they have become a naturalized citizens, Kaiser Commission on Key Facts: Medicaid and the Uninsured, Medicaid and SCHIP Eligibility for Immigrants. P2 (April 2006).

⁷² PRWORA sec 403(b), 8 U.S.C. sec 1613(b). The Trafficking Victims Protection Reauthorization Act of 2008 additionally made trafficking victims who have been granted a prima facie determination or who have approved T-visas qualified immigrants. This may have some effect on the durational limitations applicable to asylees.

⁷³ Office of Refugee Resettlement: Cash & Medical Assistance, <http://www.acf.hhs.gov/programs/orr/benefits/cma.htm> (last visited Sept. 29, 2009).

⁷⁴ 22 U.S.C. § 7105.

⁷⁵ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(2) (Dec. 19, 2003).

⁷⁶ IIRAIRA § 501, 8 U.S.C. § 1641. “Legal protections for battered immigrant women and children have expanded significantly since 1990. VAWA 1994 and VAWA 2000 have effectively raised awareness about domestic violence in immigrant communities and are offering protection to many immigrant victims of domestic violence. Legislative protections have helped battered immigrant women escape abuse, survive economically, and bring their abusers to justice while at the same time reducing domestic violence in their communities.” Leslye E. Orloff & Janice v. Kaguyutan, *A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U.J. GENDER SOC. POL’Y & L. 95, 169-70 (2001), available at <http://www.legalmomentum.org/assets/pdfs/wwwofferingahelpinghand.pdf> (last visited Apr. 22, 2009).

⁷⁷ IIRAIRA § 501, amending PRWORA by adding § 431(c).

⁷⁸ The VAWA case may be a self-petition, a cancellation of removal application, or a suspension of deportation application.

⁷⁹ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

The abuser and/or sexual assault perpetrator may be any family household member including but not limited to a father in law, brother, or uncle⁸⁰.

- 3) Immigrant victims who have an approved Family Based Legal Petition (I-130) and who can demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent who filed the family based petition on their behalf.

The circumstances under which battered immigrant spouses or children of U.S. citizens or lawful permanent residents can be granted “qualified immigrant” status are the following:

- 1) The Department of Homeland Security⁸¹ or an immigration judge:⁸²
 - Has approved a self-petition⁸³ or family-based visa (filed by the spouse or parent) for the applicant
 - Has granted cancellation of removal
 - Has granted suspension of deportation or
 - Has found that the applicant's pending petition or application sets forth a *prima facie* case for such benefit or relief;⁸⁴ and
- 2) The immigrant or the immigrant's child has been battered or subject to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent, or by a member of the spouse's or parent's family residing in the same household
 - (if the permanent resident or citizen spouse or parent consents to or acquiesces in such battery or cruelty and, in case of a battered child, the immigrant did not actively participate in the battery or cruelty) and
- 3) There is a substantial connection between the battery or extreme cruelty and the need for public benefit sought, and
- 4) The battered immigrant or child no longer resides in the same household as the abuser.

Requirements When Applying for Benefits Based Upon Pending or Approved Applications:

- A VAWA case or qualifying family-based visa petition must be filed with the Department of Homeland Security or the immigration judge before the immigrant can qualify to receive benefits
- If the case has been filed but is not yet approved, the Department of Homeland Security must have ruled that the pending self petition or application filed sets forth a *prima facie* case⁸⁵

⁸⁰ For further examples, see Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997).

⁸¹ Memorandum from William Yates, Dir. of Operations U.S. Citizenship & Immigration Services to Paul Novak, Dir. of Vermont Serv. Ctr. U.S. Citizenship & Immigration Services (Apr. 8, 2004).

⁸² See Letter from Michael J. Creppy, Chief Immigration Judge, Executive Office for Immigration Review, to All Assistant Chief Immigration Judges, All Immigration Judges, All Court Administrators and All Support Staff, *Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children* (1997), available at <http://www.usdoj.gov/eoir/efoia/ocij/oppm97/97-9.pdf> (last visited Apr. 22, 2009).

⁸³ Note that spouses can file a self-petition up to two years after divorce. 8 U.S.C. 1154(a)(1)(iii)(II)(aa)(CC).

⁸⁴ A *prima facie* case is one in which the Department of Homeland Security or an immigration judge has made initial determination that a VAWA case contains all of the necessary elements of proof. See also, Memorandum from William Yates, Dir. of Operations U.S. Citizenship & Immigration Services to Paul Novak, Dir. of Vermont Serv. Ctr. U.S. Citizenship & Immigration Services (Apr. 8, 2004).

⁸⁵ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,366 (Nov. 17, 1997) (providing guidance for establishing a *prima facie* case). *Prima Facie Review of Form I-360 When*

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- If the case is in proceedings before an immigration judge the applicant will need to file a motion requesting a *prima facie* determination from the immigration judge⁸⁶
- To prove a *prima facie* case, the applicant must have presented in his or her petition at least one piece of credible evidence that provides proof of each required element of the VAWA or family-based visa petition case
- These *prima facie* determinations and approved petitions or applications qualify the applicant for benefits.
- When applying for benefits, the battered immigrant must give the public benefits agency a copy of his or her approval notice from the Department of Homeland Security or the immigration judge, or a notice of *prima facie* case determination.

Requirements for Benefits Applications Based Upon Being Battered or Subjected to Extreme Cruelty:

- A battered immigrant with an approved VAWA case or *prima facie* determination is not required to provide the benefits-granting agency with evidence of abuse beyond his or her approved petition or *prima facie* determination letter.
 - In order to have DHS or the immigration judge approve the VAWA petition or application for VAWA cancellation of removal or suspension of deportation or enter a *prima facie* determination, an applicant under VAWA must have shown that he or she experienced such battery or extreme cruelty.
 - The Department of Homeland Security has already determined battery or extreme cruelty and the benefits granting agency should not re-adjudicate this issue.⁸⁷
- A battered immigrant with a family-based petition (I-130) filed by his or her spouse or parent must submit:
 - Proof of the battery or extreme cruelty (such as a protection order, police report, photographs, a report from a counselor at a battered women's program, or medical records) along with his or her approval notice or *prima facie* determination to the benefits agency.⁸⁸

Filed By Self-Petitioning Battered Spouse/Child, Interim Regulations Vol. 62 No. 219 Federal Register 60769 (November 13, 1997) 8 C.F.R. 204.2(c)(6) and (e)(6);

⁸⁶ Michael J. Creppy, Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children. (1997). ("Any alien, who has a pending application for suspension of deportation under section 244(a)(3) and seeks a determination that he or she is a "qualified" alien for purposes of receiving public benefits, may file a motion, in writing, under 8 C.F.R. § 3.23(a), with the Immigration Judge requesting a finding that he or she is "prima facie" eligible for suspension of deportation. An applicant for cancellation of removal under section 240A(b)(2) of the INA may also request a "prima facie" determination.)

⁸⁷ Letter from Pearl B. Chang, U.S. Department of Homeland Security, to Patricia S. Arnaudo, U.S. Department of Housing and Urban Development (May 5, 2005) (on file with Legal Momentum).

⁸⁸ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,369 (Nov. 17, 1997) ("The benefit provider should consider *any credible evidence proffered by the applicant*. Evidence of battery or extreme cruelty (and in the case of a petition on behalf of a child, evidence that the applicant did not actively participate in the abuse) includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against the applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty. Additionally, an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty. The benefit provider should keep a copy of all evidence presented by the applicant. The benefit provider should bear in mind that, due to the nature of the control and fear dynamics inherent in domestic violence, some applicants will lack the best evidence to support their allegations (e.g., a civil protection order or a police report). Thus, the benefit provider will need to be flexible in working with the applicant as he or she attempts to assemble adequate documentation. In determining the existence of battery or cruelty, it is important that the benefit provider understand both the experience of intimate violence and the applicant's cultural context. The dynamics of domestic violence may have inhibited the applicant from seeking public or professional responses to the abuse prior to applying for benefits

“Battery or extreme cruelty” is defined as, but not limited to:

“...Being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.”⁸⁹

To be a “member of the spouse or parent’s family” is defined as:

“... Any person related by blood, marriage, or adoption to the spouse or parent of the immigrant, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country where the immigrant resides, or the state or Indian country in which the immigrant, the immigrant’s child, or the immigrant child’s parent received a protection order.”⁹⁰

The “Substantial Connection” Element of Proof

To obtain benefits an immigrant victim must demonstrate that there is a “substantial connection” between the battery or extreme cruelty and the need for the public benefit. The Department of Justice issued an Attorney General’s Order that sets forth a non-exclusive list of factors that establish “substantial connection.” The following are examples of the types of circumstances in which there would be a “substantial connection” between abuse and the need for benefits:⁹¹

- To become self-sufficient following separation from the abuser
- To escape the abuser or the abuser’s community
- To ensure the safety of the victim, the victim’s child, or the victim’s parent
- To compensate for the loss of financial support resulting from the separation
- Because the victim lost his or her job or earns less because of the battery or cruelty or because of the involvement in legal proceedings relating them (child custody, divorce actions, etc.)
- Because the victim had to leave his or her job for safety reasons
- Because the victim needs medical attention or mental health counseling or has become disabled
- Because the victim loses a dwelling or a source of income following separation
- Because the victim’s fear of the abuser jeopardizes the victim’s ability to take care of his or her children;
- To alleviate nutritional risk or need resulting from the abuse or following separation
- To provide medical care during a pregnancy resulting from the relationship with the abuser,

needed to enable the applicant to leave the abuser. For many cultural groups, going to outsiders for help is viewed as disloyalty to the community and an embarrassment to the family. In some cultures, for example, women have been conditioned to accept the authority and control of their husbands. Thus, there may be little independent documentary evidence of the abuse; the benefit provider should be sensitive to the needs and situation of the abused applicant when reviewing allegations and evidence of abuse.”)

⁸⁹*Id.* at 61,369. This definition is parallel to the definition of “battering and extreme cruelty” contained in the regulations governing VAWA self-petitions and battered spouse waivers. Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13,061, at 13,074 (Mar. 26, 1996) (codified at 8 C.F.R. pt. 204). It is important for advocates to understand that this definition is broader than the definition of domestic or family violence contained in many state domestic violence statutes in that it includes emotional abuse, which, in many states, would not lead to the issuance of a protection order. It therefore may be necessary for advocates and attorneys assisting battered immigrants to educate state benefits-providing agency staff about this more inclusive definition.

⁹⁰Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,369. (Nov. 17, 1997)

⁹¹*Id.* at 61,370. Full cite for first cite of each pg.

- the abuse, or abuser's sexual assault, or
- To replace medical coverage or health care services lost following the separation with the abuser.

Considerations when the immigrant victim or child has not yet left the same household as the abuser at the time of the benefits application

The U.S. Attorney General's Order notes that:

Although a qualified applicant is not a "qualified immigrant" eligible for benefits until the battered applicant or child or parent ceases residing with the batterer, applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently.⁹²

The Order therefore suggests that, wherever possible, the federal or state benefits provider completes the eligibility determination process and approve the applicant for receipt of benefits prior to the time that the applicant has separated from the batterer. This ensures that the applicant will be able to receive benefits as soon as he or she leaves the abuser.

States have addressed this issue in two ways. Some states take the immigrant victim's application and complete the process of determining that he or she will be eligible to receive public benefits as a qualified immigrant. They then award benefits immediately and give the immigrant one month to return to the benefits-granting agency to provide them evidence that he or she no longer resides with the abuser. Other states complete the benefits determination process and inform the immigrant victim that he or she will receive the benefits as soon as the immigrant provides the benefits-granting agency with evidence that he or she is no longer residing with the abuser.

Evidence of separation from the abuser could include but is not limited to:

- A civil protection order removing the abuser from their home
- A civil protection order requiring the abuser to stay away from his or her home
- A letter from the landlord stating that the abuser no longer resides there
- Letters from family members, friends, neighbors, or victim advocates stating that the abuser no longer resides in the household
- An affidavit from victim asserting that abuser no longer resides with her
- A new lease agreement evidencing that the immigrant is not residing with the abuser
- Utility bills evidencing that the immigrant is no longer living in the abuser's home.

Once a battered immigrant qualifies for benefits under VAWA, he or she is legally entitled to access a much wider array of services and benefits than he or she would be able to receive if he or she was not a qualified immigrant, including:

- Public and assisted housing;
- Post-secondary education grants and loans; and
- All HHS funded federal public benefits except federal means-tested public benefits.⁹³

A. HOUSING

⁹² *Id.* at 61,370.

⁹³ Including TANF, Medicaid, SCHIP, Food Stamps and SSI. Access to these programs have additional immigrant eligibility requirements and restrictions that will be discussed later in this chapter.

All immigrant victims of domestic violence and child abuse, and sexual assault victims at risk of homelessness are all eligible for shelter and transitional housing for up to 2 years without regard to the victim's immigration status.⁹⁴

Public and assisted housing is considered a federal public benefit. For an immigrant victim of sexual assault to qualify for public and assisted housing benefits she must be a qualified immigrant. Generally speaking, the immigrant victims who qualify for public and assisted housing will be those victims with prima facie determinations or approved applications in a VAWA self-petition, a VAWA cancellation of removal, or a VAWA suspension of deportation case. They may also be eligible if they have had a family based visa petition filed on their behalf by their United States citizen or legal permanent resident spouse or parent. This option was designed to provide access to public benefits to sexual assault and domestic violence victims who live in homes with extended family members where the sexual assault perpetrator may be a father-in-law or brother-in-law of the victim. Certain immigrant victims of sexual assault also qualify for housing if they are lawful permanent residents, refugees, asylees, Cuban Haitian entrants⁹⁵ or any other group of immigrants that are qualified immigrants eligible to receive public benefits.⁹⁶

While these groups are clearly eligible for housing under the law, since HUD has not issued implementing regulations, in practice many battered qualified immigrants continue to have difficulty convincing public and assisted housing authorities in their communities to grant battered immigrants access to the public and assisted housing benefits they qualify to receive.⁹⁷ As a result, many immigrants who would normally be eligible for housing, have been denied.⁹⁸ Additionally, an immigrant victim may qualify to live in public housing if they are part of a mixed household. Under HUD policies and regulations a household is eligible for public housing if one member of the family is eligible for public or assisted housing. A mixed household is a term used for public benefits eligibility purposes and refers to a household where some family members are eligible for public and assisted housing because they are citizens or qualified immigrants and other family members are not because they are undocumented or have an immigration status that does not make them a qualified immigrant. For example, an undocumented mother with two United States citizen children would qualify. Mixed status families do not receive the full public or assisted housing benefit that they would receive if all family members were qualified immigrants. The public or assisted housing grant is pro rated and the family is required to pay more for their housing because their public or assisted housing grant is lower. In calculating benefits on a pro rata basis the amount of assistance paid for a mixed family is calculated based on the number of members that have eligible citizenship or immigration status. In calculating benefits for mixed families payment that would normally be available for that family size is reduced by the proportion of the family members who are not qualified to receive benefits. The result is a lower benefits payment than the household would receive if all family members were citizens or qualified immigrants.⁹⁹

When an immigrant victim and any undocumented children included in the victim's VAWA case living in public housing becomes qualified immigrants, the public housing benefit for either public or assisted housing is increased to add funds for each of the newly qualified immigrant family members who can now be counted as a family member eligible for the housing subsidy. This is extremely important for victims because economic security and the ability to support themselves and their children means a reduction in the chance that they will return to their abusers.

⁹⁴ Andrew Cuomo, Letter to HUD Funds Recipients, U.S. Department of Housing and Urban Development, January 19, 2001, also available at http://new.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf

⁹⁵ Cuban and Haitian Entrants are also statutorily available for the same benefits as battered immigrant qualified immigrants and HUD should therefore not leave this group out when issuing guidance, policy directive or regulations regarding housing assistance.

⁹⁶ See full discussion of qualified immigrants earlier in this chapter.

⁹⁷ Please see appendix XX for a detailed history of the law and current status of housing law.

⁹⁸ Please see appendix XX for a detailed history of the law and current status of housing law. You should use this as a guide to advocate for immigrant access to housing.

⁹⁹ U.S. Department of Housing and Urban Development, *HUD Occupancy Handbook Exhibit 3-10*, (2007),

As of fall of 2009, HUD still has not issued implementing regulations or policies making it difficult for victims to access public and assisted housing benefits. Until this problem is addressed by HUD, advocates should take the following documents with them when applying for public or assisted housing through HUD in order to facilitate the process.¹⁰⁰

- Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act issued on 1996¹⁰¹
- Documentation that the immigrant victim has applied for and has received either a prima facie determination or approval of her VAWA immigration case;¹⁰² or
- Documentation that a family based visa petition has been filed on the victim's behalf, together with evidence that the applicant has been a victim of battering or extreme cruelty;
- 8 U.S.C. 1641(c);
- The 2003 Budget Act directing DHS and HUD to work together to facilitate battered immigrant access to public and assisted housing.¹⁰³
- Letter from Department of Homeland Security to Department of Housing and Urban Development describing procedures that HUD should follow in processing cases of battered qualified immigrants seeking public or assisted housing.¹⁰⁴

B. EDUCATION : Financial Aid for Some Battered Immigrant Women

Immigrant sexual assault victims who are qualified battered immigrants and their children are eligible for post-secondary educational grants and loans.¹⁰⁵ Access to postsecondary grants and loans that enable victim to pursue educational opportunities enhances economic options and self-sufficiency of immigrant victims and reduces dependence on abusive family members or employers. Battered immigrants with pending or approved applications for immigration relief under the Violence Against Women Act (VAWA) are among the list of immigrants who are eligible for federal student financial aid programs as a "qualified immigrants."¹⁰⁶ Post secondary educational assistance are the higher educational loans and grants students apply for when they fill out a Free Application for Federal Student Aid (FAFSA) form.¹⁰⁷

Under 8 U.S.C §1611(c)¹⁰⁸ the term "Federal public benefit" is defined as:

"(A) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

¹⁰⁰ These documents are included in the Appendix for this section.

¹⁰¹ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Interim Guidance).

¹⁰² In VAWA cases, DHS has made a ruling that the applicant is a victim of battering or extreme cruelty. HUD should not seek any further domestic violence evidence in these cases.

¹⁰³ HJ. Res. 2 Conference Report 108-10 February 13, 2003 page 1495 ("The conferees direct the Department to work with the Department of Justice to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are the victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work Opportunity Act of 1996 and the Illegal Immigration Reform and Personal Responsibility Act of 1996.")

¹⁰⁴ Letter from Pearl B. Chang, U.S. Department of Homeland Security, to Patricia S. Arnaudo, U.S. Department of Housing and Urban Development (May 5, 2005) (on file with Legal Momentum).

¹⁰⁵ If you are having trouble accessing Post secondary financial aid for a client who is eligible, please contact National Immigrant Women's Advocacy Project for assistance. As of publication, the Department of Education was still in the process of creating specific forms and policies to address any barriers this group may face in the application process.

¹⁰⁶ 8 U.S.C. 1641; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Division C, § 501, 110 Stat. 300a-546.

¹⁰⁷ For copies of the form and directions for filling out the FAFSA form, visit: <http://www.fafsa.ed.gov/>

¹⁰⁸ PRWORA § 401(c)(A) and (B)

(B) any retirement, welfare, health, disability, public or assisted housing, **postsecondary education**, [emphasis added] food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unity by an agency of the United States or by appropriated funds of the United States.¹⁰⁹

Federal financial aid programs are grants and loans “provided by an agency of the United States,” in this case the Department of Education.¹¹⁰ Postsecondary education is specifically listed as a federal public benefit in 8 U.S.C. 1611.¹¹¹ Not only are federal financial aid programs listed as federal public benefits programs accessible to “qualified immigrants,” PRWORA explicitly excludes post secondary financial aid from the list of federal public benefits that have time restrictions governing how long a qualified immigrant applicant must wait to access the benefits.¹¹²

Immigrants who become “qualified immigrants” are immediately eligible to receive postsecondary educational grants and loans. Federal financial aid programs under federal law fall within the definition of federal public benefits, but not federal means-tested public benefits.¹¹³ Once an immigrant becomes a qualified immigrant, the immigrant is legally able to access student assistance programs under the Higher Education Act of 1965.

Child Care

Funding for child care from the Child Care Development Fund is a federal public benefit that only qualified immigrants can access.¹¹⁴ Since child care is not a federal means tested public benefit, federally funded child care is available both citizens and qualified immigrants. The Child Care Bureau at the Administration for Children and Families of at the U.S. Department of Health and Human Services is the agency responsible for administering federal child care funding. The Child Care Bureau has determined with regard to immigration status verification that “only the citizenship and immigration status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes”¹¹⁵. Thus, children of immigrant victims who are U.S. citizens or qualified immigrants can be enrolled in child care programs and have their participation paid through federal child care benefits. Furthermore, when immigrant victims filing VAWA self-petitions who include their undocumented children as dependent (derivative) family members in their VAWA self-petition once a victim becomes receives a prima facie determination in her VAWA case, her children will also receive prima facie approval of their VAWA applications. This prima facie determination makes the derivative children “qualified immigrants” who are immediately eligible for federally funded child care.

¹⁰⁹ 8 U.S.C.1611(c); See also Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” 62 Fed. Reg. 61,344 (1997). Attachment 3.

¹¹⁰ 8 U.S.C. 1611(c); PRWORA § 401(c)(A)

¹¹¹ 8 U.S.C. 1611; PRWORA § 401(c)(B). See also Verification of Eligibility for Public Benefits, Department of Justice, Proposed Rule, August 4, 1998, (Vol. 63 No. 149, 41664)

¹¹² 8 U.S.C. 1613; PRWORA § 403 (a) “In General. – Notwithstanding any other provision of law and except as provided in subsection (b), (c), and (d), an alien who is a qualified alien (as defined in section 431[1641 of USC]) and who enters the United States on or after the date of the enactment of this Act is not eligible for any Federal means-tested public benefit for a period of 5 years beginning on the date of the alien’s entry into the United States with a status within the meaning of the term “qualified alien”; see also Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” 62 Fed. Reg. 61,344 (1997) (interpreting PRWORA’s measurement of 5 years from entry as alien’s first entry).

¹¹³ Postsecondary education assistance programs are **not** means-tested public benefits, because they were statutorily excluded from the definition. 8 U.S.C 1613(c)(2)(H); PRWORA § 403(c)(2)(H) states that despite the definition of a federal means-tested benefit it DOES NOT include: “(H) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act.”

¹¹⁴ Department of Health and Human Services, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008.

¹¹⁵ Department of Health and Human Service Child Care Bureau, Clarification of Interpretation of “Federal Public Benefit” Regarding CCDF Services Program Instruction (ACYF-PI-CC-98-08) November 25, 1998.

Section 432(d) of PRWORA, as amended, provides that, “a nonprofit charitable organization, in providing any Federal public benefit...or any State or local public benefit...is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.”¹¹⁶ However, if a non-profit agency is providing services that are federal public benefits, a government entity may conduct the verification and notify the non-profit agency that then cannot use funds that are federal public benefits to serve immigrants who do not qualify. The Child Care Bureau is encouraging state lead child care agencies not to subcontract with non-profit agencies for child care unless the non-profit agency agrees to conduct immigration status verification of children using the non-profit’s child care services.¹¹⁷ As a result undocumented immigrant children will have more limited access to government funded child care programs.

All children without regard to immigration status however, are legally eligible to participate in Head Start programs. The Head Start and Early Head Start programs are not “federal public benefits” because these programs like all educational programs except post secondary education benefits were omitted from the statutory definition of federal public benefits in title IV of PRWORA.¹¹⁸

II. ACCESS TO FEDERAL MEANS-TESTED PUBLIC BENEFITS

Federal means-tested public benefits are the most difficult category of public benefits for immigrant sexual assault victims to access. Only those qualified immigrants who meet one or more of the following criterion will be able to access federal means-tested public benefits:

- First entry into the United States by a statutorily specified date,¹¹⁹
- Overcome statutory eligibility bars to access,¹²⁰
- Not be barred by sponsor-to-immigrant deeming of income, and/or
- Be exempt from statutory bars and to deeming by being credited with 40-qualifying-quarters of work. Immigrant victims who qualify for relief under VAWA may additionally be exempt from deeming under special deeming exemption rules that apply in domestic violence cases.

A. FEDERAL MEANS TESTED PUBLIC BENEFITS DEFINITION

The term “federal means-tested public benefit” covers those benefit programs that determine eligibility for benefits on the basis of the income or resources of the individual or family seeking the benefit.¹²¹ In addition, federal means-tested public benefits must be funded through federal means-tested mandatory spending programs. Discretionary spending programs, as well as mandatory spending programs that are not means-tested, are excluded from the definition of federal means-tested public benefits.¹²² This distinction is important because, unlike federal benefits that are not

¹¹⁶ (8 USC 1642(d)).

¹¹⁷ Department of Health and Human Service, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008.

¹¹⁸ of Health and Human Service, Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees, May 2, 2008. (If a Head Start Agency also runs a childcare program that received Child Care Development Funds only a program that provides child care services that are subject to the Head Start Performance Standards *and* supported by combined Head Start and CCDF funding is exempt from verification requirements. If the Health Start program also administers a separate program for children (not subject to Head Start Performance Standards) entirely supported by CCDF funds, this separate CCDF program would not be exempt from PRWORA’s verification requirements.)

¹¹⁹ In most cases this date will be August 22, 1996.

¹²⁰ 8 U.S.C. 1613; PRWORA § 403(a) places a five-year bar on immigrants that denies them access to “federal means-tested public benefits”.

¹²¹ PRWORA § 403; Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act, Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256, 45,257 (Aug. 26, 1997). The U.S. Departments of Agriculture, Education, Labor and Veterans Affairs, and the Social Security Administration, concur in or defer to the interpretation of federal means-tested public benefit proffered by the Department of Health and Human Services. Memorandum Opinion for the General Counsel, Department of Health and Human Services (Jan. 14, 1997), *available at* <http://www.usdoj.gov/olc/meanstst10.htm>.

¹²² 62 Fed. Reg. 45,256, 45,257.

means-tested that all who become qualified immigrants can access, qualified immigrants are generally ineligible for federal means-tested public benefits for a period of five years after they have been given qualifying status. This five year bar is discussed in detail in the following section.

Only four benefit programs have been determined to provide federal means-tested public benefits:

- Supplemental Security Income (SSI)
- Food Stamps
- Medicaid (except for emergency Medicaid)
- Temporary Assistance for Needy Families (TANF)

Prior to April 1, 2009, the State Child Health Insurance Program had been considered a federal mean-tested public benefits imposing a 5 year bar on access to benefits for qualified immigrant children and pregnant women.¹²³ The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹²⁴ removed the 5 year to benefits access for under 21 year old children who are legally present in the United States. Under CHIPRA states that provide health care immigrant children who are qualified immigrants or otherwise legally present, including for example children of U-visa victims and VAWA self-petitioners. As a result qualified immigrant children and pregnant women can receive SCHIP funded health care

B. FIVE-YEAR BAR ON RECEIVING MEANS-TESTED PUBLIC BENEFITS

Advocates should be aware that qualified immigrants' eligibility for federal means-tested benefits depends in part upon when the immigrant entered the United States. The federal programs determined to be means-tested include Medicaid, SSI, TANF, and Food Stamps.. Immigrants who are "qualified immigrants" and who first entered the United States before August 22, 1996, are generally eligible for the same federal means-tested public benefits available to U.S. citizens, with the exception of SSI.¹²⁵

Immigrants who are "qualified immigrants" who entered the United States *on or after* August 22, 1996, however, are barred from receiving "federal means-tested benefits" during the first five years after obtaining qualified immigrant status. After this five-year period has ended, qualified immigrants who had an affidavit of support (Form I-864) filed on their behalf as part of their application for permanent resident status may be subject to income deeming rules that may continue to make them ineligible for federal-means tested public benefits (see discussion on sponsor deeming and the battered women's exception below).¹²⁶

Some post-August 22, 1996 entrants are exempt from this five-year bar. If immigrant sexual assault victim fall within any of the following categories they are exempt from the five-year bar. These immigrants include:

- Refugees
- Asylees
- Victims of trafficking
- Amerasians
- Cuban/Haitian entrants

¹²³ Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit" 62 Fed. Reg. No. 149, 41658.

¹²⁴ Public Law No. 111-3, 2009 (H.R. 2).

¹²⁵ Immigrants who entered before August 22, 1996, are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants, were lawfully residing in the United States, and were receiving SSI on August 22, 1996.

¹²⁶ In all other respects, the rights and limitations on post-August 1996 immigrants to receive public benefits do not differ from the rights and limitations of "qualified aliens" who entered the U.S. before August 22, 1996.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Veterans and immigrants on active military duty, their spouses¹²⁷ (and surviving spouses who did not remarry), and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
- Immigrants granted withholding of deportation

In addition, some states have elected to provide state funded SSI, health care, food assistance and/or cash assistance to immigrants who would otherwise be subject to the five-year bar by using their state funds to pay the costs of these benefits.¹²⁸

Another way that immigrants can be exempted from the 5-year bar to federal means-tested public benefits is to demonstrate that they or their spouse or parents can be credited with 40 quarters of work in the United States. Immigrants who satisfy a 40-qualifying-quarter requirement are exempt from the five-year bar on accessing means-tested programs.¹²⁹ A “qualifying quarter” is a unit of wages under Social Security law and is calculated upon the basis of how much a person earns in a calendar year.¹³⁰ Each year, the Social Security Administration (SSA) determines the required amount.¹³¹ Up to four quarters of credit may be earned yearly. All covered employment, and some uncovered employment, performed in the United States will be counted toward qualifying quarter credits.¹³²

Most employment is considered “covered.”¹³³ For the purposes of counting quarters, all work immigrants have done can be counted toward attaining 40 qualifying quarters including income from work performed when the immigrant was undocumented. Earnings made during periods when the immigrant did not have legal work authorization and earning for which no income taxes were withheld can be used as credit toward the 40 quarter goal.¹³⁴ However, because it is much easier to show work completed when it is done by an individual with a SSN, it is important that immigrants apply for SSN’s immediately after being authorized to work.

It is important to note that this is consistent with DHS procedures that require immigrants to pay taxes on earnings accrued while the undocumented immigrant was working. In the process of filing for lawful permanent residency immigrants are required to have paid any taxes due on prior earnings. The Social Security Administration issues Tax Identification numbers that are used to facilitate payment of income taxes by immigrants who are working without legal work

¹²⁷ Divorce from the veteran cuts the divorced immigrant spouse off from access to these benefits.

¹²⁸ See NILC charts and section below on SSI + Food stamps

¹²⁹ The other exceptions to both the permanent and five-year bars on receiving certain benefits apply to refugees, asylees, and veterans or active duty military members and their spouses and unmarried dependent children.

¹³⁰ Social Security Act, title II, 42 U.S.C. §§ 401, *et seq.*

¹³¹ For to receive four qualifying quarters an immigrant had to the following amounts:

Calendar Year	Amount Needed to Receive Four Quarters of Coverage
1999	\$2,960
2000	\$3,120
2001	\$3,320
2002	\$3,480
2003	\$3,560
2004	\$3,600
2005	\$3,680
2006	\$3,880
2007	\$4,000
2008	\$4,200
2009	\$4,360
2010	\$4,480

www.dcf.state.fl.us/publications/esspolicymanual/a_33.pdf

¹³² For a helpful guide to counting quarters please see Kansas Department of Social and Rehabilitation Services, , also available at *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40QualQuart1-01.pdf.

¹³³ Kansas Department of Social and Rehabilitative Services, *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40QualQuart1-01.pdf.

¹³⁴ United States Department of Agriculture, Eligibility Determining Guidance: *Non-Citizen Requirements in the Food Stamp Program*, (January 2003); see

authorization.¹³⁵ Payment of taxes through a tax identification number allows immigrants to pay taxes on earnings in a timely fashion without being subject to additional costs and penalties that can accrue if the immigrant defers tax payment on income until a future time when they may be eligible for lawful permanent residency.

The Social Security Administration (SSA) counts qualifying quarters solely based upon the total amount earned each year. That quarterly amount could have been earned any time during the calendar year. An immigrant receives full credit from 4 quarters of work if the total amount for the year exceeds the minimum required. All of the earnings could have actually been earned in one year. This amount changes yearly based upon inflation.¹³⁶

Since the maximum number of qualifying quarters that may be achieved each year is four, qualified immigrants must have worked for all or part of each year for at least ten years in order to attain their 40 qualifying quarters of work and to overcome the five-year bar on benefits eligibility. If an immigrant received federal means-tested public benefits at any time during a quarter, the individual will not receive credit for that quarter of work.

The qualified immigrant may obtain 40 quarters sooner than ten years by getting credit for quarters earned by the spouse or parent. In addition to quarters earned themselves, all quarters earned by a parent prior to the immigrant's eighteenth birthday may be counted. Similarly, if the immigrant is married or widowed, any quarters earned by the spouse during the marriage may be counted toward establishing a qualifying quarter. However, after divorce, immigrant spouses lose the ability to count quarters earned by their spouses during the marriage. Also, if qualified immigrants are subject to the five-year bar, but have not accumulated enough qualifying work quarters to overcome that restriction, qualified immigrants may count work during the 5-year bar period to establish qualifying quarters. Thus, if a person with only seven years of work credit becomes a qualified immigrant and if they work for three more years after attaining qualified immigrant status, they will only be barred from access to benefits for three rather than five years.

C. SPONSOR DEEMING EXCEPTIONS¹³⁷

After the 5 year bar to benefits access has ended, qualified immigrants can apply for benefits that they had been previously barred from receiving. However, for any person to qualify to receive public benefits, the benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. "Sponsor deeming" rules control how the income eligibility determination is made for non-citizens who apply for public benefits. When a U.S. citizen or permanent resident immigrant files a petition seeking immigration benefits for a family member, that citizen or lawful permanent resident petitioner must complete and file an affidavit of support with the Department of Homeland Security. This affidavit states that the citizen or permanent resident immigrant is willing to be financially responsible for the immigrant family member whom they are requesting be granted permission to legally immigrate to the United States.¹³⁸ When an immigrant with an affidavit of support filed on his or her behalf applies for public benefits, sponsor deeming rules require that the benefits-granting agency to assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of the sponsor. Deeming does not apply to immigrants w/o sponsors or whose sponsors did not sign an enforceable affidavit of support.¹³⁹

¹³⁵ See IRS.gov, *Individual Taxpayer Identification Number (ITIN)* (Nov. 6, 2009), available at http://www.irs.gov/individuals/article/0,,id=96287_00.html

¹³⁶ See Appendix XXX to this chapter for a chart showing the dollar value of earnings per quarter for 1999 through 2009. For updates see <http://www.ssa.gov/OACT/COLA/QC.html> (last visited Apr. 22, 2009)

¹³⁷ Unfortunately, there are no exemptions for victims who are solely victims of sexual assault. This relief is available to those sexual assault victims in marital relationships.

¹³⁸ Immigration and Nationalization Act (INA) § 212(a)(4)(C) & (D), 8 U.S.C. § 1182(a)(4)(C) & (D); INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1).

¹³⁹ NILC: Immigrants and Public Benefits Food and Nutrition Programs: <http://www.nilc.org/immspbs/fnutr/foodnutr015.htm>

Post-August 22, 1996 Entrants Exempt From Sponsor Deeming:

- Those who have become U.S. citizens,¹⁴⁰
- Persons with 40 quarters of work history in the United States,¹⁴¹
- Persons married to U.S. citizen or lawful permanent residents with 40 quarters of work history¹⁴²
- Persons who between their own work history and their parent's work history before they turned 18 have 40 quarters of work history;
- Married persons who can combine their work history with the work history of their spouse to arrive at 40 quarters of work history;
- Certain battered immigrants (for up to 12 months or longer if there has been a judicial finding regarding domestic violence),¹⁴³
- Indigent qualified immigrants¹⁴⁴ (Immigrants facing hunger or homelessness) (for up to 12 months)
- Those without sponsors, or those whose sponsors did not sign an enforceable affidavit of support¹⁴⁵

Sponsor Deeming Rules for Pre-August 22, 1996 Entrants

For immigrants who first entered the United States prior to August 22, 1996 the following categories of immigrants were exempted from sponsor deeming for federal means tested benefits:

- Refugees
- Asylees
- Immigrants granted withholding of deportation under Section 243 of the Immigration and Nationality Act (INA)¹⁴⁶
- Lawful permanent residents who have earned or can be credited with 40 qualifying quarters of employment,¹⁴⁷
- Lawful permanent residents at risk of hunger or homelessness
- Qualified battered immigrant spouses and children (with certain limitations discussed below), and
- Certain indigent immigrants whom the benefits provider determines to be unable to obtain food and shelter in the absence of assistance.

E. BATTERED IMMIGRANT EXEMPTION TO SPONSOR DEEMING

For any immigrant to qualify to receive public benefits, the benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. "Sponsor deeming" rules control how the income eligibility determination is made for non-citizens who apply for public benefits. Under immigration law, when an immigrant's family member sponsors him or her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an

¹⁴⁰ INA § 213A(a)(2), 8 U.S.C. § 1183a(a)(2).

¹⁴¹ INA § 213A(a)(3), 8 U.S.C. § 1183a(a)(3).

¹⁴² INA § 213A(a)(3)(B)(ii), 8 U.S.C. § 1183a(a)(3)(B)(ii).

¹⁴³ INA § 212(a)(4)(C)(i), 8 U.S.C. § 1182(a)(4)(C)(i), 8 U.S.C. § 1631(f). *See also* Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,370 (Nov. 17, 1997).

¹⁴⁴ 8 U.S.C. § 1631(e). *See also* Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

¹⁴⁵ *USDA issues guidance on implementation of immigrant food stamp rules*, 17(1) Immigrants' Rights Update. (2003), *also available at* <http://www.nilc.org/immspbs/fnutr/foodnutr015.htm>.

¹⁴⁶ 8 U.S.C. § 1253.

¹⁴⁷ In certain circumstances, quarters of employment earned by a spouse or parent may be credited to the immigrant.

affidavit of support that is filed with the Department of Homeland Security. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant's sponsor.¹⁴⁸ When an affidavit of support has been filed in the immigration case of an immigrant who later applies for public benefits, sponsor deeming rules require that the benefits-granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of their sponsor. It is often the case that these rules render the vast majority of immigrants with sponsors ineligible to receive public benefits.

However, when creating deeming rules Congress exempted some immigrants from the sponsor deeming requirement. Immigrant victims of sexual assault who fall into one of the categories listed below, will be able to apply for public benefits based only on their own assets and resources and will not be subject to sponsor deeming. Congress exempted the following immigrants from sponsor deeming rules:

- Qualified battered immigrant spouses and children (with certain limitations discussed below);
- Refugees;
- Asylees;
- Those granted withholding of deportation under Section 243 of the Immigration and Nationality Act (INA);¹⁴⁹
- Lawful permanent residents who have earned or can be credited with 40 quarters of employment;¹⁵⁰ and
- Lawful permanent residents at risk of hunger or homelessness.

THE BATTERED IMMIGRANT DEEMING EXEMPTION

Sponsor deeming posed grave problems for battered immigrants who received their lawful permanent residency through abusive U.S. citizen or lawful permanent resident spouses or parents. In the past, deeming rules cut off many battered immigrant lawful permanent residents from public benefits and impeded their ability to flee their abusive sponsoring spouses. In order to reduce the harm to battered immigrant women and children, Congress created special sponsor deeming exceptions for immigrant domestic violence victims. Immigration law specifically exempts most qualified battered immigrants from satisfying deeming requirements for 12 months.¹⁵¹

- if the battery or extreme cruelty took place in United States;
- if the abuser was the spouse, parent, or member of spouse's or parent's family;
- if there is a "substantial connection" between the battery or extreme cruelty and the need for the public benefit; and
- if the victim no longer resides with the abuser.

As a result of this exception the following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:¹⁵²

¹⁴⁸ Immigration and Nationalization Act (INA) § 212(a)(4)(C)&(D), 8 U.S.C. § 1182(a)(4)(C)&(D); INA § 213A(a)(1), 8 U.S.C. § 1183a(a)(1).

¹⁴⁹ 8 U.S.C. § 1253.

¹⁵⁰ In certain circumstances, quarters of employment earned by a spouse or parent may be credited to the immigrant.

¹⁵¹ 8 U.S.C. 1631(f); Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

¹⁵² Battered immigrants with I-864 affidavits of support submitted after December 5, 1997 are explicitly exempted from the I-864 deeming rules for 12 months. Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997). Some immigrant victims will have had I-134 affidavits of support filed on their behalf prior to December 5, 1997. Immigrant victims with the I-864 and the I-134 affidavits of support should both be eligible for the battered immigrant exceptions to deeming. However, in some cases Balanced Budget Act of 1997 § 5505(e), Pub. L.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- VAWA self-petitioners (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- VAWA cancellation of removal or VAWA suspension of deportation applicants (adults and children with *prima facie* determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
- Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
- Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition (whether or not the child has been abused); and
- Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before or after obtaining lawful permanent residency.

After the one-year exemption expires, a battered immigrant applicant may continue to be exempted from the deeming requirements if the immigrant can demonstrate that:

- An order of a judge or a prior DHS determination has recognized the battery or cruelty, and
- There continues to be a substantial connection between the abuse and battery suffered and the need for the benefits sought.¹⁵³

Battered immigrants who need benefits beyond one year will either need a judicial or DHS determination of abuse. If they are required to satisfy deeming requirements after the expiration of the one-year period, they, like other lawful permanent residents, may count the qualifying quarters earned by their spouse or parent in order to qualify.¹⁵⁴

The determination of abuse could have been made in a wide range of proceedings. Judicial determinations of abuse that would be sufficient to meet this requirement might be made in a family court proceeding for:

- A protection order,
- A temporary protection order,
- Custody,
- A divorce, or
- Property division.

This determination might be made in a criminal court proceeding in the context of:

- A bond hearing,
- A plea,
- A conviction, or
- Sentencing.

No. 105-33, codified at 42 U.S.C. § 608(f) amendments may be used to apply deeming in cases of battered immigrants. If this occurs advocates and attorneys working with battered immigrants should argue that the state can use the Family Violence Option to waive deeming in the case of immigrant victims with old I-134 affidavits of support. Alternatively, since VAWA self-petitioners are fully exempt from deeming rules without regard to whether an affidavit of support was filed for them, immigrant victims seeking benefits based on an approved family based visa petition can additionally file a self-petition and then proceed to seek benefits based on the self-petition case and the victim will be exempt from deeming.

¹⁵³ *Id.*; IIRAIRA § 552, amending PRWORA § 421(f)(1)(B), 8 U.S.C. § 1631(f)(1)(B).

¹⁵⁴ Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997).

Furthermore, the determination of abuse may be made in a civil court proceeding, such as:

- A small claims property division for non-married parties
- An immigration case:
 - Concerning a VAWA self-petition,¹⁵⁵
 - Concerning a battered spouse waiver,¹⁵⁶
 - Concerning a VAWA NACARA,¹⁵⁷
 - Under the VAWA Cuban Adjustment Act,¹⁵⁸
 - Under VAWA Suspension of Deportation¹⁵⁹
 - Under VAWA Haitian Refugee Immigration Fairness Act,¹⁶⁰
 - Concerning a VAWA cancellation of removal, or
 - Concerning a 10 year cancellation where battery or extreme cruelty is an extreme hardship factor.

Temporary Assistance to Needy Families (TANF)

TANF provides cash assistance to needy families with children.¹⁶¹ TANF is a joint federal and state income support program. States provide monthly cash grants to eligible families, and the federal government reimburses the states for a percent of their program costs. The Department of Health and Human Services (HHS) is the administering federal agency. Federal law and regulations define eligibility requirements, the application process, and due process safeguards that are binding upon the states. States cannot set more stringent requirements. States can, however, pass laws that provide more benefits to a broader range of immigrants than required under federal law.¹⁶² To determine which states provide state-funded cash assistance benefits to qualified immigrants subject to the five year bar, immigrants who are permanently residing under color of law or other immigrants the National Immigration Law Center provides up to date charts on state laws.¹⁶³

All members of a family or "assistance unit" who are included in the TANF grant must meet the program's eligibility requirements. Financial eligibility levels are set by the states. State TANF programs have work reporting requirements as a result of a federal welfare reform law.¹⁶⁴ In addition to the monthly check, another benefit for a family receiving TANF is automatic eligibility for Medicaid and federally funded Child Care. Many sexual assault victims will have limited access to TANF because they may be subject to limitations imposed by the 5-year bar and deeming. Some may be qualified immigrants who have already passed their 5-year bar limitation and others may live in states that provide state-funded TANF replacement programs.¹⁶⁵ TANF programs also have child support cooperation requirements that require that persons receiving TANF assistance cooperate

¹⁵⁵ See, e.g., 8 U.S.C. § 1154(a)(1)(A)(iii)(bb); 8 U.S.C. § 1154(a)(1)(B)(ii),(iii); 8 U.S.C. § 1186a(c)(4)(C); 8 U.S.C. § 1255 note; 8 U.S.C. § 1229b(b)(2).

¹⁵⁶ See 8 U.S.C. § 1229b(b)(2).

¹⁵⁷ See VAWA of 2000, Publ. L. No. 106-386, § 1510; Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. No. 105-100, § 202(d)(1).

¹⁵⁸ See VAWA of 2000, Pub. L. No. 106-386, § 1509.

¹⁵⁹ See IRIRA of 1996, Pub. L. No. 104-208 (division C) § 309.

¹⁶⁰ See VAWA of 2000, Pub. L. No. § 1511.

¹⁶¹ Social Security Act, tit. IV-A, 42 USC §§ 601, *et seq.*

¹⁶² PRWORA § 412, 8 U.S.C. § 1622.

¹⁶³ See generally, National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs*, available at http://www.nilc.org/pubs/Guide_update.htm#tbl8.

¹⁶⁴ Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343.

¹⁶⁵ The list of states providing state funded TANF replacement programs as of October 2008 are CA, CT, FL, IL, IA, ME, MD, MN, NE, NJ, NM, NY, OR, PA, TN, UT, VT, WA, WI, WY. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf

with the state in collecting child support from the parent of the children that the TANF applicant is including as a beneficiary in the TANF benefits application.

Out of concern that several of TANF's requirements could pose a danger to domestic violence victims, Congress included as part of TANF the Family Violence Option (FVO). The FVO included in the Welfare Act of 1996 permits states to grant "good cause waivers" of certain TANF program requirements.¹⁶⁶ Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and service plans in order to protect battered immigrants from: "...immediate dangers, [to] stabilize their living situations and explore avenues for overcoming dependency."¹⁶⁷ These family violence option waivers are temporary in nature, but the actual length is defined broadly as "so long as necessary."¹⁶⁸ This definition gives welfare administrators the discretion to determine the period during which the waiver will apply, and renew the waiver on a case-by-case basis.¹⁶⁹

Under HHS regulations, states that formally adopt the Family Violence Option do not have to pay penalties if they do not meet work targets or exceed time limitations because of waivers granted to battered women. All states, the District of Columbia and Puerto Rico have adopted the Family Violence Option.¹⁷⁰ Advocates and attorneys working with immigrant victims should urge state benefits officials to apply Family Violence Option protections that specifically help immigrant victims. This may include screening in the appropriate language, allowing ESL classes to meet work requirements, waivers of work requirements, referrals to culturally competent services, as well as waivers of sponsor deeming requirements.

Medicaid

Medicaid is a joint federal and state program that provides medical care to the needy.¹⁷¹ The assistance consists of reimbursement to medical service providers rather than direct cash payments to the patient. Medicaid recipients will usually receive an identification card that they must show to participating providers to receive medical care. Such providers can include doctors, hospitals, nursing homes and pharmacies. These providers then bill the state for the cost of the service based on established rates.

The federal statute outlines the basic options that states may adopt in implementing their own Medicaid programs and the requirements that states must follow. States must meet federal requirements when implementing a Medicaid program, including minimum standards of eligibility, scope of services and procedural protections. States are also given a variety of options, which means that state programs can vary greatly. The state submits a plan to HHS to qualify for federal participation. The plan describes how the state will conform to federal laws and regulations. Federal regulations and interpretive guidelines from the Health Care Financing Administration, a division of HHS, interpret the federal law in this area.¹⁷² All states now provide Medicaid coverage. The federal government funds approximately half of the costs.

Medicaid is not provided to all low-income individuals. State programs implementing the federal guidelines have varied coverage, but they must include the federal standards for "categorically needy" recipients, i.e., persons who are automatically eligible to receive Medicaid because they are

¹⁶⁶PRWORA § 402(a)(7), 8 U.S.C. § 1612(a)(7).

¹⁶⁷Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,128 (Nov. 20, 1997) (to be codified at 40 C.F.R. pts. 270-5). State authorities are required to maintain the confidentiality of the victims.

¹⁶⁸42 U.S.C. § 607(a)(7).

¹⁶⁹Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62,124, at 62,131 (Nov. 20, 1997) (to be codified at 45 C.F.R. § 270.30).

¹⁷⁰Jenny S. Pappariella, *Excerpts from the TANF Final Rule: Preamble and Regulations Related to Domestic Violence*, National Resource Center on Domestic Violence, p 4, also available at http://new.vawnet.org/Assoc_Files_VAWnet/TANFFinalRuleExcerpts.pdf

¹⁷¹Social Security Act title. XIX, 42 U.S.C. §§ 1396, *et seq.*

¹⁷²42 C.F.R. Part 430, *et seq.*

eligible for SSI and/or TANF.¹⁷³ Other low-income persons may qualify for Medicaid if they meet certain requirements established by their state. Financial eligibility levels are similar to those established for TANF, and vary depending upon the state's requirements.

Amendments to Medicaid eligibility were included in the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹⁷⁴ effective April 1, 2009. These amendments expanded the groups of Medicaid eligible immigrants to include a range of lawfully present immigrant children and pregnant women. Prior to CHIPRA generally only qualified immigrant and trafficking victim sexual assault survivors qualified for Medicaid. The range of immigrant victims who will be eligible for Medicaid as of April 2009¹⁷⁵ includes:

- qualified immigrants
 - CHIPRA removed the 5-year bar for access to Medicaid for under 21 year old children and pregnant women;
 - All other immigrant victims still face a 5 year bar to access to Medicaid;
- trafficking victims; and
- lawfully residing immigrant children and pregnant immigrant women

Under CHIPRA states will be reimbursed by the federal government for providing Medicaid funded health care to lawfully residing non-citizen children under the age of 21 and for non-citizen pregnant women during pregnancy and for 60 days post-partum.¹⁷⁶

Federal benefits laws have defined "lawfully residing" to include several categories of immigrants who are "lawfully present" and intend to reside in the U.S. In addition to lawful permanent residents and other "qualified immigrants" the term has been defined to include other immigrants who are in the U.S. lawfully, such as U-visa victims, persons who receive deferred action status, and spouses and children of U.S. citizens who have applied for lawful permanent residency.¹⁷⁷ Examples of adult¹⁷⁸ immigrant sexual assault victims who will be Medicaid eligible include noncitizen victims:

- Who either first entered the U.S. prior to August 22, 1996 or who have been lawful permanent residents for more than 5 years who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants;
 - Qualified immigrants
- Non-citizens who are pregnant who are
 - Lawful permanent residents
 - Conditional permanent residents
 - Battered spouse waiver applicants
 - VAWA self-petitioners
 - VAWA cancellation applicants
 - Qualified immigrants and

¹⁷³ Virginia Department of Social Services Medical Assistance Unit, *MEDICAID, TITLE XXI, SLH AID CATEGORIES*, (December 2007), also available at http://www.vcu.edu/vissta/bps/bps_resources/medicaid/aid_categories_chart_medicaid_slh.pdf

¹⁷⁴ Public Law No. 111-3, 2009 (H.R. 2).

¹⁷⁵ To receive federal reimbursement for health care provided to non-citizen children and pregnant women states will need to elect to participate in the program.

¹⁷⁶ Public Law No. 111-3 tit. I subtitle. B § 111, 2009 (H.R.2); National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>

¹⁷⁷ National Immigration Law Center, *FACTS ABOUT New State Option to Provide Health Coverage to Immigrant Children and Pregnant Women*, (April 2009), also available at <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>. The Center for Medicare and Medicaid Services will issue regulations fully defining this category as CHIPRA is implemented.

¹⁷⁸ Noncitizen children eligible for healthcare benefits will be discussed in the following section on the State Child Healthcare Insurance Program.

- U visa recipients or who have received deferred action status.

Sponsor deeming rules are not applicable to noncitizen pregnant women who receive Medicaid under CHIPRA¹⁷⁹. Victims accessing Medicaid through this provision will be eligible without having to additionally qualify for the battered immigrant exemption to sponsor deeming.

Although CHIPRA significantly expands the categories of immigrant victims of sexual assault and domestic violence who will be eligible for Medicaid funded health care, many sexual assault victims who are not trafficking victims or pregnant will still be subject to the 5-year bar on access to Medicaid for qualified immigrants. Several states have opted to provide state-funded medical assistance to varying categories of legally present immigrants including qualified immigrants subject to the 5 year bar and U visa applicants.¹⁸⁰ Please refer to the health care chapter for more information on access to subsidized health care for immigrant victims of sexual assault.

State Child Health Insurance Program (SCHIP)

The State Child Health Insurance Program (SCHIP)¹⁸¹ was enacted August 5, 1997 as part of the Balanced Budget Act of 1997.¹⁸² SCHIP allocates funds to states to provide health insurance coverage for uninsured, low-income children. To be eligible, “targeted low-income children” must be ineligible for Medicaid yet live in families with incomes under 200 percent of the federal poverty line. The states must pay for part of the SCHIP program under a federal-state matching formula, defined in the statute. As with other federal public benefits programs PRWORA authorized states to choose whether to offer state funded benefits to immigrants who were not eligible to receive federally funded health care. At the time of the enactment of CHIPRA in January of 2009, 19 had passed state statutes authorizing the use of state funds to provide Medicaid and/or SCHIP coverage to legal immigrant children who were ineligible under the Federal law¹⁸³

In January 2009 Congress reauthorized SCHIP in the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹⁸⁴. The reauthorized bill made several significant changes to the SCHIP program that will improve access to health care for immigrant victims and their children. The biggest change in the program is the elimination of the 5 year bar for access to SCHIP funded health care benefits for lawfully residing immigrant children and pregnant women. CHIPRA allows states providing health care lawfully residing noncitizen children to receive federal reimbursement for health care provided. To be covered noncitizen children must be under the age or 21. Examples of

¹⁷⁹ Children’s Health Insurance Program Reauthorization Act of 2009, Public Law No. 111-3, 2009 (H.R. 2).Section 214(a). (42 U.S.C. 1396b(v)(4)(A).

¹⁸⁰ The list of states providing state funded medical assistance as of March 2009 is AK,CA,CO,CT,DE,DC,FL,HI,IL,ME,MD,MA,MN,NE,NJ,NM,NY,OH,PA,RI,TX,VI,WA,WY. For regularly updated information see National Immigration Law Center, State-Funded Medical Assistance Programs, http://www.nilc.org/pubs/guideupdates/tb110_state-med-asst_2007-07_2009-03.pdf

¹⁸¹ Title XXI of the Social Security Act

¹⁸² Pub. L. No. 105_33.

¹⁸³ The following states provide state funded healthcare covering varying groups of noncitizen children: CA (combined SCHIP and Medicaid expansion), CT (combined SCHIP and Medicaid expansion), DC, FL (combined SCHIP and Medicaid expansion), HI (Medicaid expansion), IL, ME (combined SCHIP and Medicaid expansion), MD (combined SCHIP and Medicaid expansion), MA (combined SCHIP and Medicaid expansion), MN (Medicaid expansion), NE (Medicaid expansion), NJ (combined SCHIP and Medicaid expansion), NM (Medicaid expansion), NY (Medicaid expansion), PA (separate SCHIP program), TX (combined SCHIP and Medicaid expansion), WA, WY (SCHIP expansion), **Correct**

Also, prenatal care is available regardless of immigration status through the SCHIP healthcare for the “fetus” option, in some of the states already listed (CA, IL, MA, MN, NE, RI, TX, and WA), and also in the following states: AR, LA, MI, and WI.

National Immigration Law Center, **SCHIP Reauthorization Legislation Can Help Ensure that Children Receive Timely Health Care Coverage**, January 2009) also available at http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA_Talking_Points_Final_1-8-09.pdf For an up to date list of state programs ;

See also National Immigration Law Center, *New State Option to Provide Healthcare to Immigrant Children and Pregnant Women*, (April 2009) also available at: <http://www.nilc.org/immspbs/cdev/ICHIA/ICHIA-facts-2009-04-01.pdf>

¹⁸⁴ Public Law No. 111-3, 2009 (H.R. 2).

children who will be eligible for state funded health care under SCHIP without a waiting period include under 21 year old children who are:

- VAWA self-petitioners
- VAWA cancellation of removal applicants
- Children included in their parents VAWA self-petition or cancellation of removal application
- Child trafficking victims
- Children of trafficking victims
- Child U-visa recipients
- Children of U-visa recipients
- Child who are granted deferred action from DHS
- Lawful permanent residents
- Qualified immigrants

As with all federal public benefits, children qualify for benefits independent of their parent's immigration status. Benefits eligibility rules apply only to the individual seeking benefits, not to the entire household. Thus if a lawfully residing child is eligible for Medicaid or CHIP as a result of CHIPRA, the child's parents may apply for Medicaid or CHIP for their child, regardless of their own immigration status. For example, a battered immigrant who received a prima facie determination in her VAWA self-petitioning case will become a qualified immigrant but will not be eligible to receive Medicaid benefits because she will be subject to the 5 year bar. If the battered immigrant self-petitioner included her undocumented immigrant children in her VAWA self-petition, when the self-petitioner receives eligibility for public benefits as a qualified immigrant as part of her VAWA self-petitioning case, her children become qualified immigrants immediately eligible for health care benefits under SCHIP. Similarly, children included in a U-visa victims' application will receive access to healthcare under SCHIP when the U-visa application is approved or when they receive deferred action status in connection with the U-visa application.

Supplemental Security Income (SSI)

SSI is the hardest public benefits program for sexual assault victims to qualify to receive because special program eligibility rules significantly limit access.. There is an indefinite bar from receiving SSI that applies to non-qualified immigrants, as well as to qualified immigrants who entered the United States after August 22, 1996. However, certain qualified immigrants may fall within one of the exceptions to the indefinite bar on SSI..

SSI is a federally funded cash assistance program for low-income persons who are aged, blind or disabled.¹⁸⁵ The Social Security Administration (SSA), a division of HHS, administers the SSI program. SSI differs from traditional social security retirement or disability benefit programs in that it is based upon financial need rather than past earnings credited to a social security account. In other words, SSI is a needs-based income maintenance program providing a guaranteed minimum income to eligible persons. The program has national eligibility standards and a basic monthly payment that may be supplemented by the state.¹⁸⁶

Persons applying for SSI must meet the requirements of one or more of the following categories:

- **Disabled:** To qualify as "disabled" a person must demonstrate that physical or mental impairments will keep or have kept them from working for 12 continuous months.¹⁸⁷ Most

¹⁸⁵ 42 U.S.C. §§ 1381, *et seq.*

¹⁸⁶ The list of states providing state funded SSI supplemental state programs as of October 2007 are CA, HI, IL, ME, NE, NH.. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs http://www.nilc.org/pubs/guideupdates/tb19_state-ssi_2006-07_2007-10.pdf

¹⁸⁷ 42 U.S.C. § 1382c(a)(3).

people will have to have their disabilities verified by a doctor, which involves an examination and possibly a review of past medical records.

- Blind: Persons are “blind” for SSI purposes if the vision in their best eye is no better than 20/200n with corrective lenses.¹⁸⁸
- Aged: Persons 65 years or older.¹⁸⁹

To qualify a person who falls within one of these three categories must additionally prove financial eligibility. The maximum income levels are set slightly above the federal poverty income guidelines,¹⁹⁰ calculated annually by HHS, but the maximum income limits vary depending upon the basis of one’s SSI eligibility. Recipients of SSI are also automatically eligible for Medicaid.¹⁹¹

The following qualified immigrants are eligible for SSI:

- Immigrants who were receiving SSI benefits on August 22, 1996¹⁹²
- Qualified immigrants who were lawfully residing in the United States on August 22, 1996 and who are disabled at the time of application for assistance, regardless of the date of onset of the disability.¹⁹³ The immigrant need not have been physically present on August 22, 1996, as long as on that date he or she qualified as “lawfully residing in the United States.”¹⁹⁴ That phrase means the person resides here and fits within one of the “lawfully present” immigrant categories listed above. Residence entails physical presence plus an intent to remain. Short absences of less than six months do not terminate residency unless there is an intent to do so.¹⁹⁵
- - Example: An immigrant victim who became disabled related to incidents of domestic violence or sexual assault, would qualify for SSI if, they were lawfully residing in the U.S. on August 22, 1996 and if they became a qualified immigrant at sometime between August 22, 1996 and the time of application for SSI.
 - Elder abuse victims may be the most likely to qualify.
- Refugees, Cuban/Haitian entrants, Amerasians, and immigrants granted asylum or withholding of deportation/removal, but only for the first seven years after entry as a refugee, Cuban/Haitian entrant, Amerasian, or the grant of asylum or withholding of deportation. Note that if these immigrants were receiving SSI benefits on August 22, 1996, there is no seven-year limitation.
- Victims of trafficking¹⁹⁶
- Qualified immigrants who are either active duty service members or veterans, or their spouses and unmarried dependent children under 21¹⁹⁷

¹⁸⁸ 42 U.S.C. § 1382c(a)(2).

¹⁸⁹ 42 U.S.C. § 1382c(a)(1)(A).

¹⁹⁰ See 53 Fed. Reg. 4213 (Feb. 12, 1988).

¹⁹¹ 42 U.S.C. § 1396a(a)(10)(A)(i).

¹⁹² *Id.*

¹⁹³ Age unaccompanied by disability does not suffice, but the diseases that commonly occur with old age are incorporated into the disability determination.

¹⁹⁴ *Id.* Theoretically, but rarely, some grandfathered residents who are or become disabled may be rendered ineligible by the “deeming” rules that are described below in the section discussing eligibility for Temporary Assistance for Needy Families (TANF), the State Child Health Insurance Program (SCHIP), and Medicaid.

¹⁹⁵ Social Security Administration, Program Operations Manual System (hereinafter POMS) SI 00502.142(B)(2)(b).

¹⁹⁶ Victims of human trafficking who become disabled are the group of immigrant victims of sexual assault that have the greatest opportunity to qualify for SSI.

¹⁹⁷ Theoretically, but rarely, some immigrants who qualify for the veteran’s exemption may be rendered ineligible by the “deeming” rules that are described below in the section discussing eligibility for TANF, SCHIP, and Medicaid.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- American Indians who were born in Canada and are members of federally recognized tribes and those defined in INA § 289
- Permanent resident immigrants who have worked at least 40 “qualifying quarters” for social security purposes or who can be credited with those quarters under special procedures¹⁹⁸

Persons should apply for SSI in person at the closest Social Security district or branch office. Payments date from the time a written application is filed. The applicant must show proof of age, income, and any medical impairment.

Food Stamps

Food Stamps are another public benefits program that will be difficult for many sexual assault victims to access. The immigrant eligibility requirements for Food Stamps are complicated and subject to various exceptions. Congress enacted the federal food stamp program to ensure that individuals in low-income households obtain adequate nutrition.¹⁹⁹ The food stamp program is a federal means tested public benefits program administered through state welfare or social services agencies under the supervision of the U.S. Department of Agriculture (USDA). States must follow federal guidelines in determining eligibility and in processing applications.²⁰⁰ However, states may extend state funded food assistance to immigrants who are not eligible for the federal program.²⁰¹ The program enables food stamp recipients to buy food and improve their diets. Qualified persons receive coupons called food stamps, in specific monetary denominations, which can be used in lieu of money to buy food items at participating stores.²⁰² The stamps cannot be used to purchase non-food items, alcohol, or cigarettes. The number of people in the household, their income, and their living expenses determine the amount of food stamps the household will receive.²⁰³ In general, the maximum amount of gross income that a household can receive and still be eligible for food stamps must be below 130 percent of the federal poverty income guidelines.²⁰⁴ A “household” can be one person who lives alone or a group of persons, related or unrelated, who live in the same place and buy and prepare food for use by all the members.²⁰⁵ In addition to meeting the financial eligibility requirements, most households must also register for work at the food stamp office or at the state or local job service office, and accept any “suitable” employment.²⁰⁶

Most immigrant victims of sexual assault or domestic violence will live in a mixed-status household in which some family members will be eligible for food stamps and other family members will not have an immigration status that qualifies them to receive food stamps.. In such a case the ineligible immigrant is not considered a household member, and his or her needs are not counted in allocating the amount of food stamps for the household. The ineligible immigrant's income, however, may be counted when calculating the income and resources available to the household members.²⁰⁷

¹⁹⁸ Welfare Act § 402(b)(2), as amended by the Balanced Budget Act of 1997 §§ 5301_5306. (In order to use work of a spouse or a parent the individual will need a Consent for Release of Information signed by the spouse/parent in order to use the employment gained under his/her SSN. The parent or spouse must indicate that the request pertains to Social Security Number, Identifying information, Information about benefit payments, and Other-Quarters Coverage History. For more information please see Kansas Department of Social and Rehabilitative Services, *The Kansas Economic and Employment Support Manual (KEESM)*, app at A-4 40 *Qualifying Quarters of Coverage*, also available at http://www.srskansas.org/KEESM/Appendix/A-4_SSA40qualQuart1-01.pdf.)

¹⁹⁹ 7 U.S.C. §§ 2011, *et seq.*; 7 CFR § 271.1(a).

²⁰⁰ See 7 C.F.R. § 272.3

²⁰¹ The list of states providing state funded food assistance programs as of July 2007 are CA, CT, FL, ME, MN, NE, WA, WI. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf Most recent on the site- these are fine

²⁰² 7 C.F.R. § 271.2

²⁰³ 7 C.F.R. § 273.9.

²⁰⁴ 20 C.F.R. § 404.820(g).

²⁰⁵ 7 C.F.R. § 273.1

²⁰⁶ 7 C.F.R. § 273.7(a)(1)

²⁰⁷ 42 CFR § 124.603(a)(2).

The sexual assault or domestic violence victims who will be eligible to receive food stamps will be those victims who fall within one of the following categories of Food Stamps eligible immigrants.²⁰⁸

- Refugees
- Cuban/Haitian entrants
- Amerasians
- Immigrants granted asylum
- Immigrants granted withholding of deportation
- Victims of trafficking
- Qualified immigrant children under age 18²⁰⁹
- Persons who have been qualified immigrants for five years or more
- Qualified immigrants who are either active duty service members or veterans and their spouses and unmarried dependent children under 21;
- Permanent resident immigrants who can be credited with at least 40 qualifying quarters for social security purposes through the immigrant's own work or combined with work quarters they can be credited from their spouse or parent.
- Qualified immigrants who are blind or have a disability at the time of application for assistance, regardless of the date of onset of the disability, and who are also receiving disability benefits
- Qualified immigrants who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older on that date
- American Indians who were born in Canada and are members of federally recognized tribes and those defined in INA § 289
- Immigrants who are lawfully residing in the United States and were members of a Hmong or Highland Laotian tribe at the time that the tribe (not necessarily the individual immigrant) rendered assistance to United States personnel by taking part in military or rescue operation during the Vietnam era, their spouses, unmarried dependent children, or their un-remarried surviving spouses.²¹⁰

It is important to note that immigrant parents who do not qualify for food stamps themselves, can file applications for food stamps for their U.S. citizen, lawful permanent resident or qualified immigrant children under the age of 18. Qualified immigrant children eligible for food stamps would include child abuse victim self-petitioners, children granted VAWA cancellation of removal, child trafficking victims or immigrant children included in their abused mother's self-petition. When the mother receives a prima facie determination in her VAWA self-petitioning cases, her children receive prima facie determinations as well. Once children become qualified immigrants through any of these and the above listed avenues they become immediately eligible for food stamps. Parents applying for food stamps on their children's behalf are required to provide immigration status and social security number information only for the child food stamps applicant. Parents who do not qualify for food stamps, if asked for their immigration status information or social security numbers information should tell benefits workers that they are not applying for foods stamps for themselves and are not required to provide either their immigration status information or social security number.²¹¹

III. STATE FUNDED BENEFITS

State funded benefits provide a significant option for access to the public benefits safety net for immigrant victims of sexual assault, domestic violence, child sexual assault and child abuse for

²⁰⁸ 7 C.F.R. 273.4; 7 C.F.R. 732-6. See also Supplemental Nutrition Assistance Program, *Section 402- Limited Eligibility of Qualified Aliens for Certain Federal Programs*, United States Department of Agriculture, Food and Nutrition Service, also available at http://www.fns.usda.gov/snap/rules/Memo/PRWORA/99/Section_402.htm

²⁰⁹ 7 C.F.R. § 273.4(a)(5)(i)(G) (2009).

²¹⁰ Welfare Act § 402(a)(2), (b)(2), as amended by AREERA §§ 503-510.

²¹¹ For further information see Breaking Barriers Ch 4.2, Public Benefits Access for Battered Immigrant Women and Children

victims who live in state that provide various forms of state funded public benefits to immigrants who are legally present,²¹² lawfully residing under color of law (PRUCOL)²¹³ or who are qualified immigrants subject to the federal 5 year bar on federal public benefits access. In addition to placing significant restrictions on immigrant access to federally funded public benefits, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gave states the authority to control two aspects of state-funded benefits programs. First, PRWORA gave states the authority to extend state-funded benefits eligibility to include non-qualified immigrants.²¹⁴ Second, PRWORA gave states the ability to limit the state-funded public benefits available to qualified immigrants,²¹⁵ immigrant visa holders²¹⁶ and immigrants paroled into the United States for less than one year.²¹⁷

As with federal public benefits, certain services are excluded from PRWORA's definition of the state or local public benefits that are restricted by PRWORA. Services, assistance and programs funded by state and local government funds that are paid to an entity other than an "individual, household or family eligibility unit" are not "state or local benefits" under PRWORA and are available to all persons, regardless of immigration status.²¹⁸ Programs and services necessary to protect life and safety that are funded by state or local government are explicitly open to all immigrants without any immigrant restrictions. All immigrants can receive state-funded emergency medical care, in-kind emergency disaster relief, immunizations for communicable diseases, and services necessary for the protection of life or safety.²¹⁹ Treatment of emergency medical conditions,²²⁰ Short term, non-cash, in-kind emergency disaster relief;²²¹ and Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²²²

A. STATE AUTHORITY TO EXTEND BENEFITS ELIGIBILITY TO NON-QUALIFIED IMMIGRANTS

Prior to the passage of PRWORA in 1996 federal law did not place limitations on state and local governments' ability to grant access to general assistance and other state-funded benefits to immigrants whether they were documented or undocumented. PRWORA restructured immigrant access to benefits defining "federal public benefits", "federal means tested public benefits", and "state or local benefits". PRWORA also set forth procedures that states and localities must follow to extend state or locally funded public benefits to persons other than those deemed by the federal government to be qualified immigrants, persons residing legally in the United States on immigrant visas, and certain parolees.²²³ PRWORA also gave states the discretion of passing affirmative legislation extending state and local public benefits access to undocumented immigrants, to other non-qualified immigrants, and/or to qualified immigrants that are subject to the 5 year bar on access federal public benefits and federal means tested public benefits. In order to extend immigrant access to state and/or local public benefits, PRWORA required states to pass laws after August 22, 1996 that specifically authorized non-qualified immigrant access to state and local public benefits.²²⁴ Numerous states have done so, authorizing access to state-funded benefits programs for varying categories of immigrants.²²⁵

²¹² This category includes U-visa victims and the family members included in their U-visa applications.

²¹³ This category includes U-visa victims and the family members included in their U-visa applications.

²¹⁴ PRWORA § 411, 8 U.S.C. § 1621(b).

²¹⁵ PRWORA § 411(a)(1), 8 U.S.C. § 1621(a)(1).

²¹⁶ PRWORA § 411(a)(2), 8 U.S.C. § 1621(a)(2) (These groups of immigrant visa holders are called nonimmigrants under the Immigration and Nationality Act INA Section 101(a)(15) and include immigrants granted legal temporary visas).

²¹⁷ PRWORA § 411(a)(3), 8 U.S.C. § 1621(a)(3). (These are immigrants paroled into the United States for less than one year under INA section 212(d)(5)..

²¹⁸ *Id.* at § 411(c), 8 U.S.C. § 1621(c)(1)(B).

²¹⁹ See The following section of this chapter for a full discussion of programs and services necessary to protect life and safety.

²²⁰ PRWORA § 411(b)(1).

²²¹ PRWORA § 411(b)(2).

²²² PRWORA § 411(b)(3).

²²³ PRWORA at § 411(a), 8 U.S.C. § 1621(a)(3).

²²⁴ *Id.* at § 411(d), 8 U.S.C. § 1621(d).

²²⁵ The National Immigration Law Center (NILC) has created and regularly updates several charts detailing immigrant eligibility for state-funded benefits. These charts are available as an appendix to this manual, however, because public benefits

State-funded benefits programs can provide important access to public benefits for immigrant sexual assault victims who because they are not qualified immigrants are not eligible to receive federal public benefits, or who are qualified immigrants but subject to a five-year bar on access to federal benefits under PRWORA.²²⁶

- Twenty-four states have implemented replacement programs that provide state-funded medical assistance to immigrants ineligible for federally funded Medicaid.²²⁷
- Twenty states provide cash assistance to immigrants ineligible for the federally-funded Temporary Assistance to Needy Families (TANF),²²⁸
- Eighteen states provide medical care for immigrants ineligible for the federally-funded through State Children's Health Insurance Plan (SCHIP) and or Medicaid expansion programs,²²⁹
- Eight states provide food assistance to immigrants who are ineligible for federally-funded Food Stamps,²³⁰ and
- Six states provide cash assistance to immigrants ineligible for federally-funded Supplemental Security Income (SSI).²³¹

There is significant variation amongst the states as to the categories of immigrants who can receive various state-funded benefits. Some states only provide state-funded replacement benefits to qualified immigrants who are ineligible for federal benefits due to the five-year bar. Others extend state-funded benefits to include immigrants who are domestic violence, trafficking or u-visa victims, undocumented immigrant children, immigrants who are "legally present," "legally residing," and/or to "persons who are permanently residing in the U.S. under color of law" (PRUCOL)²³²

PRUCOL²³³ is not an immigration status, it is a benefits eligibility category. PROCOL means that the Department of Homeland Security is aware of the person's presence in the United States, and

information is subject to change, please refer to the NILC website for regularly updated information.

http://www.nilc.org/immspbs/sf_benefits/index.htm#stfnd.

²²⁶ The five-year bar on federal means-tested public benefits is discussed later in this chapter.

²²⁷ The list of states providing state funded medical assistance as of March 2009 is AK, CA, CO, CT, DE, DC, FL, HI, IL, ME, MD, MA, MN, NE, NJ, NM, NY, OH, PA, RI, TX, VI, WA, WY. For regularly updated information see National Immigration Law Center, State-Funded Medical Assistance Programs, http://www.nilc.org/pubs/guideupdates/tbl10_state-med-asst_2007-07_2009-03.pdf

²²⁸ The list of states providing state funded TANF replacement programs as of October 2008 are CA, CT, FL, IL, IA, ME, MD, MN, NE, NJ, NM, NY, OR, PA, TN, UT, VT, WA, WI, WY. For regularly updated information see National Immigration Law Center, State-Funded TANF Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl8_state-tanf_2004-03_2008-10.pdf

²²⁹ The list of states providing state-funded health care for children through SCHIP and/or Medicaid Expansion as of September 2008 are: CA, CT, DC, FL, HI, IL, ME, MD, MA, MN, NE, NJ, NM, NY, PA, TX, WA, WY. For regularly updated information see National Immigration Law Center, State-Funded SCHIP Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl11_state-SCHIP_2007-07_2008-09.pdf

²³⁰ The list of states providing state-funded food assistance programs as of July 2007 are: CA, CT, FL, ME, MN, NE, WA, and WI. For regularly updated information see National Immigration Law Center, State-Funded Food Assistance Programs, http://www.nilc.org/pubs/guideupdates/tbl12_statefood_2007-07.pdf

²³¹ The list of states providing state-funded SSI replacement programs as of July 2006 are: CA, HI, IL, ME, NE, NH. For regularly updated information see National Immigration Law Center, State-Funded SSI Replacement Programs, http://www.nilc.org/pubs/guideupdates/tbl9_state-ssi_2006-07_2007-10.pdf

²³² For compendium that tracks state laws providing benefits to immigrants including a description of the exact groups of immigrants covered under each state law set the National Immigration Law Center's website at <http://www.nilc.org>. It is also important to note that several states use varying legal approaches to offer prenatal care to provide qualified immigrant and other documented and/or undocumented immigrant pregnant women including: California, Colorado, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Texas, and Washington), Arkansas, Louisiana, Michigan, Washington and Wisconsin.

²³³ Prior to 1996 welfare and immigration reforms PRUCOL was an eligibility category for federal benefits. While the federal government no longer recognizes PRUCOL as a category of immigrants who are eligible for federal benefits, many states use the definitions of PRUCOL in prior federal law to define groups of immigrants that qualify for state-funded benefits. Under prior federal law the Social Security Administration issued guidelines defining to whom the term applied as follows:

"We will consider you to be permanently residing in the United States under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service [INS] and that agency does not contemplate enforcing your departure. The [INS] does

has no plans to deport her. As a benefit eligibility category, PRUCOL has been interpreted differently by different states and sometimes differently by various benefits programs within each state²³⁴ PRUCOL may include persons:²³⁵

- Who have filed Violence Against Women Act and Trafficking Victim's Protection Act immigration cases
 - VAWA self-petitions
 - VAWA cancellation of removal
 - VAWA suspension of deportation
 - U-visas
 - T-visas
- With an approved immediate relative visa petition
- Who filed an application for adjustment to legal permanent resident status
- In deferred action status
- Granted family unity
- Granted a stay of deportation
- Who have lived in the US continuously since before January 1, 1972
- Other persons in the US with the knowledge of DHS whose departure that agency does not contemplate enforcing.

B.STATE AUTHORITY TO LIMIT BENEFITS FOR QUALIFIED IMMIGRANTS

PRWORA gave states discretion to expand state public benefits eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants,²³⁶ persons residing legally in the United States on immigrant visas,²³⁷ and certain immigration parolees.²³⁸ However, states may not cut off or restrict state-funded public benefits for the following qualified immigrants:

not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of aliens in the same category or if from all the facts and circumstances in your case it appears that the [INS] is otherwise permitting you to reside in the United States indefinitely." 20 C.F.R. § 416.1618(a) (2008).

²³⁴ See e.g. National Immigration Law Center, State Funded Medical Assistance Programs (March, 2009).

http://www.nilc.org/pubs/guideupdates/tbl10_state-med-asst_2007-07_2009-03.pdf

²³⁵ Deeana Jang, *Health Care and other Benefits for Immigrants*, Presentation at the National Network to End Violence Against Immigrant Women Conference, Lexington, Kentucky November 2007 (Asian & Pacific Islander American Health Forum).

²³⁶ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²³⁷ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²³⁸ PRWORA § 412(a), 8 U.S.C. § 1622(a). National Center for State Legislators, National Policy Project, *2007 Enacted State Legislation Related to Immigrants and Immigration* (Jan. 31, 2008); see also Progressive States Network, *The Anti-Immigrant Movement that Failed: Positive Integration Policies by State Governments Still Far Outweigh Punitive Policies Aimed at New Immigrants* (Sept. 2008), available at <http://www.progressivestates.org/content/903>.

Some states limit state funding for immigrants and require that immigrants applying for state benefits provide proof of lawful presence in the United States. The definition of lawful presence can be similar to PRUCOL and covers immigrants who are in the process of applying for legal immigration status whose cases have not been denied. This would include immigrants with work visas, qualified immigrants who are subject to the 5-year bar on access to federal public benefits, VAWA self-petitioners with prima facie determinations, approvals or who attained lawful permanent residency based on their approved self-petition. It would also include U-visa victims with interim relief, a bona fide case or a U-visa grants.

Proof of lawful presence is required to access state funded benefits in

- CO (H.B. 07-1314, 66th Gen. Assem., Reg. Sess. (Colo. 2007);
- ID S.B. 1157, 59th Leg., **Reg. Sess. (Idaho 2007)**;
- IN **Limited to qualified aliens** for TANF S.B. 504, 115th Gen. Assem., **Reg. Sess.** (Ind. 2007));
- CA Limit certain state funded benefits programs for certain immigrants. In CA only "eligible alien status" can receive temporary homeless relief shelter, A.B. 335, 2007-2008 Reg. Sess. (Cal. 2007));
- KS: specifies which benefits immigrants may receive and which they are excluded from and requires verification, H.B. 2599, 2007-2008 Reg. Sess. (Kan. 2007).;
- LA creates an accountability program to determine the eligibility of refugees to receive TANF, state grants, food stamps, Social Security, and other public benefits, H.B. 2007 Reg. Sess. (La. 2007).;
- MI passed a law that that prohibits funds directed toward multicultural services from going to undocumented immigrants. Third-party grantees are required to certify that recipients of state funds are lawfully present in the United States. The legislature makes an exception for emergency medical situations. HB 4344 (Signed 10/31/2007)

- Refugees, asylees, trafficking victims, Cuban and Haitian entrants, Amerasian immigrants, and those granted withholding of deportation under INA § 243 for the first five years after their date of admission (seven years for Medicaid);²³⁹
- Permanent resident immigrants who have worked for 40 quarters as defined by the Social Security Act, and their spouses or children (who can use some or all of their citizen or lawful permanent resident spouse's 40 quarters to qualify);²⁴⁰ and
- Immigrants who are veterans on active duty, or the spouses or dependent children of such persons.²⁴¹

Additionally, PRWORA's grant of state authority to restrict access based on immigration status applied only to payments, programs, services or assistance that fall within the definition of "state or local public benefits". PROWRA barred state law restrictions on the following programs that Congress exempted from the definition of state and local public benefits:

- Treatment of emergency medical conditions;²⁴²
- Short term, non-cash, in-kind emergency disaster relief;²⁴³
- Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²⁴⁴
- Programs and services necessary to protect life and safety.²⁴⁵

FEDERAL PREEMPTION AND STATE ACTION IN THE IMMIGRATION AND PUBLIC BENEFITS CONTEXT

The United States Constitution imposes certain limitations on states' ability to determine state or local eligibility for public benefits under (1) the Supremacy Clause and the doctrine of federal preemptions, or (2) the Equal Protection Clause of the Fourteenth Amendment. Understanding these federal limitations on state laws is extremely important for programs serving immigrant victims in states and localities that have passed state laws and/or local ordinances that exercise state authority under PRWORA to limit provision of state funded public benefits to immigrants.

When federal and state laws appear to conflict how do advocates and attorneys effectively advocate to assure that immigrant victims of violence against women are able to access programs and services they are legally entitled to receive under federal law? The goal of this section of this chapter is to provide advocates and attorneys working with immigrants with the legal analysis of

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- MO prohibits undocumented immigrants from receiving state or local benefits and prohibits municipality sanctuary policies H.B. 1549, 1771, 1395 & 2366, 94th Gen. Assem., Reg. Sess. (Mo. 2008).;
 - RI prohibits new non-citizen children from enrolling in the state's Medicaid program H.B. 7120, 2006 Gen. Assem., Reg. Sess. (R.I. 2006).;
 - SC requires verification of immigration status for applicants over the age of 18 for public benefits, H.B. 4400, 117th Gen. Assem., Reg. Sess. (S.C. 2008). WV eligibility for the West Virginia Works program and delineates specific categories of immigrants for which exceptions are made S.B. 518, 2007 Reg. Sess. (W.Va. 2007).
- The most restrictive states have laws that are particularly harmful and concerning for immigrant victims.
- AZ restricts categories of non-citizens who receive state funded benefits to those who submit documentation of citizenship, permanent residency, or lawful presence in the United States, H.B. 5467, 48th Leg., Reg. Sess. (Ariz. 2007);
 - OK terminated several forms of state funded public assistance, placed tighter restrictions on higher education benefits, provided exceptions with respect to emergency care, disaster assistance and certain immunizations and enacted laws prohibiting undocumented immigrants from obtaining public benefits and requiring public agencies to check status of those above age 14 H.B. 1804, 51st Legis., Reg. Sess. (Okla. 2007).

²³⁹ PRWORA § 412(b)(1), 8 U.S.C. § 1622(b)(1)

²⁴⁰ *Id.* at § 412(b)(2); 8 U.S.C. § 1622(b)(2).

²⁴¹ *Id.* at § 412(b)(3); 8 U.S.C. § 1622(b)(3).

²⁴² PRWORA § 411(b)(1), 8 U.S.C. § 1621(b)(1)(except organ transplants).

²⁴³ PRWORA § 411(b)(2), 8 U.S.C. § 1621(b)(2).

²⁴⁴ PRWORA § 411(b)(3), 8 U.S.C. § 1621(b)(3)

²⁴⁵ PRWORA § 411(b)(4), 8 U.S.C. § 1621(b)(4).

these conflicting laws. Without this information state laws are used to cut victims off from federally funded public benefits, services and assistance victims are legally entitled to receive.

The United States Supreme Court, in *DeCanas v. Bica*,²⁴⁶ formulated a three-prong test to determine whether a state's action in the realm of immigration is pre-empted by Congress. First, the Court recognized that the “[p]ower to regulate immigration is unquestionably exclusively a federal power.”²⁴⁷ In other words, a state may not “regulate immigration.”²⁴⁸ Second, a state statute may be preempted if it is the “clear and manifest purpose of Congress” that there be complete ouster of state power in the area, including the power to promulgate laws that are not in conflict with the federal law.²⁴⁹ That is, a state statute is preempted where Congress has intended to “occupy the field.”²⁵⁰ Finally a state law cannot stand if it is “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,”²⁵¹ or if it conflicts with federal law, making compliance with both state and federal law impossible.²⁵²

The extent to which PRWORA preempts states from imposing limitations on immigrant access to state benefits is complex. First, section 412 of PRWORA, 8 U.S.C. § 1622, specifically authorizes states to determine and limit eligibility for State public benefits for qualified immigrants, non-immigrants,²⁵³ and certain parolees, but not for categories of qualified immigrants listed under the exceptions. Second, under section 411 of PRWORA, 8 U.S.C. § 1621, a State may enact affirmative legislation after August 21, 1996, extending public benefits to immigrants who are not qualified immigrants, non-immigrants, or certain parolees. PRWORA's default rule, in the absence of affirmative State legislation, prohibits immigrants from being eligible for any State or local public benefits, unless that alien is a qualified immigrant, a non-immigrant under the INA, or one of certain parolees.²⁵⁴

At the same time PRWORA is clear that certain services are excluded from PRWORA's definition of the types of publicly funded states and federal benefits, programs and services that PRWORA restricts. PRWORA provides that specified programs and services are exempt from federal or state immigration restrictions and are to open to all persons without regard to the individual's immigration status. Exempt programs and services are state and/or federally funded:²⁵⁵

- Emergency medical care,
- In-kind emergency disaster relief,
- Immunizations for communicable diseases, and
- Services necessary for the protection of life or safety.

Although section 411 and 412 of PRWORA, 8 U.S.C. §§ 1621 and 1622, include specific directives, the scope of the states' right to regulate immigrant access to state benefits has not been fully clarified. While the Supreme Court has not determined the extent to which PRWORA preempts State laws governing immigrant access to public benefits; and there is some guidance from U.S. district

²⁴⁶ 424 U.S. 351 (1976).

²⁴⁷ *Id.* at 354.

²⁴⁸ See *Equal Access Education v. Merten*, 305 F.Supp.2d. 585 (E.D. Va. 2004); *League of United Latin American Citizens v. Wilson*, 997 F.Supp. 1244 (C.D. Cal. 1997).

²⁴⁹ *DeCanas*, 424 U.S. at 357.

²⁵⁰ *Id.* at 361.

²⁵¹ *Id.* at 363.

²⁵² See *Michigan Cannery & Freezers v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469 (1984); *Merten*, 305 F.Supp.2d. at 602; *League*, 997 F.Supp. at 1253.

²⁵³ “Non-immigrant” is the legal terminology used in immigration law to describe persons who come to the United States temporarily for some particular purpose without the intention to remain permanently. These “non-immigrants” receive immigration visas allowing them to lawfully enter the U.S. There are many types of non-immigrant visas issued including students, tourists, and temporary workers. This manual uses the term immigrant visas or temporary immigrant visas instead of the term non-immigrants so as to use a term that is clear to all readers whether or not they are immigration lawyers.

²⁵⁴ *Id.* at § 411; 8 U.S.C. § 1621.

²⁵⁵ *Id.* At § 411 (b), 8 U.S.C. § 1621 (b). For a listing of programs specified by the Attorney General pursuant to PRWORA § 411(b)(4), 8 U.S.C. § 1621(b)(4), that are excepted from PRWORA's immigrant access restrictions., see *Final Specification of Community Programs Necessary for Protection of Life and Safety Under Welfare Reform Legislation* [A.G. Order No. 2353-2001], 66 Fed. Reg. 3613 (Jan. 16, 2001).

courts. In *League of United Latin American Citizens v. Wilson*, the court found that, through Title IV of PRWORA, Congress intended to occupy the field of regulation of government benefits to immigrants.²⁵⁶ The court held that PRWORA “demarcate[d] a field of comprehensive federal regulation within which states may not legislate, and define[d] federal objectives with which states may not interfere.”²⁵⁷ Because PRWORA constitutes a comprehensive scheme that restricts immigrant eligibility for all public benefits (no matter how funded), the court reasoned that states have no power to legislate in this area.²⁵⁸ The court stated that PRWORA defines the full scope of permissible state legislation in the area of regulation of government benefits and services to immigrants:²⁵⁹

- (a) states may enact a law after August 22, 1996 that provides state or local public benefits to immigrants who are not qualified immigrants, non-immigrants under the INA, or one of certain parolees, and
- (b) states may further restrict the eligibility of qualified immigrants for state public benefits.

It should be noted that the court in *League* did not distinguish between “public benefits” and other government benefits that are not “public benefit.” Notably, PRWORA contains no prohibition on the states’ right to limit access to such programs. However, in *League*, the court indicated that PRWORA is a comprehensive regulatory scheme covering all government benefits to immigrants.²⁶⁰ Using the *League* court’s reasoning, states would be preempted from granting or denying access to government programs to immigrants, except as explicitly permitted by 8 U.S.C. §§ 1621 and 1622. Applying this decision in the case of immigrant domestic violence victims would prohibit states from denying access to federally funded public or assisted housing benefits for VAWA self-petitioners who become qualified immigrants.

In *Equal Access Education v. Merten*, the Eastern District of Virginia suggested that PRWORA’s regulatory scheme was less pervasive than the court in *League* had determined.²⁶¹ The court in *Merten* noted that PRWORA denied certain benefits to undocumented immigrants, and requires a state that wishes to make an undocumented immigrant eligible for any state or local public benefit for which the immigrant would otherwise be ineligible under PRWORA to enact a law affirmatively providing for such eligibility.²⁶² Thus, the court believed, “it does appear that Congress has preempted the field determining immigrant eligibility for certain public benefits, including state benefits.”²⁶³ Thus, the court contemplates that there are benefits *not* governed by PRWORA in fields not completely occupied by the federal government.²⁶⁴ The following can be gleaned from the statutory language of PRWORA, the tests in *DeCanas*, and the district court opinions in *League* and *Merten*:

- The express language of PRWORA, 8 U.S.C. § 1621(d), effectively “preempts” any state law that existed prior to August 22, 1996 that granted access to state or local public benefits to an immigrant who is not a qualified immigrant, non-immigrant under the INA, or certain parolees,²⁶⁵ and

²⁵⁶ *League*, 997 F.Supp. at 1253. The court uses the term “public benefits” and “benefits” interchangeably; it does not appear that the court distinguishes between the two, or would find that there are government benefits that are *not* “public benefits.”

²⁵⁷ *Id.* at 1253-54.

²⁵⁸ *Id.* At 1255. Accordingly, the only regulations that a state can promulgate are regulations that implement the provisions of PRWORA. California regulations that implemented Proposition 187 were at issue in *League*. The court determined that PRWORA prevents California from promulgating regulations to effectuate Proposition 187, even if Proposition 187 is a scheme parallel to that specified in PRWORA.

²⁵⁹ *Id.*

²⁶⁰ *League*, 997 F.Supp. at 1253-56.

²⁶¹ *Merten*, 305 F. Supp. 2d at 605.

²⁶² *Id.* (citing 8 U.S.C. § 1621 (d)).

²⁶³ *Id.*

²⁶⁴ In *Merten*, the government benefit at issue was attendance at public post-secondary institutions. The court found that access to public higher education is not a benefit governed by PRWORA, and that the field is not one completely occupied by the federal government. As such, states are permitted to adopt federal standards governing an immigrant’s status in the United States to prevent undocumented immigrants from attending public post-secondary institutions.

²⁶⁵ The Court of Appeal of California found that, through enactment of PRWORA, Congress decided that states may not provide state public benefits for undocumented immigrants. *Community Health Foundation v. Wilson*, 57 Cal.App.4th 296

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- PRWORA, 8 U.S.C. § 1622, permits states to determine the eligibility for any state public benefit for qualified immigrants, non-immigrants under the IMC, and certain parolees (subject to certain exceptions); by corollary, such action is not “preempted” by PRWORA.

In addition to the possibility that the federal preemption doctrine may serve as a limitation on a state’s right to determine the eligibility of immigrants for state-funded benefits, the Equal Protection Clause of the Federal Constitution may also restrict a state’s ability to pass laws that distinguish among immigrants. As already noted, PRWORA permits states to determine the eligibility for any state public benefit for qualified immigrants, non-immigrants under the INA, and certain parolees. The Attorney General has also fully exercised the power delegated to her under 8 U.S.C. § 1611(b)(1)(D) and 1621(b)(4) in regard to programs necessary for the protection of life or safety under PRWORA, stating:

“Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.”²⁶⁶ ...

IV. Programs Open to All Victims Regardless of Immigration Status

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically overhauled the public welfare system in an effort to “promote[s] work over welfare and self-reliance over dependency.”²⁶⁷ However, Congress acknowledged that certain vulnerable persons still needed assistance and therefore included provisions ensuring that specific types of programs remained open all immigrants and were not subject to PRWORA’s immigration status restrictions.²⁶⁸ A series of federal laws, federal regulations and guidance confirm that undocumented immigrants and immigrant victims of violence against women are legally entitled to non-discriminatory access to a range of government funded benefits, services and assistance that are explicitly exempted from immigrant access restrictions.²⁶⁹ The federal laws, regulations, and policies that grant access to federal and state funded benefits, assistance and services without regard to the victim’s immigration status include but are not limited to:

- The Violence Against Women Act (VAWA)²⁷⁰,
- Orders issued by the U.S. Attorney General,²⁷¹

(1997). Accordingly, the state lacked discretion to determine whether it could continue to provide taxpayer funding for those benefits, under either state or federal law without passing a post-August 22, 1996 new law.

²⁶⁶ 56 Fed. Reg. 3615 (Jan. 16, 2001).

²⁶⁷ H.R. REP. NO. 104-725, at 261 (1996).

²⁶⁸ To help those in need the bill “retains protections for those who experience genuine and intractable hardship.” H.R. Conf. Rep. No. 104-725, at 261 (1996).

²⁶⁹ For a full description of the various types of government funding available to fund services provided to immigrant victims of sexual assault and domestic violence see, *Breaking Barriers*, Chapter 4.1 Access to Programs and Services That Can Help Battered Immigrants, (Legal Momentum, Washington, D.C. 2004). Pp 6-10.

²⁷⁰ Administered by the Department of Justice. See VAWA 1994 (108 Stat. 902 et. Sec. §4002 (a)(32) as amended by VAWA 2005) citing the USC Section on underserved populations. The Office on Violence Against Women at the U.S. Department of Justice lists as an activity that may compromise victim safety--,

“Procedures that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their...immigration status...”

DEP’T OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, OVW FY 2009 GRANTS TO ENHANCE CULTURALLY AND LINGUISTICALLY SPECIFIC SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING PROGRAM 8 (2009), available at http://www.ovw.usdoj.gov/docs/fy09_culturally_and_linguistically_specific_services_solicitation.pdf. The Office on Violence Against Women encourages grantees to:

“Develop innovative approaches to improving culturally relevant services to immigrants including services to address barriers that immigrants frequently experience, such as lack of knowledge or existing resources, language barriers, and issues particular to immigration and deportation.” *Id.* at 7.

²⁷¹ See e.g., A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10; Interim Guidance on Verification of Citizenship, Qualified

- The Family Violence Prevention and Services Act²⁷²
- The Fair Housing Act,²⁷³
- The McKinney Homeless Act,²⁷⁴
- PRWORA,²⁷⁵
- IIRAIRA,²⁷⁶ and
- Guidance issued by federal agencies.²⁷⁷

Two major categories remain open to all immigrants regardless of status. First, Programs that do not fall within the definition of “federal public benefits”²⁷⁸ or “state or local public benefits”²⁷⁹ under the statute remain unrestricted. Second, PRWORA also created important categories of federal public benefits²⁸⁰ and state²⁸¹ public benefits that are exempt from the statute’s immigration restrictions, including programs that are necessary for the protection of life or safety.²⁸² Other exempt programs include emergency Medicaid²⁸³, in-kind emergency disaster relief,²⁸⁴ immunizations and treatment of communicable diseases.²⁸⁵

A. FEDERALLY FUNDED PROGRAMS OPEN TO ALL IMMIGRANTS BECAUSE THEY ARE NOT CONSIDERED “FEDERAL PUBLIC BENEFITS” UNDER PRWORA

Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 Vol. 62, No. 221.

²⁷¹ PRWORA § 401(c), 8 U.S.C. § 1611(c)

²⁷² The statutes codifying the Family Violence Prevention and Services Act services can be found at: Family Violence Prevention and Services Act, as amended, 42 U.S.C. §§ 10401-10421; Child Abuse Amendments of 1984, Title III, Public Law 98-457; Child Abuse Prevention, Adoption and Family Services act of 1988, Title III, Public Law 100-294, as amended; Violent Crime Control and Law Enforcement Act of 1994, Title IV, Public Law 103-322; 42 U.S.C. 10401; Child Abuse Prevention and Treatment Act Amendment of 1996, Public Law 104-235; Victims of Trafficking and Violence Protection Act of 2000, Title II, Public Law 106-836.

²⁷³ Sec. 805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions (stating that “It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.”)

²⁷⁴ McKinney-Vento Homeless Assistance Act of 1986, Public Law 100-77, 101 Stat. 482, 07/22/1987k 100th Congress, as reauthorized in 2000, 42 U.S.C. 11301, Public Law 106-400, 106th Congress.

²⁷⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, 110 Stat. 2105, August 22, 1996, Section 401(b)(1)(D).

²⁷⁶ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 576.

²⁷⁷ See, e.g., Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) available at http://new.vawnet.org/Assoc_Files_VAWnet/ImmigrantAccess.pdf and as Appendix XXX in this Manual;

see also OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001); and Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 Vol. 62, No. 221.

²⁷⁸ PRWORA § 401(c), 8 U.S.C. § 1611(c). In order to be considered a federal public benefit under the statute, a program must fall under the provisions of at least one of the definition’s two subsections. Under subsection (A),

“a program is a federal public benefit if it is a “grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States.” PRWORA, § 401(c)(1)(A), 8 U.S.C. § 1611(c)(1)(A).

The Department of Health and Human Services has interpreted this provision to apply to “agreements or arrangements between Federally funded programs and individuals.” 63 Fed. Reg. at 41,659. Importantly, the term “grant” does not include “block grants” provided to states or localities. *Id.*

Subsection (B) applies to:

“any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.” PRWORA, § 401(c)(1)(B), 8 U.S.C. § 1611(c)(1)(B).

²⁷⁹ PRWORA § 411(c), 8 U.S.C. § 1621(c)

²⁸⁰ PRWORA § 401(b), 8 U.S.C. § 1611(b)

²⁸¹ PRWORA § 411(b), 8 U.S.C. § 1621(b)

²⁸² PRWORA § 401(b)(4), 8 U.S.C. § 1611(b)(4).

²⁸³ PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).

²⁸⁴ PRWORA § 401(b)(2), 8 U.S.C. § 1611(b)(2).

²⁸⁵ PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(3).

Although PRWORA provides a definition of the term “federal public benefit,”²⁸⁶ individual benefits-granting agencies (such as the Department of Health and Human Services or the Department of Housing and Urban Development) bear the ultimate responsibility for determining which of their programs are considered “federal public benefits.”²⁸⁷ The Attorney General and the Department of Justice have repeatedly affirmed the government’s preference for deferring to each agency’s own interpretation of the term “federal public benefit.”²⁸⁸

Several federal government agencies have published regulations and policies setting out lists of programs that each federal agency considers to be “federal public benefits.”²⁸⁹ Any, federally funded government programs that have are not included in each agencies list of “federal public benefit” are not restricted on the basis of immigration status²⁹⁰ and are open to all persons including undocumented immigrants; and including immigrant victims of sexual assault. Below are highlighted examples of the types of programs federal government agencies have deemed to be open to all immigrants because they are not federal public benefits or federal means-tested public benefits. What follows is an analysis federally funded programs that do not have restrictions on immigrant from agencies administering programs that are of greatest interest to advocates, attorneys and health care providers working with immigrant victims of sexual assault.

The U. S. Department of Health and Human Services (HHS)

Health Care: HHS provides significant sources of health care for immigrant victims of sexual assault and domestic violence who are not “qualified immigrants.” This health care is provided through community and migrant health centers, as well as substance abuse, mental health, and maternal and child health programs.²⁹¹ These services are available to all immigrant victims, regardless of immigration status.²⁹² HHS has provided specific guidance regarding the availability of unrestricted programs to immigrant survivors of domestic violence.²⁹³ Many of these programs also provide services that can help immigrant victims of sexual assault.²⁹⁴ :

²⁸⁶ PRWORA 401(c), 8 U.S.C. § 1611(c)..

²⁸⁷ See, e.g. 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (Department of Health and Human Services interpretation of “federal public benefit”).

²⁸⁸ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, 3614 (“the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit”); A.G. Order No. 2170-98, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662, 41,664 (“The Service will give all appropriate deference to benefit granting agencies’ applications of the definition to the programs they administer, or to applications provided by another Federal agency that oversees or administers a Federal benefit program”).

²⁸⁹ See e.g., Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998). The list includes 31 programs that provide federal public benefits, including Medicare, Temporary Assistance to Needy Families, and the Social Services Block Grant; U.S. Department of Agriculture, Non-Citizen Requirements in the Food Stamp Program, Eligibility Determination Guidance (January 2003) available at

http://www.fns.usda.gov/fsp/Rules/Legislation/pdfs/Non_Citizen_Guidance.pdf; There are 12 HUD programs that are restricted to “qualified immigrants.” Public and Assisted Housing, Department of Housing and Urban Development, *Programs of HUD*, U.S., 80 (2006); Public Housing Operating Fund, *Id.* at 81; Public Housing Capital Fund, *Id.* at 82; Public Housing Neighborhood Networks (NN) Program, *Id.* at 84; Public Housing Homeownership, *Id.* at 22; Section 8 Moderate Rehabilitation Single Room Occupancy *Id.* at 57; Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance), *Id.* at 70; Renewal of Section 8 Project-Based Rental Assistance, *Id.* at 74; Housing Choice Voucher Program, *Id.* at 75; Homeownership Voucher Assistance, *Id.* at 78; Project-Based Voucher Program, *Id.* at 79.

²⁹⁰ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, available at <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

²⁹¹ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹² OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹³ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

²⁹⁴ See Appendix XX for a chart of all HHS programs that are unrestricted based on immigration status.

Family Violence Prevention and Services Act Funding: According to HHS, Family Violence Prevention and Services Act (FVPSA) funding is not a federal public benefit and is funding that is to be used to serve any victim without regard to the victim's immigration status.²⁹⁵ Thus, immigrant sexual assault victims whose assault occurred in the context of domestic violence²⁹⁶ are eligible regardless of status to receive the same services as battered immigrants, including services provided by domestic violence shelters and other domestic violence programs that receive FVPSA funding.

Community Services Block Grant: The Community Services Block Grant (CSBG) program offers services open to all persons without regard to immigration status. CSBG funds are not deemed by HHS to be federal public benefits.²⁹⁷ The Community Services Block Grant programs provide assistance to State and local communities to fund initiatives that combat unemployment, inadequate housing, poor nutrition, lack of emergency and health services, and lack of educational opportunity.²⁹⁸ CSBG funding can be used to provide a wide array of services to all persons, including all immigrants including:

- Vocational and adult employment training,
- ESL courses,
- Transitional shelters,
- Crisis intervention telephone hotlines,
- Initiating community gardens, and
- Treatment for substance abuse.²⁹⁹

B. SERVICES NECESSARY FOR PROTECTION OF LIFE OR SAFETY

Under PRWORA, if the program is necessary for the protection of life and safety it is exempt from restrictions on immigrant access to public benefits.³⁰⁰ These programs include but are not limited to police, fire, emergency medical technician and ambulance services, emergency Medicaid, emergency shelter, transitional housing, access to the courts and victim services.³⁰¹

The PRWORA gives the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, regardless of whether they are state or federally funded.³⁰² Under PRWORA, programs that meet the following criteria must be provided to all persons without regard to immigration status. Moreover, such programs are completely exempt

²⁹⁵ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE. These programs are only available to victims whose sexual assault occurred in the context of family violence. 42 U.S.C. § 10401.

²⁹⁶ Family Violence Prevention and Services Act, is 42 USC § 10410.

²⁹⁷ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE; Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998).

²⁹⁸ HHS, Administration for Children & Families, Community Services Block Grant Fact Sheet, <http://www.acf.hhs.gov/programs/ocs/csbg/aboutus/factsheets.htm> (last updated Feb. 13, 2008).

²⁹⁹ CSBG Program, Report to Congress, Fiscal Year 2004, http://www.acf.hhs.gov/programs/ocs/csbg/report_grantprogram04.html.

³⁰⁰ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Sections 401 and 411; Immigration Reform and Immigrant Responsibility Act of 1996 (IRAIRA), Public Law 104-208, 110Stat. 3009-546, Sept 30, 1996, section 501, (discussing section 431 of the PRWORA which was amended to add a new subsection allowing certain battered immigrants to be treated as qualified immigrants such that they can be eligible for public assistance.)

³⁰¹ AG Order No. 2129-97, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61345, Vol. 62, No. 221; See Claudia Schlosberg, *Not qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998).

³⁰² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) Sections 401 and 411.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

from any requirements that they verify or report the immigration status of persons seeking or receiving their services.³⁰³ To be exempt, programs must:

- Offer in-kind services at the community level
- Provide services regardless of the individual's income or resources, and
- Be necessary to protect life or safety.³⁰⁴

"In-kind" services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, protection orders, and victim services. The U.S. Attorney General's list explicitly includes the full range of services for crime victims necessary to protect life and safety guaranteeing that these services are open to all persons.³⁰⁵ As a result, both documented and undocumented immigrant victims of rape, sexual assault, incest, and domestic violence are eligible to receive these services.

The Attorney General's Order guarantees that programs that meet the four criteria described above are to be open to all persons without regard to immigration status. No federal, state or local government providing funding for programs that meet the four prongs of the test articulated by the Attorney General can restrict immigrant access to a program providing services necessary to protect life and safety that meets this test. Department of Justice regulations state that:

"assistance enumerated in this Order are ones that Congress authorized the Attorney General to except from limitations on the ban on the availability of federal, state, or local public benefits imposed by Title IV of the Act. ...The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)). .. Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters."³⁰⁶

The following public assistance programs provided by community-based agencies have been designated by the U.S. Attorney General to be open to all persons without regard to immigration status.³⁰⁷ This non-exclusive³⁰⁸ list of programs has been deemed by the U.S. Attorney General to be services necessary to protect life and safety:

- Crisis counseling and intervention programs³⁰⁹
- Services and assistance relating to child protection³¹⁰
- Adult protective services³¹¹

³⁰³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; AG Order No. 2129-97, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61345, Vol. 62, No. 221 ; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 501, (amending section 431 of the PRWORA to add a new subsection making certain battered immigrants qualified for public benefits purposes.)

³⁰⁴ AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996); AG Order No. 2170-98, 63 Fed. Reg. 41,662, 4166 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

³⁰⁵ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10

³⁰⁶ Vol 66, No 10 Fed. Reg. 3615 (January 16, 2001).

³⁰⁷ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10.

³⁰⁸ See A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 FR 3613; Vol. 66, No. 10

³⁰⁹ Examples include: rape crisis, mental health counseling and treatment for sexual assault and domestic abuse survivors, counseling and programs for incest survivors, counseling and programs for trafficking, sexual assault, domestic violence child and elder abuse survivors.

³¹⁰ Including: State, local, non-profit services to child abuse, incest, and sexual assault victims, child abuse protection units.

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Violence and abuse prevention³¹²
- Services to victims of domestic violence or other criminal activity³¹³
- Treatment of mental illness or substance abuse³¹⁴
- Programs to help individuals during periods of adverse weather conditions³¹⁵
- Soup kitchens and Community food banks³¹⁶
- Senior nutrition programs and other nutritional programs for persons requiring special assistance³¹⁷
- Medical and public health services³¹⁸
- Activities designed to protect the life and safety of workers, children, and youths or community residents³¹⁹

³¹¹ Including state, local non-profit services to elder abuse and neglect victims.

³¹² Including sexual assault, domestic violence, child abuse, incest, elder abuse, trafficking and crime victim outreach, education and prevention activities.

³¹³ Including the full range of services, assistance, and treatment for victims of sexual assault, incest, domestic violence, child abuse, elder abuse, trafficking, and crime victim services. This includes full access to protections offered by state and federal courts in civil, criminal, family and protection order matters.

³¹⁴ This provision assures that undocumented immigrants cannot be turned away from mental health treatment programs offered in-kind at the community level that are necessary to protect health, life, and safety. Immigrant victims of sexual assault, incest, trafficking, and family violence with DSM diagnosis or substance abuse can access mental health treatment programs. This includes counseling by rape crisis centers and domestic violence programs. Please refer to *Healthcare for Immigrant Victims of Sexual Assault, Charts*, Chapter 17 of this manual, for information on what additional mental health treatment that may be covered by victims of Crime Act (VOCA) funding. Further under the Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) insurance companies that are required to comply with the provision of these laws must cover mental health treatment for mental illness in the same way that the plans cover medical and surgical benefits. . The acts apply to large group self-funded group plans and large group fully insured group health plans. Ctr. for Medicare & Medicaid Services, *The Mental Health Parity Act*, at http://www.cms.hhs.gov/healthinsreformforconsume/04_thementalhealthparityact.asp (last visited Feb. 27, 2009). Exempted from the act are: "small employers who have between 2 and 50 employees; large group health plans that can demonstrate that compliance with MHPA increases their cost by at least one percent; a non-federal government employer that provides self-funded group health plan coverage to its employees may elect its plan (opt-out) from most requirements." *Id.*; 29 U.S.C § 1185a(c). Medicare and Medicaid are not group plan insurance providers; they are public health plans, which are not covered under the acts. *Id.* The MHPA requires that covered group insurance plans treat mental health benefits in a similar way that they treat medical or surgical expenses. Accordingly, plans are not allowed to include an aggregate or yearly limit on mental health benefits that is set lower than limits placed on medical or surgical benefits. 29 U.S.C. §§ 1185a(a). MHPAEA mandates that group insurance providers who are covered by the act must not require the insured to pay any more in copayments or other expenses for mental health or substance use treatment than they would have to for medical or surgical benefits. Similarly, covered insurers are not allowed to have tighter restrictions on mental health or substance use "treatment limitations" than they do on medical or surgical benefits. Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, H.R. 1424—117 §§ 511-12 (2008) (codified as amended at 29 U.S.C. 1185a (Oct. 3, 2009)). § 512(a)(1). "Treatment limitations" include: limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of the treatment. For instance, an insurer that is covered by the act may not place a limit on the number of sessions the insured can seek for mental health or substance use if there is not the same limit on medical sessions. *Id.*

³¹⁵ "Although data are limited, field reports indicate that reported violence against women increases in communities hit by environmental disasters." Violence Against Women in Disasters, A Study of Domestic Violence Programs in the United States and Canada ELAINE ENARSON, University of British Columbia, Violence Against Women, Vol. 5, No. 7, 742-768 (1999); see also CRS Report for Congress, Order Code RS22258, September 13, 2005, Federal Food Assistance: Hurricane Katrina, Joe Richardson, Domestic Social Policy Division "The Agriculture Department has effectively waived most eligibility and benefit rules governing food assistance programs for those affected by Hurricane Katrina, making them automatically eligible for maximum benefits. <http://www.au.af.mil/au/awc/awcgate/crs/rs22258.pdf>.

³¹⁶ Sexual assault victims who are trying to rebuild their lives following sexual assault may leave or lose their jobs or housing and may need to rely on soup kitchens and community food banks to meet nutritional needs for themselves and their children particularly if she is an immigrant victim and has no access to food stamps.

³¹⁷ Examples include the Women Infants Children Program (WIC), public education and school meals program, summer meals, and medical assistance for people with AIDS (Alcohol and Drug Program Administration (ADAP) and ADAP Plus).

³¹⁸ This provision assures access to Emergency Medicaid, other HHS funded health programs including community health clinics and migrant health services are open to everyone without regard to immigration status. Community health clinics can provide an important source of health care for undocumented sexual assault victims who do not qualify for other subsidized post rape health care. See Appendix on unrestricted HHS Programs.

³¹⁹ This definition includes: police, fire department, emergency medical technicians, and access to courts. In the health care context services include immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services, and treatment for sexually transmitted diseases. See Claudia Schlosberg, *Not-qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998). ; see also NATIONAL IMMIGRATION PROJECT & SAN FRANCISCO AIDS FOUNDATION, HIV/AIDS AND IMMIGRANTS: A MANUAL FOR HIV/AIDS SERVICE PROVIDERS, available at

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children.³²⁰

In 2001 the Secretary of Housing and Urban Development issued policy guidance defining “short-term shelter” to include emergency shelter and transitional housing programs for up to two years.³²¹

“[T]his policy directive clarifies that all programs administering HUD grants, which provide emergency shelter, transitional housing, short-term shelter and housing assistance to victims of domestic violence are deemed necessary, under the Order, for the protection of life and safety. Therefore, programs and services of this type that deliver in-kind services at the community level and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources are to make their programs available to all persons without verification of citizenship, nationality or immigration status, as set forth in the Order...”

Under the same HUD policy victims of sexual assault, regardless of immigration status, in need of shelter to escape abuse or to avoid homelessness qualify for federally funded emergency shelters and for short-term transitional housing programs for up to two years.³²²

Victim assistance and victim services programs are required, as a matter of law, to offer their services equally to all victims, without regard to the victim’s immigration status.³²³ To strengthen the ability of non-profit and charitable organizations to serve immigrants and immigrant victims, federal law exempts these programs from Department of Homeland Security (DHS) verification and reporting requirements. Congress explicitly confirmed that nonprofit charitable organizations have no legal obligation to inquire about the immigration status of persons who seek their services.³²⁴

<http://www.nationalimmigrationproject.org/HIV/2004HIVManual/2004hivmanual/> (Chapter 4 of this manual contains eligibility information about public benefits for HIV/AIDS immigrants).

³²⁰ HUD defines short term shelter or housing assistance to include emergency shelter and up to two years of transitional housing. Letter from U.S. Dept. of Housing and Urban Development to HUD Funds Recipients, to HUD Funds Recipients (Jan. 19, 2001). Some victims of sexual assault will qualify for emergency shelter and transitional housing as child abuse or domestic violence victims. Domestic violence is defined in the Violence Against Women Act as follows:

“The term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

The Violence Against Women Act of 1994 (VAWA) Pub.L. 103-322, 108 Stat. 1902, 42 U.S.C. § 13925(a)(6) (2000). Under this definition sexual assault victims whose perpetrators are current or former family members, extended family member, intimate partners, cohabitants, boyfriends, girlfriends or any other person covered by your state’s protection order statute would qualify for emergency shelter and transitional housing as domestic violence victims. Child sexual assault victims will qualify as abused, abandoned or neglected children. Other sexual assault victims will qualify for shelter and transitional housing as persons who would otherwise be homeless or at risk of homelessness. Access to shelter and transitional housing would be particularly important for a sexual assault victim who was assaulted in her apartment or apartment complex and due to the psychological affects of assault is too traumatized to stay in her apartment unit. If the victim has been renting from a private landlord she may not have a place to move to and will need access to shelter or transitional housing. If the victim has been living in public housing or a subsidized housing unit and she is unable to convince the housing authority to transfer her and cannot afford to move on her own, she may end up in a homeless shelter.

³²¹ Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>.

³²² Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19, 2001) available at <http://www.legalmomentum.org/site/DocServer/appendixb-2.pdf?docID=222>. See also A.G. Order No. 2353-2001, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3,613, 3,616 (Jan.16, 2001). For a full list of HUD funded programs do not have restricted immigrant access, see, Appendix XXX HUD Funded programs.

³²³ AG Order No. 2129-97, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,345-61,346, Vol. 62, No. 221; see also appendix to this chapter on Anti-discrimination.

³²⁴ 8 U.S.C. § 1642(d). These protections are broader and extend beyond programs offering services necessary to protection life and safety.

Further, programs that turn away undocumented immigrants risk being charged with discrimination in violation of Federal law and also loss of federal funding.³²⁵

C. OTHER SERVICES NOT RESTRICTED BY PRWORA

While services needed to protect life and safety are perhaps the most common unrestricted services victims of sexual assault and domestic violence may need to access, there are other unrestricted categories of publicly funded benefits and services that both documented and undocumented victims of sexual assault can access. These include: medical assistance under title XIX of the Social Security Act; short-term, non-cash, in kind emergency disaster relief; public health assistance for immunizations and treatment for symptoms of communicable diseases; and programs for housing or community development assistance or financial assistance administered by the secretary of HUD. A brief description of three of these programs follows.

1. Medical assistance under title XIX of the Social Security Act

Emergency medical assistance is available to all immigrants regardless of status for care and services that are necessary to the treatment of an emergency medical condition, not related to an organ transplant procedure as long as the immigrant meets any other eligibility requirements under his or her approved state plan.³²⁶

2. Short-term, non-cash, in kind emergency disaster relief

The Federal Emergency Management Administration (FEMA) has determined that programs providing the following services are considered short-term disaster relief:

- search and rescue;
- emergency medical care;
- emergency mass care;
- emergency shelter;
- clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;
- warning of further risk or hazards;
- dissemination of public information and assistance regarding health and safety measures;
- provision of food, water, medicine, and other essential needs, including movement of supplies or persons; and
- reduction of immediate threats to life, property, and public health and safety.³²⁷

3. Public health assistance for immunizations and treatment for symptoms of communicable diseases

All immigrants, regardless of immigration status, are eligible for public health assistance funded through sources other than the Medicaid program. The public health assistance is limited to immunizations with respect to diseases for which immunizations exist and for testing *and* treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. Public health assistance includes a wide range of critical health services for immigrants and their families, including:

³²⁵ See Interim Guidance on Verification of Citizenship, Qualified Immigrant Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att'y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997); see also appendix to this chapter on discrimination.

³²⁶ 42 U.S.C. § 1611(b)(1)(A); See Social Security Act, 42 USC 1396.

³²⁷ http://www.nilc.org/disaster_assistance/Disaster_Relief.pdf

Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence

- Immunizations for Children and Adolescents;
- AIDS and HIV services and treatment including screening and diagnosis, counseling, testing and treatment provided with Ryan White Program funds³²⁸ or other non-Medicaid funds;
- Tuberculosis services including screening, diagnosis and treatment; and
- Sexually transmitted disease (STD) screening, diagnosis and treatment.³²⁹

³²⁸ Title XXVI of the Public Health Service Act was amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 and provides funds for STD and HIV testing.

³²⁹ Claudia Schlosberg, *Not-qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, January 12, 1998, Paper can be viewed at <http://www.healthlaw.org/library/attachment.67503?print>. State and local health departments carry out the screening, diagnosis and treatment of STDs. In order to ascertain for which STD's free screening is available contact your state's health department. Access to state health departments' web sites is available at <http://www.cdc.gov/mmwr/international/relres.html>

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

E. Trafficking Victim Benefits Eligibility Process

Trafficking Victim Benefits Eligibility Process^{1 2}

By **Jordan Tacher and Leslye E. Orloff**
National Immigrant Women's Advocacy Project (NIWAP)

April 12, 2013

Often the fastest method of receiving benefits is to apply for Continued Presence status. An adult trafficking victim will receive a certification letter from the Department of Health and Human Services Office of Refugee and Resettlement (ORR) which can then be used to facilitate the T-visa process. A trafficking victim under 21 years of age will receive an eligibility letter from the Department of Health and Human Services Office of Refugee and Resettlement (ORR).

Qualifying for Continued Presence status:

1. The identified individual must be a victim of human trafficking
AND
2. Is willing to be a potential witness in the investigation or prosecution of the trafficker. The federal law enforcement official will make the initial determination if the individual meets the federal definition of a victim of a severe form of trafficking in persons.
3. In some cases, a victim can qualify for continued presence even when the s/he has not cooperated with law enforcement

How to apply for and obtain Office of Refugee and Resettlement benefits eligibility based on Continued Presence³:

1. Request that federal law enforcement officials (Immigration and Customs Enforcement (ICE), FBI, U.S. Attorneys) submit a Continued Presence application to the ICE Law Enforcement Parole Branch.
 - a. Only federal officials can certify.
 - b. If the trafficking case is being investigated or prosecuted by state or local officials, they must request that federal law enforcement officials file the continued presence request with ICE on behalf of the trafficking victim.
2. Once the federal law enforcement official receives the information for the application from the trafficking victim (in federal cases) or state law enforcement (in state cases), the federal official then files the Continued Presence application with ICE Law Enforcement Parole Branch.
3. When the ICE Law Enforcement Parole Branch approves a Continued Presence application for a trafficking victim, notification is sent to ORR and the Vermont Service Center (VSC).
4. Once ICE grants Continued Presence--
 - a. ORR issues a letter authorizing the victim to receive federal and state benefits⁴
 - b. Vermont Service Center produces a Form I-94 "Arrival-Departure Record" and employment authorization and forwards these to the federal submitting official who conveys these documents to the victim⁵

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³ For more information and sample documents, see *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, CATHOLIC LEGAL IMMIGRATION NETWORK, LEGAL AID FOUND. OF LOS ANGELES, U.S. CONFERENCE OF CATHOLIC BISHOPS/MIGRATION & REFUGEE SERVS. (NOV. 2004), available at http://www.uscrrifugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_3_Human_Trafficking_Resources/5_4_3_1_Human_Trafficking_Manuals/A_Guidefor_LegalAdvocates.pdf (last visited MAR. 22, 2013).

⁴ Adult trafficking victims receive an ORR certification letter and child trafficking victims receive an eligibility letter.

5. Continued presence authorization lasts for one year.
6. The continued presence can be renewed if the federal investigation or prosecution is ongoing and the victim is cooperating with reasonable requests from law enforcement.
7. Trafficking victims with continued presence, who qualify, may apply for a T visa, which provides a four year visa and a path to lawful permanent residency.

Qualifying for T visa Status:

To obtain a T visa, the victim must prove the following four requirements.⁶ The applicant:

1. Is or has been the victim of a severe form of human trafficking;
2. Is in the United States, American Samoa, or at a port-of-entry to the United States or American Samoa because of human trafficking;
3. Would suffer extreme hardship involving unusual and severe harm if removed from the United States; and
4. Satisfies one of the following three conditions:
 - a. The victim has cooperated and is willing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking; or
 - b. The victim is excused by the Attorney General from failing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking because of physical or psychological trauma; or
 - c. The victim is under 18 years of age

How to apply for a T visa:

1. File T visa with the Vermont Service Center. It is strongly encouraged, but not required, that the T visa application include a law enforcement endorsement.
2. T Visa applicants can also apply for benefits for certain family members who are either in the U.S. or abroad (spouse, children, parents, unmarried siblings under the age of 18). Family members must apply for status using a supplemental application.
3. Once the application is received, the applicant will be notified about going to the U.S. Citizenship and Immigration Service Application Support Center for fingerprints to be taken.
4. Vermont Service Center will determine whether the applicant is to receive *bona fide* because the following conditions are met. The application:
 - a. Is complete and properly filed,
 - b. Contains law enforcement agency endorsement or credible secondary evidence,
 - c. Includes completed fingerprint and background checks,
 - d. Presents *prima facie* evidence to show eligibility for a T visa, and
 - e. Contains no indication of fraud.
5. USCIS will then use various means, such as parole or deferred action, to prevent the removal of individuals who have filed *bona fide* applications until the Vermont Service Center issues a final decision on the T visa application.
6. The Vermont Service Center will send a *bona fide* determination letter to the applicant and to ORR
7. Based on this *bona fide* determination, ORR will issue a certification letter to an adult victim and an eligibility letter to a child victim.
8. Individuals granted deferred action or parole, whether through continued presence or as a result of a *bona fide* determination, may immediately be granted employment authorization without having to wait for the ORR certification or eligibility letter.

⁵ Only the federal law enforcement official or assigned agency victim assistance coordinator can provide the victim or their representative updates on the status of pending Continued Presence applications.

⁶ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386 (2000). See also *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVS. (OCT. 3, 2011), http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=02ed3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD#T_Nonimmigrant_Eligibility (last visited Mar. 22, 2013); *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9a52923ee5dd3210VgnVCM100000082ca60aRCRD&vgnextchannel=829c3e4d77d73210VgnVCM100000082ca60aRCRD> (last visited Mar. 22, 2013).

9. If the T visa is approved, the visa is valid for four years.
10. T visa recipient may apply for lawful permanent residency after one of the following occurs:
 - a. The victim must be continually physically present in the U.S. with a T visa for three years; or
 - b. The victim received certification that the investigation is complete

How to receive benefits after receiving Continued Presence status or a T visa:⁷

1. Once ORR has granted certification and eligibility letters, benefit granting agencies must accept these in lieu of immigration documentation.
2. Victims are not required to prove immigration status.
3. Before victims can receive benefits, benefit representatives must contact ORR at Trafficking@acf.hhs.gov or 1.866.401.5510 to verify the validity of ORR-issued letters and also to inform ORR of the benefits for which a victim has applied.
4. After the benefit agency notifies ORR, the agency cannot deny the benefits for which the victim applied even if ORR has not responded.
5. If a Social Security Number is required for eligibility of benefits (Medicaid, TANF, Food Stamps), the agency must grant the trafficking victim benefits while working with ORR to obtain a non-work social security number.

Federal and State Public Benefits and Other Government Funded Programs Available to Trafficking Victims⁸ and Eligibility Period (from date of entry)⁹

The Department of Agriculture

- Supplemental Nutrition Assistance Program (SNAP formerly Food Stamps) - *No time limit*¹⁰
- Special Supplemental Nutrition Program for Women, Infants and Children (WIC) - *No time limit*¹¹
- Federal Crop Insurance¹²

Department of Education

- Title IV Federal Student Financial Aid¹³

The Department of Health and Human Services¹⁴

- Temporary Assistance for Needy Families (TANF) - *5 years*¹⁵
- TANF Funded Child Care - *requires TANF eligibility so affected by TANF 5 year bar*¹⁶

⁷ See *State Letter #01-13: The Trafficking Victims Protection Act of 2000*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. OFFICE OF REFUGEE RESETTLEMENT (May 3, 2001), available at <http://www.acf.hhs.gov/programs/orr/resource/state-letter-01-13> (last visited Mar. 22, 2013).

⁸ See generally *Fact Sheet: Victim Assistance*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. OFFICE OF REFUGEE RESETTLEMENT (AUG. 7, 2012), available at <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-victim-assistance-english> (last visited Mar. 22, 2013).

⁹ Trafficking victims also qualify for the full range of public benefits open to VAWA eligible battered immigrants. See Jordan Tacher and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (April 19, 2013), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/VAWA%20Benefits%20Eligibility%20Process%20LEO%20-%2004-17-13%20FINAL.docx/view> (April 17, 2013).

¹⁰ 8 U.S.C. §§ 1612(a)(2)(A)(i). For more information on SNAP eligibility, see *Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC. (JAN. 30, 2013), <http://www.fns.usda.gov/snap/government/polimgtr.htm> (last visited Mar. 22, 2013).

¹¹ For more information on WIC eligibility and how to apply for the benefits, see *WIC Eligibility Requirements*, U.S. DEP'T OF AGRIC. (Nov. 20, 2012), <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Mar. 22, 2013).

¹² See *Bulletin No: MGR-05-008 Eligibility for Federal Crop Insurance Benefits for Non-Citizens without a Social Security Number (SSN)*, U.S. DEP'T OF AGRIC. (May 26, 2005), available at <http://www.rma.usda.gov/news/managers/2005/PDF/mgr-05-008.pdf> (last visited Mar. 27, 2013).

¹³ Trafficking victims are eligible for the same Title IV funds available to refugees. For more information, see U.S. DEP'T OF EDUC., *Eligibility for Title IV Program Assistance for Victims of Human Trafficking*, (Jun. 2009), available at <http://ifap.ed.gov/dpctletters/attachments/GEN0609.pdf> (last visited Mar. 22, 2013).

¹⁴ See *REVISION - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law*, DEP'T OF HEALTH AND HUMAN SERVS. (Jun. 15, 1999), available at http://archive.acf.hhs.gov/programs/ocs/liheap/guidance/special_topics/im99-10.html (last visited Mar. 27, 2013); 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

¹⁵ After 5 years TANF trafficking victim eligibility, trafficking victims approved for T visas can maintain TANF eligibility as qualified immigrants. 8 U.S.C. 1641(c)(4) makes T visa recipients and applicants who have set forth a prima facie case qualified immigrants eligible for state and federal public benefits. To receive TANF adult victims need HHS certification letter and victims under the age of 18 will need eligibility letter from ORR.

¹⁶ For a state by state analysis of state funded access to access to TANF funded child care see *Immigrant Crime Victim Child Care Access available at* <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

- State Children’s Health Insurance Program (SCHIP) - *Must be under the age of 18 or pregnant; otherwise no time limit*¹⁷
- Voluntary Agencies Matching Grant Program- *6 months*. Trafficking victims must enroll within 31 days of ORR certification or eligibility letter¹⁸
- Heating assistance (LIHEAP) - *no time limit*¹⁹
- Medicare Premium Free - Part A²⁰
- Medicare Premium “Buy In” Program²¹
- Medicaid - *7 years*²²
- Emergency Medicaid - *open to all persons without regard to immigration status*
- Adoption Assistance
- Administration on Developmental Disabilities (ADD)-
 - State Developmental Disabilities Councils (direct services only)
 - ADD-Special Projects (direct services only)
 - ADD-University Affiliated Programs (clinical disability assessment services only)
 - Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund (CCDF)²³
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low-Income Individuals (JOLI)²⁴
- Mental Health Clinical Training Grants
- Substance Abuse and Mental Health Services - *No time limit*²⁵

¹⁷ For the definition of “lawfully residing, see “*Lawfully Residing*” Children and Pregnant Women Eligible for Medicaid and CHIP, NAT’L IMMIGRATION LAW CTR. (Sep. 2012), available at <http://nilc.org/lawfullyresiding.html> (last visited Mar. 22, 2013). When minor victims turn 21, their health care eligibility moves from SCHIP to Medicaid. Victims turning 18 may be eligible for Medicaid either because they are within 7 years of having received their ORR eligibility letter or because they are T visa applicants and 5 years have passed since they received a prima facie determination or approval of their T visa case.

¹⁸ See *Voluntary Agencies Matching Grant Program FY 2013 Program Guidelines*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES (2013), available at https://www.acf.hhs.gov/sites/default/files/orr/mg_fy_2013_program_guidelines_0.pdf (last visited Mar. 22, 2013).

¹⁹ See *Summary of Immigrant Eligibility Restrictions Under Current Law*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (Feb. 25, 2009), <http://aspe.hhs.gov/hsp/immigration/restrictions-sum.shtml> (last visited Mar. 22, 2013). Trafficking victims with ORR certification or eligibility letters receive LIHEAP to the same extent as refugees. T visa applicants with prima facie determinations or T visa approvals receive LIHEAP as qualified immigrants. See *LIHEAP Eligibility Criteria*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES (May 8, 2012), <http://www.acf.hhs.gov/programs/ocs/resource/liheap-eligibility-criteria> (last visited Mar. 22, 2013). For more details and information about how to apply for LIHEAP, see *Low Income Home Energy Assistance Program (LIHEAP)*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES, <http://www.acf.hhs.gov/programs/ocs/programs/liheap> (last visited Mar. 22, 2013).

²⁰ Eligibility for assistance is based on authorized employment. Immigrant applicant must be lawfully residing. For the definition of “lawfully residing,” see “*Lawfully Residing*” Children and Pregnant Women Eligible for Medicaid and CHIP, Nat’l Immigration Law Ctr., available at <http://nilc.org/lawfullyresiding.html> (last visited Mar. 27, 2013).

²¹ Must be a lawful permanent resident who has resided continuously in the U.S. for at least 5 years.

²² Trafficking victims, like refugees and asylees are only eligible to receive SSI for the first 7 years in the United States. For many SSI eligibility is the basis for Medicaid eligibility. When SSI eligibility ends, trafficking victims who file for and receive T visas within 2 years of their eligibility for Medicaid based on HHS trafficking victim certification or eligibility letters can maintain access to Medicaid as qualified immigrants who have had T visa status for more than 5 years.

²³ For information on CCDF child care eligibility for immigrant victims see Child Care Child care assistance for low-income families and families receiving Temporary Assistance for Needy Families (TANF), see *Guide to Immigrant Eligibility for Federal Programs*, Nat’l Immigration Law ctr., <http://nilc.org/guideupdate.html> (last visited Mar. 22, 2013); see also Immigrant Crime Victim Child Care Access available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

²⁴ For more information and for a list of grantees, see *Job Opportunities for Low-Income Individuals Program (JOLI)*, U.S. DEP’T OF HEALTH AND HUMAN SERVS ADMIN. FOR CHILDREN AND FAMILIES, <http://www.acf.hhs.gov/programs/ocs/programs/joli> (last visited Mar. 22, 2013).

²⁵ See generally *Services Available to Victims of Human Trafficking*, DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES (May 2012), available at http://www.acf.hhs.gov/sites/default/files/orr/trafficking-services_0.pdf (last visited Mar. 22, 2013); *Find Substance Abuse and Mental Health Treatment*, SAMHSA, <http://www.samhsa.gov/treatment/index.aspx> (last visited Mar. 22, 2013). Substance Abuse Resources: For a listing of State substance abuse agencies, see *State Substance Abuse Agencies*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/abuseAgencies.jspx> (last visited Mar. 22, 2013). To find a substance abuse and/or mental health treatment program, see *Substance Abuse Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/quickSearch.jspx> (last visited Mar. 22, 2013). Mental Health Resources: To find a mental health treatment program near you, see *Mental Health Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/MHTreatmentLocator/faces/quickSearch.jspx> (last visited); National Suicide Prevention Lifeline: call 1-800-273-TALK (8255). See also NAT’L SUICIDE PREVENTION LIFELINE, <http://www.suicidepreventionlifeline.org/> (last visited Mar. 22, 2013).

- Health screenings and immunizations - 90 days²⁶
- Health Resources and Services Administration Programs (HRSA) - No time limit²⁷
- Native Hawaiian Loan Program
- Refugee Cash Assistance - For the first 8 months after ORR certification or eligibility letter²⁸
- Refugee Medical Assistance - For the first 8 months after ORR certification or eligibility letter²⁹
- Refugee Preventive Health Services Program
- Refugee social services³⁰
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)³¹

Department of Homeland Security

- Disaster Assistance³²

Department of Housing³³

- Public Housing Programs - no time limit³⁴
- Tenant-Based Vouchers - no time limit³⁵
- Public Housing Operating Fund³⁶
- Public Housing Capital Fund³⁷
- Public Housing Neighborhood Networks (NN) Program³⁸
- Public Housing Homeownership (Section 32)³⁹

²⁶ Screenings are conducted by State or local health departments for the diagnosis, treatment and prevention of communicable diseases and other conditions of public health importance. This usually includes screening for tuberculosis (TB), parasites, and hepatitis B, as well as school vaccinations. See *Fact Sheet: Victim Assistance*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. OFFICE OF REFUGEE RESETTLEMENT (AUG. 7, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-victim-assistance-english> (last visited Mar. 22, 2013).

²⁷ To find an HRSA funded Health Care Center, see *Find a Health Center*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVICES ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 22, 2013). HRSA offers health care and support to uninsured, underserved, and special needs populations. HRSA issues grants to federally funded health centers that are available to anyone regardless of their ability to pay. The health centers charge patients using a sliding fee scale, based on their income. Health centers provide well-care checkups, treatment for sick patients, complete care for pregnant patients, immunizations and checkups for children, dental care, prescription drugs, as well as mental health and substance abuse care.

²⁸ Helps victims ineligible for TANF or SSI. Requires registration and participation in for employment and employability services, unless specifically exempted by the state. Minors cannot receive the benefit if they cannot comply with employability requirements. The Refugee Cash program reimburses states for the cost of cash assistance provided to victims of a severe form of trafficking during the first eight months after receipt of ORR certification or eligibility letters. For more information, see *Refugee Cash and Medical Assistance Program and Refugee Social Services Program*, U.S. DEP'T OF HEALTH AND HUMAN SERVS ADMIN. FOR CHILDREN AND FAMILIES, <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=1d14624d4b6e712b1370d52b6d56ab87> (last visited Mar. 22, 2013).

²⁹ The Refugee Medical Assistance program reimburses states for the cost of medical assistance provided to victims of a severe form of trafficking during the first eight months after receipt of ORR certification or eligibility letters. See *Refugee Cash and Medical Assistance Program and Refugee Social Services Program*, DEP'T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES, <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=1d14624d4b6e712b1370d52b6d56ab87> (last visited Mar. 22, 2013).

³⁰ The services offered include but are not limited to supportive, employability services, and help addressing barriers to employment. See *About Refugee Social Services*, U.S. DEP'T OF HEALTH AND HUMAN SERVS OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/programs/refugee-social-services/about> (last visited Mar. 22, 2013).

³¹ States may choose whether to allow access for qualified immigrants. See *Summary of Immigrant Eligibility Restrictions*, DEP'T OF HEALTH AND HUMAN SVCS. (Feb. 25, 2009), available at <http://aspe.hhs.gov/hsp/immigration/restrictions-sum.shtml> (last visited Mar. 27, 2013).

³² See *Disaster Assistance: Help for Victims*, NAT'L IMMIGRATION LAW CTR., available at <http://nilc.org/disaster-help.html> (last visited Mar. 27, 2013).

³³ For a listing of all Public and Assisted Housing programs through HUD, see HUD Programs and Immigrant Eligibility, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/unrestricted-benefits/PB_16-Appendix_Imm-Eligibility-for-HUD-Programs-MANUAL-ES.pdf/view (last visited Mar. 27, 2013). The first section of the appendix lists programs that are only available to "qualified immigrants." The second section lists the remaining programs that are available to all immigrants regardless of their status.

³⁴ See generally *Services Available to Victims of Human Trafficking*, supra note 24.

³⁵ *Id.*

³⁶ See *Programs of HUD*, U.S. DEP'T OF HOUS. AND URBAN DEV. (2006), available at <http://archives.hud.gov/pubs/ProgOfHUD06.pdf> (last visited Mar. 27, 2013) (listed as number 80).

³⁷ *Id.* at 81.

³⁸ *Id.* at 82.

³⁹ *Id.* at 84.

- Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)⁴⁰
- Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)⁴¹
- Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)⁴²
- Renewal of Section 8 Project-Based Rental Assistance⁴³
- Housing Choice Voucher Program⁴⁴
- Homeownership Voucher Assistance⁴⁵
- Project-Based Voucher Program⁴⁶
- Short term shelter (emergency shelter and transitional housing)—*open to all immigrants who are victims of domestic violence, homeless, or abused, abandoned or neglected children for up to two years*⁴⁷

Department of Justice

- Victims of Crime (VOCA) Victim Compensation- *no time limit, state requirements vary*⁴⁸
- Victim Rights and Services - Federal Victim Witness Coordinators, Emergency Witness Assistance. Witness Security Program - *no time limit*⁴⁹

Department of Labor⁵⁰

- One-Stop Career Centers Core and Intensive Services⁵¹
- Job Corps⁵²

Legal Services Corporation

- Legal Services Corporation (can also assist with the application process for both Continued Presence and T-Visa)⁵³

Social Security Administration

- Supplemental Security Income (SSI) - 7 years⁵⁴

⁴⁰ Id. at 22

⁴¹ Id. at 57.

⁴² Id. at 70.

⁴³ Id. at 74.

⁴⁴ Id. at 75.

⁴⁵ Id. at 78.

⁴⁶ Id. at 79.

⁴⁷ See Letter from Andrew Cuomo, Sec’y, U.S. Dep’t of Hous. And Urban Dev., to HUD Funds Recipients (Jan. 19, 2001), *available at* <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (last visited Mar. 27, 2013).

⁴⁸ For state-specific details, see *Program Directory*, NAT’L ASS’N OF CRIME VICTIM COMP. BDS., <http://www.nacvcb.org/index.asp?sid=5> (last visited Mar. 22, 2013). Generally, the victim must (a) report the crime promptly to law enforcement, and cooperate with police and prosecutors (many states allow exceptions to this requirement, particularly for child victims); (b) submit a timely victim compensation application (some states provide exceptions); (c) have a cost or loss not covered by insurance or another government benefit program; and (d) not have committed a criminal act or some substantially wrongful act that caused or contributed to the crime (domestic violence, sexual assault and human trafficking victims are not be considered to have contributed to the crime). Apprehension or conviction of the offender is not required. Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T visas should be able to receive VOCA victim assistance to the same extent as refugees. For contact information for local crime victim service providers, see *Directory of Crime Victim Services*, OFFICE OF VIOLENCE AGAINST WOMEN, <http://ovc.ncjrs.gov/findvictimservices/search.asp> (last visited Mar. 22, 2013).

⁴⁹ These programs are available to trafficking victims involved in federal trafficking investigations or prosecutions. See *generally Services Available to Victims of Human Trafficking*, *supra* note 22.

⁵⁰ All vary by state and are available to battered qualified immigrants with work authorization.

⁵¹ For more information and to find a job resource center, see *Service Locator*, Career One-Stop, <http://www.servicelocator.org/> (last visited Mar. 27, 2013).

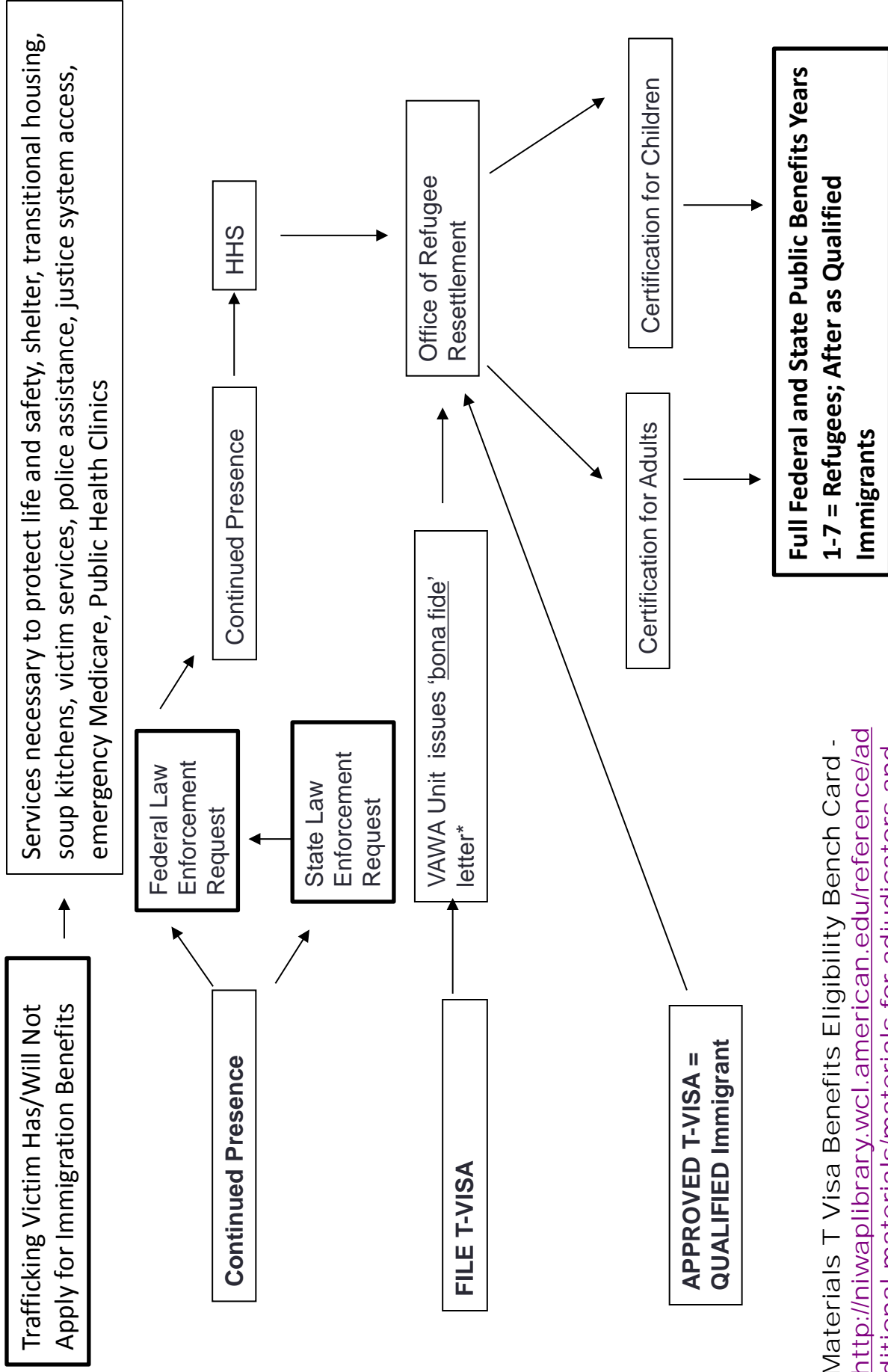
⁵² For employment opportunities, visit *Job Search*, Job Corps, www.jobcorps.gov/employment/JobSearch.aspx (last visited Mar. 27, 2013).

⁵³ For further guidance, see LEGAL SERVICES CORPORATION, Eligibility of Immigrant Victims of Severe Forms of Trafficking and Family Members for Legal Services (Oct. 6, 2005), *available at* <http://www.lsc.gov/sites/default/files/LSC/pl2005-2.pdf> (last visited Mar. 22, 2013).

⁵⁴ For persons who are blind, disabled, or over 5 years of age with limited income and resources. Trafficking victims who become lawful permanent residents, who have been lawful permanent residents for 5 years and who have 40 quarters of work credit can be eligible for SSI as qualified immigrants after eligibility for SSI as victims of human trafficking has expired. For more details, see *Supplemental Security Income (SSI) For Noncitizens*, U.S. SOCIAL SECURITY ADMIN., *available at* <http://www.ssa.gov/pubs/11051.pdf> (last visited Mar. 22, 2013). For more information on victim and witness funds available, see *Formula Grants*, U.S. Dep’t of Justice, <http://www.ojp.usdoj.gov/ovc/grants/types.html#formulagrants> (last visited Mar. 22, 2013).

**F. T Visa Continued Presence Public Benefits
Chart: Access to Public Benefits For Victims of
Human Trafficking**

Access to Federal and State Public Benefits for Victims of Human Trafficking



Materials T Visa Benefits Eligibility Bench Card - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Trafficking-Victims-Benefits-Eligibility-Process.pdf>

G. U Visa Victims Benefit Eligibility Process

U-Visa Victim Benefits Eligibility Process^{1 2}

By Jordan Tacher and Leslye E. Orloff³
 National Immigrant Women's Advocacy Project (NIWAP)

February 21, 2014

U-Visa applicants and their children are able to access government funded services to the same extent as undocumented immigration. Since U-Visa applicants and the children they include in their U-Visa applications are considered persons residing under color of law (PRUCOL), they are eligible for certain government funded services to the same extent as undocumented immigrants. They may also be eligible for someone state-funded benefits in states that offer benefits to immigrants who are PRUCOL. Additionally, U visa recipients and U visa applicants who are either wait-list approved or otherwise receive deferred action are considered lawfully present immigrants. As a result, they are eligible for some federal health care benefits and limited state funded benefits in some states.⁴ However, among the forms of immigration relief available to immigrant victims of domestic violence, sexual assault, human trafficking and other crimes, U-Visa applicants and recipients have substantially less access to federal and state public benefits than do victims who file for immigration relief as Violence Against Women Act (VAWA) self-petitioners, VAWA cancellation of removal applicants, VAWA suspension of deportation applicants, and trafficking victims with continued presence and/or pending or approved T-Visa applications.

Some immigrant victims of domestic violence or human trafficking may also qualify to apply for immigration benefits through VAWA or a T-Visa as well as a U-Visa. In deciding which immigration remedy to pursue, access to public benefits can be a significant factor that results in an immigrant survivor choosing to pursue a VAWA or T-Visa case instead of a U-Visa.⁵

Qualifying for a U-Visa⁶:

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² This document was developed under grant SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the author(s) and do not necessarily represent the official position or policies of the State Justice Institute.

³ This document was updated by Aditi Kumar

⁴ Benish Anver and Leslye Orloff, *Medical Assistance Programs for Immigrants and Immigrant Crime Victims State by State, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT* (Mar. 12, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access/Medical-Assistance-State-Chart.pdf/view> (last visited Feb. 17, 2014).

⁵ To determine whether your client might qualify for one of these forms of immigration relief in addition to the U-visa, see Jordan Tacher and Leslye E. Orloff, *Trafficking Victim Benefits Eligibility Process*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Apr. 19, 2013), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/TraffickingVictimsBenefitsEligibilityProcess%20FINAL-%204-17-13.docx/view> (April 17, 2013); Jordan Tacher and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (April 19, 2013), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/VAWA%20Benefits%20Eligibility%20Process%20LEO-%20-%204-17-13%20FINAL.docx/view> (April 17, 2013). For a chart comparing VAWA, T, and U visa immigration relief qualifications and application process, see *Comparing Forms of Immigration Relief for Immigrant Victims of Crime*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jun. 19, 2012), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/Comparing-Forms-of-Immigration-Relief--Immigration-Remedies-chart.pdf/view>.

⁶ For more information regarding the application process, see *U Visa: Victims of Criminal Activity: U Nonimmigrant Status*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (September 25, 2012), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/september-20-21-2012-new-orleans-la/u-visa->

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

A victim must meet ALL of the following eligibility requirements to qualify for a U-Visa:

- Suffered “substantial physical or mental abuse” as a result of being the victim of one (or more) of the following criminal activities (or similar activities) that violate federal, state, or local criminal law:
 - rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;
- Have information about the criminal activity;⁷
- Have been helpful, is being helpful, or is likely to be helpful in detection, investigation, prosecution, conviction, or sentencing of the criminal activity;⁸
- Can provide a certification from a state or federal agency authorized to issue certifications⁹ regarding the victim’s helpfulness;
- The criminal activity occurred in the United States or violated U.S. law;
- The victim is admissible to the United States or receives a waiver of inadmissibility; and
- A U-Visa applicant can be either the direct or indirect victim of the criminal activity.¹⁰

Application Procedure for U-Visas:

- The immigrant crime victim obtains a U-Visa certification.
- The immigrant crime victim files the U-Visa application with attachments including the U-Visa certification form at the Vermont Service Center of the U.S. Citizenship and Immigration Services.
- If the victim is applying for a family member (e.g. a spouse, child, or parent described above), a supplemental application must be filed for each family member who is applying for a U-Visa. Applicants seeking work authorization for family members should include work authorization requests with the original application.
- If the U-Visa is approved, the visa lasts four years, which can be extended if the law enforcement agency that completes the certification confirms that the victim’s presence in the U.S. is required to assist in the investigation or prosecution of the criminal activity.
- Approved U-Visas include work authorization for the applicant and all family members who previously filed work authorization applications.
- U-Visa recipients can apply for lawful permanent residency after three years by proving –

[certification/u-visa-chapters/10_U-visa-MANUAL-ES.pdf/view](#) (last visited Apr. 4, 2013). To check the date when an approved self-petitioner may be eligible for LPR status, see *Visa Bulletin*, U.S. STATE DEP’T, http://travel.state.gov/visa/bulletin/bulletin_1360.html (last visited Mar. 22, 2013).

⁷ For children under 16 years old, that his/her parent, guardian, or “next friend” information about the criminal activity.

⁸ Or if the victim is under 16 years old, that the victim’s parent, guardian, or “next friend” has been helpful, is being helpful, or is likely to be helpful.

⁹ Certifying officials include, but are not limited to, federal, state or local police, sheriffs, prosecutors, judges, magistrates, adult or child protective services; the U.S. Department of Labor, Equal Employment Opportunity Commission, the U.S. Department of Homeland Security, or state labor investigation boards.

¹⁰ Direct victims are people who have suffered direct and proximate (immediate) harm as a result of a crime. Indirect victims include the adult victim’s spouse or unmarried child under the age of 21 and a child victim’s parent and under 18 year old siblings when the immigrant was a victim of murder, manslaughter or is incompetent or incapacitated and cannot provide information about the crime or be helpful in the investigation or prosecution of the crime.

Association of VAWA and U-Visa Protections with Battered Immigrants' Safety, Well-being, Usage of the Justice Systems, and Economic Stability

- That the victim either continued to provide assistance or did not unreasonably refuse to provide assistance in the investigation or prosecution or the criminal activity; and
- The victim's continued presence in the U.S. is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

Possible Benefits for which Approved U-Visa Applicants May be Eligible:

- All benefits available to immigrants regardless of status including benefits and services necessary to protect life and safety¹¹
- Short-term shelter (emergency shelter and transitional housing)—*open to all immigrants who are victims of domestic violence, homeless, or abused, abandoned or neglected children for up to two years*¹²
- Health care funded by the Health Resources and Services Administration (HRSA)¹³
- Emergency Medicaid
- Health care benefits available to “lawfully residing” immigrants¹⁴
 - Medicaid and SCHIP for children up to age 21 and pregnant women (including women covered during the 60-day postpartum period)¹⁵
- Special Supplemental Nutrition Program for Women, Infants and Children (WIC)¹⁶
- Substance Abuse and Mental Health Services¹⁷
- Victims of Crime (VOCA) Victim Compensation- *state requirements vary*¹⁸

¹¹ For more information about the benefits available to all immigrants regardless of status, see *Unrestricted Benefits*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT RES. LIBRARY, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/unrestricted-benefits> (last visited Mar. 22, 2013).

¹² See Letter from Andrew Cuomo, Sec'y, U.S. Dep't of Hous. and Urban Dev., to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (last visited Mar. 22, 2013).

¹³ Health Resources and Services Administration (HRSA), HHS: HRSA offers health care and support to uninsured, underserved, and special needs populations. HRSA issues grants to federally funded health centers that are available to anyone regardless of their ability to pay. The health centers charge patients using a sliding fee scale, based on their income. Health centers provide well-care checkups, treatment for sick patients, complete care for pregnant patients, immunizations and checkups for children, dental care, prescription drugs, as well as mental health and substance abuse care. Health centers are located in most cities and many rural areas. To find a health center, go to HRSA's health center locator. See *Find a Health Center*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVS. ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 22, 2013); see also U.S. DEP'T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVS. ADMIN., <http://www.hrsa.gov/index.html> (last visited Mar. 22, 2013) or call 1-888-ASK-HRSA.

¹⁴ For more information on the interpretation of “lawfully residing” and the benefits for which these residents may be eligible, see CTRS. FOR MEDICAID AND MEDICARE SERVICES, *Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women* (Jul.1, 2010), <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/sho10006.pdf> (last visited Mar. 22, 2013).

¹⁵ About half of the states offer this coverage. See *Overview of Immigrants' Eligibility for SNAP, TANF, Medicaid, and CHIP*, DEP'T OF HEALTH AND HUMAN SERVS. (Mar. 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Eligibility/ib.shtml> (last visited Mar. 22, 2013).

¹⁶ For more information on WIC eligibility and how to apply for the benefits, see *WIC Eligibility Requirements*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Mar. 22, 2013).

¹⁷ For SAMHSA information, see *Find Substance Abuse and Mental Health Treatment*, SAMHSA, <http://www.samhsa.gov/treatment/index.aspx> (last visited Mar. 22, 2013). For a listing of State substance abuse agencies, see *Substance Abuse Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/abuseAgencies.jspx> (last visited Mar. 22, 2013). To find a substance abuse treatment program, see *Substance Abuse Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/abuseAgencies.jspx> (last visited Mar. 22, 2013). To find a mental health treatment program near you, see *Mental Health Treatment*, SAMHSA, <http://findtreatment.samhsa.gov/MHTreatmentLocator/faces/quickSearch.jspx> (last visited Mar. 22, 2013). The National Suicide Prevention Lifeline can be reached at 1-800-273-TALK (8255). See also NAT'L SUICIDE PREVENTION LIFELINE, <http://www.suicidepreventionlifeline.org/> (last visited Mar. 22, 2013).

¹⁸ For state-specific details, see NAT'L ASS'N OF CRIME VICTIM COMP. BDS., <http://www.nacvcb.org/index.asp?sid=5> (last visited Mar. 22, 2013). Generally, the victim must (a) report the crime promptly to law enforcement, and cooperate with police and prosecutors (many states allow exceptions to this requirement, particularly for child victims); (b) submit a timely victim compensation application (some states provide exceptions); (c) have a cost or loss not covered by insurance or another government benefit program; and (d) not have committed a criminal act or some substantially wrongful act that caused or contributed to the crime (domestic violence, sexual assault and human trafficking victims are not considered to have contributed to the crime). Apprehension or conviction of the offender is not required. Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T visas should be able to receive VOCA victim assistance to the same extent as refugees. For a state by state analysis of VOCA assistance to immigrant crime victims, application information and health care access by immigration status of victim, see *Post Assault Health Care and Crime Victims Compensation For Immigrant Victims of Violence*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Sep. 2010), http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view.

Association of VAWA and U-Visa Protections with Battered Immigrants' Safety, Well-being, Usage of the Justice Systems, and Economic Stability

- Victim Rights and Services – Federal Victim Witness Coordinators, Emergency Witness Assistance. Witness Security Program
- Legal Services Corporation funds can be used to represent victims of U-visa listed crimes including domestic violence, sexual assault and human trafficking¹⁹
- Disaster Assistance²⁰
- State-funded public benefits²¹
 - Health care²²
 - State Child Health Insurance Program (CHIP) — *Must be under the age of 18 or pregnant*²³
 - SNAP (Food Stamps)²⁴
 - Child Care²⁵
 - TANF Replacement Programs²⁶
 - Supplemental Security Income (SSI)—*subject to five-year bar*²⁷

¹⁹ Access to legal services is based on victimization and immigrant crime victims are eligible for legal services that can include any assistance connected to the abuse. Legal services are not limited to seeking immigration relief or what form of immigration relief the victim might pursue. For further guidance, see Letter from Helaine M. Barnett, President, Legal Servs. Corp., to All LSC Program Directors (Feb. 12, 2006), <http://niwaplibrary.wcl.american.edu/cultural-competency/access-to-legal-services> (last visited Mar. 22, 2013). For information regarding LSC-Funded Legal Services Free legal advice and representation in public benefits, family law, evictions, and other civil matters. See also *Guide to Immigrant Eligibility for Federal Programs*, NAT'L IMMIGRATION LAW CTR., <http://nilc.org/guideupdate.html> (last visited Mar. 22, 2013).

²⁰ See *Disaster Assistance: Help for Victims*, NAT'L IMMIGRATION LAW CTR., <http://nilc.org/disaster-help.html> (last visited Mar. 22, 2013).

²¹ For a discussion of state funded benefits open to U-Visa victims and their children included in their applications, see *State Benefits*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT RES. LIBRARY, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-benefits/> (last visited Mar. 22, 2013).

²² For a state by state analysis of state funded access to health care for immigrant crime victims, see *Medical Assistance Programs for Immigrants and Immigrant Crime Victims*, available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/MedicalAssistanceStateChart-4.1.13Final.docx/view> (April 17, 2013). For medical assistance programs for immigrants in various states, see *Guide to Immigrant Eligibility for Federal Programs*, NAT'L IMMIGRATION LAW CTR., <http://nilc.org/guideupdate.html> (last visited Mar. 22, 2013).

²³ For the definition of "lawfully residing," see "*Lawfully Residing*" *Children and Pregnant Women Eligible for Medicaid and CHIP*, NAT'L IMMIGRATION LAW CTR., <http://nilc.org/lawfullyresiding.html> (last visited Mar. 22, 2013). Qualified immigrant children and pregnant women are automatically eligible without the 5-year disqualification period. For a state by state analysis of state funded access to health care for immigrant crime victims, see *Medical Assistance Programs for Immigrants and Immigrant Crime Victims*, *supra* note 19.

²⁴ For more information on SNAP eligibility, see *Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/snap/government/polimgmt.htm> (last visited Mar. 22, 2013). For a state by state analysis of immigrant access to SNAP, see *State Funded Food Assistance Programs*, NAT'L IMMIGRATION LAW CTR., http://nilc.org/state_food.html (last visited Mar. 22, 2013).

²⁵ For information on CCDF and TANF funded child care eligibility for immigrant victims, see *Child Care* *Child care assistance for low-income families and families receiving Temporary Assistance for Needy Families (TANF)*, see *Guide to Immigrant Eligibility for Federal Programs*, NAT'L IMMIGRATION LAW CTR., <http://nilc.org/guideupdate.html> (last visited Mar. 22, 2013). See also *Immigrant Crime Victim Child Care Access*, available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view> (April 17, 2013).

²⁶ For a state by state analysis of state funded access to access to TANF, see *Eligibility for State Funded TANF Replacement Programs for Immigrant Crime Victims* available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/TANFChart-FINAL%204.17.13.docx/view> (April 17, 2013).

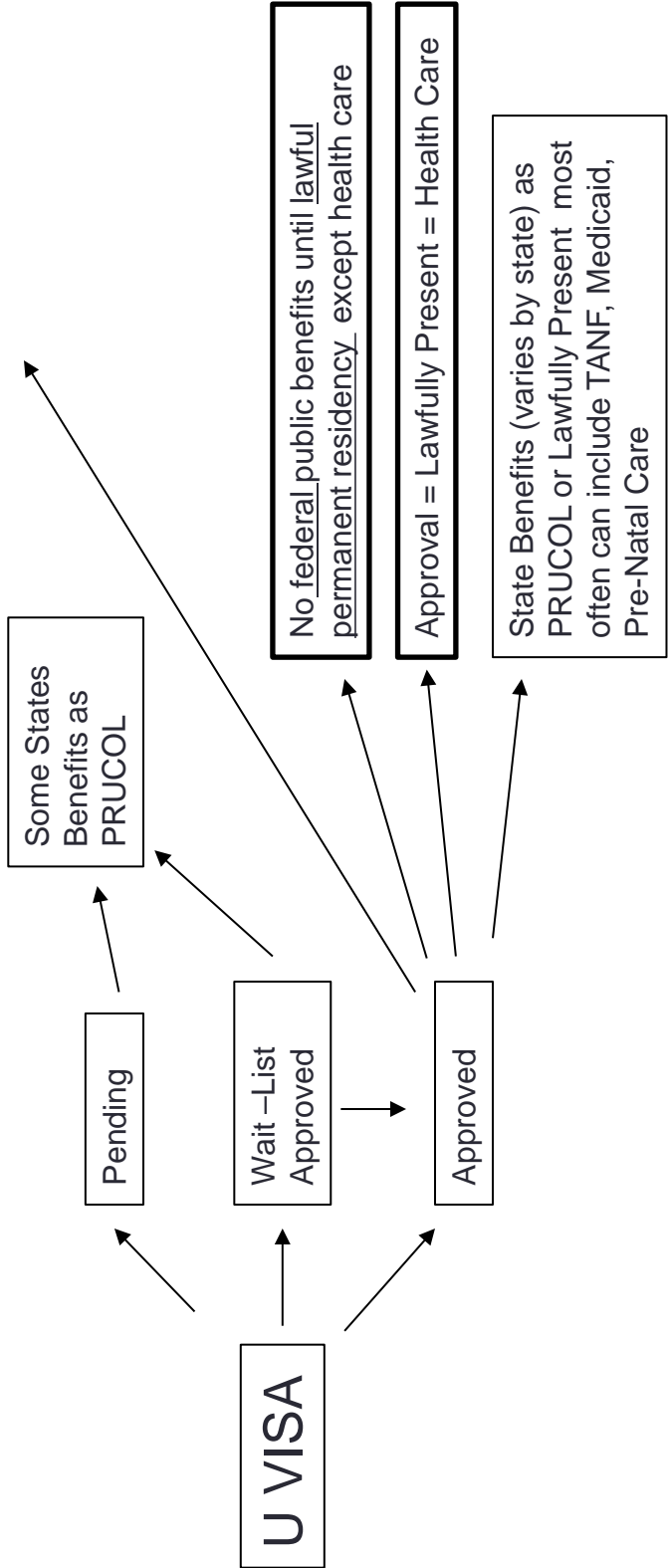
²⁷ For persons who are blind, disabled, or over 5 years of age with limited income and resources. Immigrants who entered before August 22, 1996, are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants lawfully residing in the United States and were receiving SSI on August 22, 1996. See *Supplemental Security Income (SSI) For Noncitizens*, U.S. SOCIAL SEC. ADMIN., <http://www.ssa.gov/pubs/11051.pdf> (last visited Mar. 22, 2013).

H. U Visa Public Benefits Flow Chart

Access to Federal and State Public Benefits for U Visa Victims

U Visa Victims of Criminal Activity Who Have/Will Not or Do Not File U Visa Applications

Services necessary to protect life and safety, shelter, transitional housing, soup kitchens, victim services, police assistance, justice system access, emergency Medicare, Public Health Clinics



Materials U Visa Benefits Eligibility Bench Card -

<http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf>

I. VAWA Public Benefits Eligibility Process

**VAWA Public Benefits Eligibility Process:
VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation^{1 2}**

**By Jordan Tacher and Leslye E. Orloff
National Immigrant Women's Advocacy Project (NIWAP)**

April 17, 2013

Immigrant victims of domestic violence or child abuse (defined as battering or extreme cruelty) perpetrated by U.S. citizen or lawful permanent resident spouses, former spouses, parents or step-parents who file for Violence Against Women Act (VAWA) related immigration relief become eligible for a broad range of federal and state public benefits. Prior to filing for Violence Against Women Act (VAWA) related immigration relief, immigrant victims and their children qualify for public benefits and publically funded services that are available to undocumented immigrants.³ What state and federal public benefits an immigrant VAWA victim and children included in their applications qualify to receive depends on:

- Whether the victim has filed her/his VAWA application
- Which form of VAWA relief for which the victim applies for
 - VAWA self-petition based on spouse abuse or child abuse
 - VAWA self-petition based on elder abuse
 - VAWA suspension of deportation
 - VAWA cancellation of removal
 - Battered Spouse Waiver
 - Family based visa petition with prima facie determination or approval and battering or extreme cruelty
- The stage in the DHS processing of the victim's case at the time of application
 - Receipt notice
 - Prima facie determination
 - Approval
- The number of years that have passed since the victim became a qualified immigrant
- Age of the victim or child included in the victim's application (children under 18-years-old generally have more access to public benefits than do adult victims).

Immigration Status Qualification Requirements

To qualify for each of the following forms of relief the immigrant must have been battered or subjected to extreme cruelty.⁴ Immigration law allows the following relatives who have been subject to battering or extreme

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² This document was developed under grant number SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the author(s) and do not necessarily represent the official position or policies of the State Justice Institute.

³ See *Unrestricted Benefits*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, available at <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits> (last visited Apr. 4, 2013).

⁴ The term abuse used in this article means "battering or extreme cruelty". Battering or extreme cruelty is defined as "being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence." 8 C.F.R. §204.2(c)(1). See also Leslye E. Orloff, Brittany Roberts and Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Feb. 11, 2012), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/reports-memos-social-science-research-and-related-data/Extreme-Cruelty-BIA-training-memo.pdf/view> (last visited Mar. 27, 2013).

cruelty by US citizens and lawful permanent residents to self-petition for lawful permanent residency without the abusive family member's knowledge, assistance or consent.

VAWA self-petitions

- Applicant must prove the immigration status of and their relationship to the perpetrator. The family relationships covered are:
 - Abused spouses, former spouses, or intended spouses of citizens or lawful permanent residents: may file for themselves and may include their under 21 year old children in their application;
 - Immigrant parents of Child Abuse Victims: An immigrant parent or step-parent of 21-year-old and under unmarried child who has been battered or subjected to extreme cruelty by the child's US citizen or lawful permanent resident parent is eligible to self-petition and to include in her/his application any of her/his children who are not already citizens or lawful permanent residents. The abused child may be a citizen or an immigrant with lawful or undocumented status.
 - Abused Children: Children battered or subjected to extreme cruelty by a US citizen or lawful permanent resident parent or step-parent when the child was under 21 years old are eligible to self-petition and can include their own children in their application. Abused children who can demonstrate that the battering or extreme cruelty was at least one central reason for the delay in filing have up to age 25 to file the self-petition.
 - Elder Abuse: Parents who are battered or subjected to extreme cruelty by a citizen (**not** lawful permanent resident) son or daughter over the age of 21 can self-petition.
- VAWA self-petitioners also must prove that:
 - The victim lived with the perpetrator of the battering or extreme cruelty at some point in the past.
 - The victim is a person of good moral character. Children age 14 and under are not required to prove good moral character.
 - A victim must have been battered or subjected to extreme cruelty in the United States, or if s/he were solely abused abroad, then the parent must have been an employee of the US government or a member of the US uniformed services (military).

Applicable to Spousal Victims:

Victims who are self-petitioning as the spouse of an abusive citizen or lawful permanent resident must also show that they entered into the marriage⁵ in good faith and --

- The citizen spouse (**not** lawful permanent resident) died within the past two years;
- The citizen/lawful permanent resident spouse lost her/his citizenship or residency within the past two years related to an incident of domestic violence;
- The victim believed that she married a citizen/lawful permanent resident and a marriage ceremony was performed, but the marriage was not valid because of the citizen or lawful permanent resident spouse's bigamy; or
- The victim was divorced from the citizen/lawful permanent resident spouse within the past two years and she can show a connection between the battering or extreme cruelty and the divorce.

Applicable to Child Victims:

- A child battered or subjected to extreme cruelty by the child's citizen or lawful permanent resident parent:
 - A child (under 21 years old) of a citizen/lawful permanent resident;
 - A child (under 21 years old) of a parent or step parent who was a citizen/lawful permanent resident but s/he lost her/his citizenship or residency within the past two years related to an incident of domestic violence; or
 - A child between the ages of 21 and 25 who was battered or subjected to extreme cruelty while under 21 years of age who can demonstrate that the abuse was at least one central reason for not filing a self-petition before turning 21 years old.

⁵ Common law marriages satisfy the marriage requirement, but same-sex marriages do not due to the Defense of Marriage Act.

- If the victim is over the age of 14, s/he must be a person of “good moral character.”

Applicable to Parents of a Citizen Son or Daughter:

- The parent of a citizen son or daughter who lost her/his citizenship within the past two years related to an incident of domestic violence.

VAWA Cancellation of Removal and Suspension of Deportation

Immigrant spouse or child abuse victims (but not elder abuse victims) who are in proceedings before an immigration judge may file for VAWA cancellation of removal or VAWA suspension of deportation.⁶ If the application is granted the victim receives lawful permanent residency. If the victim’s case is denied, the victim receives an order of removal (deportation). For this reason, it is extremely important that battered immigrants in removal proceedings are represented by immigration lawyers with expertise representing immigrant victims.⁷

VAWA cancellation is available to some categories of people who are not eligible to file a self-petition. Cancellation of removal is available to abused spouse and children who are eligible to self-petition and is additionally available to people that include but are not limited to the following:

- The parent of a child subjected to battering or extreme cruelty by the child’s other lawful permanent resident or U.S. citizen parent where the parents are not married;
- A spouse or the stepchild who was battered or subjected to extreme cruelty where the marriage to the abuser has been terminated for over two years;
- An abused spouse of a lawful permanent resident or an abused child of a citizen or lawful permanent resident who has died;
- A spouse or child of an abusive citizen or lawful permanent resident who lost or gave up status over two years ago; and
- An abused child who did not live with the abusive citizen or lawful permanent resident parent.

To qualify for VAWA cancellation of removal a victim must prove:

- That s/he (or her/his child) has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent;
- That s/he has been physically present in the United States for three years (some limited absences are allowed);
- That s/he is of good moral character;
- That her/his deportation would cause extreme hardship; and
- That certain specific inadmissibility grounds do not apply to him/her, or that s/he qualified for a waiver of inadmissibility.

Immigrant Spouses or Children With Pending or Approved Family Based Visa Petitions Who are Battered or Subjected to Extreme Cruelty

Immigrant spouses and children whose citizen or lawful permanent resident spouses or parents have filed family-based visa applications for them who have been battered or subjected to extreme cruelty can also be eligible to receive federal and state public benefits as “qualified immigrants”. Abused immigrants with pending or approved family based visa petitions are independently eligible for federal or state public benefits whether or not they file for VAWA related immigration relief.

Battered Spouse Waiver

⁶ VAWA cancellation of removal and VAWA suspension of deportation are similar remedies with similar requirements. Suspension of deportation is only applicable to battered immigrants who had been placed in deportation proceedings prior to March 31, 1997.

⁷ To locate an agency with experience representing immigrant victims in your state, see *National Directory of Programs With Experience Serving Immigrant Victims*, LEGAL MOMENTUM AND NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory> or contact the National Immigrant Women’s Advocacy Project, American University, Washington College of Law at niwap@wcl.american.edu or (202) 274-4457.

When a spouse who has filed a family-based visa petition for an immigrant spouse and the couple is married for less than two years on the date of their interview with the Department of Homeland Security, the immigrant's spouse will be granted a conditional residence rather than full lawful permanent residency. Two years after conditional residency is granted, the immigrant spouse and the citizen or lawful permanent resident spouse are required to file a joint petition asking DHS to grant the immigrant spouse full lawful permanent residency. An immigrant spouse (and in certain circumstances, an immigrant child) who has been battered or subjected to extreme cruelty by a citizen or lawful permanent resident spouse can apply for a "battered spouse or child waiver" of the joint filing requirement without waiting for two years.

- To qualify for a Battered Spouse Waiver
 - The victim spouse has conditional legal permanent residence as a spouse of a citizen or legal permanent resident because the marriage was less than two years old when the victim obtained residence; OR
 - A victim child has conditional legal permanent residence because her/his immigrant parent's citizen spouse filed a petition for the child and the marriage between the citizen step-parent and the child's immigrant was less than two years old when the child obtained his or her residence;
 - The marriage that is the basis for conditional residence was a good faith marriage; and
 - During the marriage, the spouse or child was battered or subjected to extreme cruelty by the citizen or lawful permanent resident abuser.
 - Battered Waiver Applicants are eligible for federal and state public benefits under the same rules as lawful permanent residents and are not required to have a prima facie determination or to prove a substantial connection between the battering or extreme cruelty and the need for benefits.

Immigration Relief Application Procedures Are a Prerequisite to Becoming a "Qualified Immigrant" Eligible to Receive Federal and State Public Benefits

VAWA self-petitioners⁸

- Victim files a VAWA self-petition at the Vermont Service Center of the U.S. Citizenship and Immigration Services (DHS). The victim may include immigrant children as self-petitioners by listing the children in the application. Victims seeking work authorization for themselves and/or their children should include an employment authorization application with their self-petition.
- When a self-petition is accepted, normally within 2-4 weeks, DHS sends a receipt notice, which provides evidence that the self-petitioner and self-petitioning children included in the application are lawfully present.
- If the Vermont Service Center believes that the victim would meet all of the requirements if all of the information in your application were true, it will issue a "notice of *prima facie* case." Victims and their children who receive prima facie determinations are eligible for state and federal public benefits as "qualified immigrants"⁹
- Work Authorization¹⁰

⁸ For more information about evidentiary requirements and other pertinent details, see Moira Fisher Praeda, Cecilia Olavarria, Janice Kaguyutan, and Alicia (Lacy) Carra, *Preparing the VAWA Self-petition and Applying for Residence* LEGAL MOMENTUM AND NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (Sep. 21, 2012), available at <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/articles/7-VAWA-self-petition-MANUAL-ES.pdf/view> (last visited Mar. 27, 2013). For more detailed information on benefits access for VAWA self-petitioners, see Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Public Benefits Access for Battered Immigrant Women and Children*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, available at http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf/view (last visited Mar. 27, 2013).

⁹ For more information regarding the application process, see *Battered Spouse, Children & Parents*, U.S. CITIZENSHIP AND IMMIGRATION SVCS. (Jan. 16, 2013) <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=b85c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextchannel=b85c3e4d77d73210VgnVCM100000082ca60aRCRD> (last visited Mar. 27, 2013). Processing time for prima facie determinations runs from 90 months to about 150 days. For a report on DHS case processing times see: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Timing-of-Access-to-Work-Authorization-6.4.12.pdf/view>

¹⁰ Immigrant spouses and children of U.S. citizens who file applications for work authorization together with their VAWA self-petitions generally receive work authorization within 6 months of filing. However, immigrant spouses and children abused by lawful permanent resident spouses or parents often wait up to or over 18 months before their VAWA self-petition is approved to receive work authorization. See Leslye E. Orloff, *National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants*, LEGAL MOMENTUM (Sep. 28, 2011), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Timing-of-Access-to-Work-Authorization-6.4.12.pdf/view> (last visited Mar. 27, 2013).

- Spouses, children and parents of U.S. citizens: Spouses and children of U.S. citizens who file the VAWA self-petition together with the victim's application for lawful permanent residency and a request for work authorization are eligible for and can receive work authorization while the VAWA self-petition is pending.
- Spouses and children of Lawful Permanent Residents who file VAWA self-petitions are only eligible for work authorization after the Vermont Service Center approves the VAWA self-petition and grants the victim deferred action status.
- Lawful permanent residency
 - A victim can apply immediately for lawful permanent resident status if s/he is the:
 - spouse of a US citizen (citizen),
 - unmarried child (under 21 years old) of a citizen, or
 - parent of a citizen who is over 21 years old
 - When self-petitioning spouses and children of lawful permanent residents are able to apply will depend upon when a visa becomes available for immigrants with the self-petitioner's filing date in the "family preference system" wait list.¹¹

VAWA cancellation of removal and VAWA suspension of deportation

- The victim files an application for VAWA cancellation of removal or VAWA suspension of deportation in immigration proceedings with the immigration judge
- To receive access to public benefits, victims with pending applications for VAWA cancellation of removal or VAWA suspension of deportation can file a "motion for prima facie determination" with the immigration judge.¹²

How Do Battered Immigrants Become Qualified Immigrants?

- Documented and undocumented battered immigrants are "qualified immigrants" if they meet the following requirements:
 - The immigrant or the immigrant's child has been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse or parent's family member living in the same household; (The immigrant spouse or parent applying for public benefits must not have actively participated in the abuse.)
 - The battered immigrant has a family-based petition or VAWA immigration case (self-petition, cancellation of removal or suspension of deportation) case
 - That is pending and the victim has received a prima facie determination from DHS or an immigration judge, or
 - That has been approved;
 - The battered immigrant can demonstrate a substantial connection between the need for benefits and the abuse¹³; and
 - The battered immigrant or child receiving benefits no longer lives with the abuser.¹⁴

Benefits That Qualified Battered Immigrants Are Eligible to Receive:

Immigrants who are or become "qualified immigrants" and who entered the U.S. before August 22, 1996, are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded

¹¹ To check the date when an approved self-petitioner may be eligible for LPR status and wait times, see *Visa Bulletin*, U.S. STATE DEP'T, http://travel.state.gov/visa/bulletin/bulletin_1360.html (last visited Mar. 27, 2013).

¹² For a detailed discussion of the procedures for obtaining a prima facie determination from an immigration judge, see *Operating Policy and Procedure Memorandum 97-9: Motions for "Prima Facie" Determination and Verification Requests for Battered Spouses and Children*, U.S. DEP'T OF JUSTICE OFFICE OF THE CHIEF IMMIGRATION JUDGE (1997), available at http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/government-memoranda-and-factsheets/VAWA_EOIR%20Prima%20Facie%20Determination.pdf/view (last visited Mar. 27, 2013).

¹³ For an explanation of the substantial connection regulations, see *Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits*, U.S. DEP'T OF JUSTICE (Dec. 11, 1997), available at <http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/eoir-prima-facie-memo-september-1997/> (last visited Mar. 27, 2013). For a full discussion of substantial connection, see Soraya Fata, Leslye E. Orloff and Monique Drew, *Access To Programs And Services That Can Help Victims of Sexual Assault*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Sep. 25, 2011), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/other-public-benefits/16-public-benefits-access-MANUAL-ES.pdf/view> (last visited Mar. 27, 2013).

¹⁴ The benefits granting agency should make benefits determinations and notify the victim of approval before she is required to leave the abuser. Benefits agencies can provide the victim benefits and give her a specified time by which she must provide the agency with proof that she is separated from her abuser.

social services available to U.S. citizens, except for SSI and Food Stamps. Immigrants who become “qualified immigrants” and who entered the United States on or after August 22, 1996, however, are barred from receiving federal means-tested benefits during the first five years after obtaining qualified immigrant status. VAWA self-petitioners become qualified immigrants upon receiving *prima facie* determinations from DHS or an immigration judge.¹⁵

All qualified immigrants, including qualified battered immigrants, are legally eligible to access the following federal public benefits programs:

The Department of Agriculture

- Supplemental Nutrition Assistance Program (SNAP formerly Food Stamps)—*subject to 5 year bar*¹⁶
- Federal Crop Insurance¹⁷
- Special Supplemental Nutrition Program for Women, Infants and Children (WIC)¹⁸

Department of Education

- Title IV Federal Student Financial Aid¹⁹

The Department of Health and Human Services²⁰

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)-
 - State Developmental Disabilities Councils (direct services only)
 - ADD-Special Projects (direct services only)
 - ADD-University Affiliated Programs (clinical disability assessment services only)
 - Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund (CCDF)²¹
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)²²
- Low Income Home Energy Assistance Program (LIHEAP)²³

¹⁵ It is important to note that battered qualified immigrants need not wait until their VAWA immigration case has been filed and the victim receives a *prima facie* determination to file and receive federal and state public benefits that their children who are U.S. citizens or lawful permanent residents are eligible to receive. Undocumented immigrant parents can apply for benefits their children are eligible to receive. To apply the immigrant parent must provide the child’s social security number and information about the child’s immigration status. However the immigrant parent cannot be required to provide information about the immigrant parent’s immigration status or social security number unless they are seeking additional benefits for themselves as qualified immigrants.

¹⁶ Qualified alien children under 18 are immediately eligible for SNAP benefits. However, VAWA self-petitioners must wait for 5 years after becoming qualified unless their state provides otherwise. For more information on SNAP eligibility, see *Supplemental Nutrition Assistance Program*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/snap/government/polimgt.htm> (last visited Mar. 27, 2013). For a state by state analysis of immigrant access to SNAP, see *State Funded Food Assistance Programs*, NAT’L IMMIGRATION LAW CTR. (Jul. 2011), http://nilc.org/state_food.html (last visited Mar. 22, 2013).

¹⁷ See *Bulletin No: MGR-05-008 Eligibility for Federal Crop Insurance Benefits for Non-Citizens without a Social Security Number (SSN)*, U.S. DEP’T OF AGRIC. (May 26, 2005), available at <http://www.rma.usda.gov/news/managers/2005/PDF/mgr-05-008.pdf> (last visited Mar. 27, 2013).

¹⁸ For more information on WIC eligibility and how to apply for the benefits, see *WIC Eligibility Requirements*, U.S. DEP’T OF AGRIC. (Nov. 20, 2012), <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Mar. 27, 2013).

¹⁹ For more information about the availability of funds for VAWA victims, see *Student Aid Eligibility - Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act*, DEP’T OF EDUC. (June 4, 2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/6%20IFAP%20-%20Dear%20Colleague%20Letters.pdf/view> (last visited Mar. 27, 2013).

²⁰ See *REVISION - Guidance on the Interpretation of “Federal Public Benefits” Under the Welfare Reform Law*, DEP’T OF HEALTH AND HUMAN SERVS. (Jun. 15, 1999), available at http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/PB_HHS%20Federal%20Pub%20Ben%20DefOVW3-31-09.pdf/view (last visited Mar. 27, 2013); 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998).

²¹ For information on CCDF child care eligibility for immigrant victims see *Child Care Child care assistance for low-income families and families receiving Temporary Assistance for Needy Families (TANF)*, see *Immigrant Crime Victim Child Care Access available at* <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

²² For more information and for a list of grantees, see *Job Opportunities for Low-Income Individuals Program (JOLI)*, U.S. DEP’T OF HEALTH AND HUMAN SERVS ADMIN. FOR CHILDREN AND FAMILIES, <http://www.acf.hhs.gov/programs/ocs/programs/joli> (last visited Mar. 27, 2013).

²³ See *LIHEAP Eligibility Criteria*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES (May 8, 2012), <http://www.acf.hhs.gov/programs/ocs/resource/liheap-eligibility-criteria> (last visited Mar. 27, 2013). For more details and information about how to apply for

- Medicare Premium Free – Part A²⁴
- Medicare Premium “Buy In” Program²⁵
- Medicaid (except assistance for an emergency medical condition)—*subject to 5-year bar*²⁶
- Emergency Medicaid – *open to all persons without regard to immigration status*
- Mental Health Clinical Training Grants
- Substance Abuse and Mental Health Services²⁷
- Health Screenings and Immunizations²⁸
- Health Resources and Services Administration Programs (HRSA)²⁹
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)³⁰
- State Child Health Insurance Program (CHIP) — *Must be under the age of 18 or pregnant*³¹

LIHEAP, see *Low Income Home Energy Assistance Program (LIHEAP)*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES, <http://www.acf.hhs.gov/programs/ocs/programs/liheap> (last visited Mar. 27, 2013). See also *Low-Income Home Energy (LIHEAP) and Weatherization Assistance Programs (WAP)*, NAT’L IMMIGRATION LAW CTR. (2002), available at <http://nilc.org/guideupdate.html> (last visited Mar. 27, 2013).

²⁴ Eligibility for assistance is based on authorized employment. Immigrant applicant must be lawfully present.

²⁵ Must be a lawful permanent resident who has resided continuously in the U.S. for at least 5 years.

²⁶ Victims are eligible after the 5-year disqualification period, but the 5-year disqualification period does not apply to otherwise eligible pregnant women or children under age 19 who are qualified aliens lawfully residing in the US. States have the option of using either Medicaid or SCHIP funds to cover some qualified immigrants. For a state by state analysis of state funded access to health care for immigrant crime victims, see *Medical Assistance Programs for Immigrants and Immigrant Crime Victims*, available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/MedicalAssistanceStateChart-4.1.13Final.docx/view> See also *Emergency Medicaid State-By-State Chart Access For Immigrant Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view (last visited Mar. 27, 2013); *Forensic Exams and Immigrant Victims State-By-State Chart*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/public-benefits/health-care/Ch17_Charts_Forensic-Exams-MANUAL-ES.doc/view (last visited Mar. 27, 2013); *Post Assault Health Care for Immigrant Crime Victims State by State Chart*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view (last visited Mar. 27, 2013); *Prenatal Care for Immigrant Victims State-By-State Chart*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Charts_Pre-Natal_Care_Chart-MANUAL-ES.doc/view (last visited Mar. 27, 2013).

²⁷ Qualified immigrants can receive substance and mental health treatment offered by HRSA funded community health clinic and those services that are covered in Medicaid and SCHIP. For Substance Abuse and Mental Health Services Administration information, see *Find Substance Abuse and Mental Health Treatment*, SAMHSA, <http://www.samhsa.gov/treatment/index.aspx> (last visited Mar. 22, 2013). For a listing of State substance abuse agencies, see *Substance Abuse Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/abuseAgencies.jspx> (last visited Mar. 27, 2013). To find a substance abuse treatment program, see *Substance Abuse Treatment Facility Locator*, SAMHSA, <http://findtreatment.samhsa.gov/TreatmentLocator/faces/abuseAgencies.jspx> (last visited Mar. 27, 2013). To find a mental health treatment program near you, see *Mental Health Treatment*, SAMHSA, <http://findtreatment.samhsa.gov/MHTreatmentLocator/faces/quickSearch.jspx> (last visited Mar. 22, 2013). The National Suicide Prevention Lifeline can be reached at 1-800-273-TALK (8255). See also NAT’L SUICIDE PREVENTION LIFELINE, <http://www.suicidepreventionlifeline.org/> (last visited Mar. 27, 2013).

²⁸ Screenings are conducted by State or local health departments for the diagnosis, treatment and prevention of communicable diseases and other conditions of public health importance. PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(1)(C) (2011). This usually includes screening for tuberculosis (TB), parasites, and hepatitis B, as well as school vaccinations. All immunizations and screenings available to Medicaid or SCHIP beneficiaries are covered. See *Immunizations*, CTRS. FOR MEDICAID AND MEDICARE SVCS. (JUN. 15, 2012), available at <http://www.cms.gov/Medicare/Prevention/Immunizations/index.html?redirect=/immunizations/> (last visited Mar. 27, 2013).

²⁹ To find an HRSA funded Health Care Center, see *Find a Health Center*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVICES ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 27, 2013). HRSA offers health care and support to uninsured, underserved, and special needs populations. HRSA issues grants to federally funded health centers that are available to anyone regardless of their ability to pay. The health centers charge patients using a sliding fee scale, based on their income. Health centers provide well-care checkups, treatment for sick patients, complete care for pregnant patients, immunizations and checkups for children, dental care, prescription drugs, as well as mental health and substance abuse care.

³⁰ States may choose whether to allow access for qualified immigrants. See *Summary of Immigrant Eligibility Restrictions*, DEP’T OF HEALTH AND HUMAN SVCS. (Feb. 25, 2009), available at <http://aspe.hhs.gov/hsp/immigration/restrictions-sum.shtml> (last visited Mar. 27, 2013).

³¹ For the definition of “lawfully residing,” see “*Lawfully Residing*” *Children and Pregnant Women Eligible for Medicaid and CHIP*, NAT’L IMMIGRATION LAW CTR., available at <http://nilc.org/lawfullyresiding.html> (last visited Mar. 27, 2013). Qualified immigrant children and pregnant women are

- Temporary Assistance for Needy Families (TANF)—*subject to 5 year bar*³²
- TANF Funded Child Care – *requires TANF eligibility so affected by TANF 5 year bar*³³

Department of Homeland Security

- Disaster Assistance³⁴

Department of Housing³⁵

- Public Housing³⁶
- Tenant-Based Vouchers³⁷
- Public Housing Operating Fund³⁸
- Public Housing Capital Fund³⁹
- Public Housing Neighborhood Networks (NN) Program⁴⁰
- Public Housing Homeownership (Section 32)⁴¹
- Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)⁴²
- Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)⁴³
- Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)⁴⁴
- Renewal of Section 8 Project-Based Rental Assistance⁴⁵
- Housing Choice Voucher Program⁴⁶
- Homeownership Voucher Assistance⁴⁷
- Project-Based Voucher Program⁴⁸
- Short term shelter (emergency shelter and transitional housing)—*open to all immigrants who are victims of domestic violence, homeless, or abused, abandoned or neglected children for up to two years*⁴⁹

automatically eligible without the 5-year disqualification period. For a state by state analysis of state funded access to health care for immigrant crime victims, see *Medical Assistance Programs for Immigrants and Immigrant Crime Victims*, available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/MedicalAssistanceStateChart-4.1.13Final.docx/view>.

³² For a state by state analysis of state funded access to access to TANF see Eligibility for State Funded TANF Replacement Programs for Immigrant Crime Victims available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/TANFChart-FINAL%204.17.13.docx/view>

³³ For a state by state analysis of state funded access to access to TANF funded child care, see Immigrant Crime Victim Child Care Access available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

³⁴ See *Disaster Assistance: Help for Victims*, NAT'L IMMIGRATION LAW CTR., available at <http://nilc.org/disaster-help.html> (last visited Mar. 27, 2013).

³⁵ For a listing of all Public and Assisted Housing programs through HUD, see *HUD Programs and Immigrant Eligibility*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/unrestricted-benefits/PB_16-Appendix_Imm-Eligibility-for-HUD-Programs-MANUAL-ES.pdf/view (last visited Mar. 27, 2013). The first section of the appendix lists programs that are only available to "qualified immigrants." The second section lists the remaining programs that are available to all immigrants regardless of their status.

³⁶ See generally Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Access To Programs And Services That Can Help Battered Immigrants*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, available at http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/BB_4.1-Access_to_Services_that_Help_Battered_Immigrants-2006-MANUAL-BB.pdf/view (last visited Mar. 27, 2013); *Housing*, NAT'L IMMIGRANT WOMEN'S PROJECT RES. LIBRARY, <http://niwaplibrary.wcl.american.edu/public-benefits/housing> (last visited, Mar. 27, 2013).

³⁷ See generally Cecilia Olavarria, Amanda Baran, Leslye Orloff, and Grace Huang, *Access To Programs And Services That Can Help Battered Immigrants*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, available at http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/BB_4.1-Access_to_Services_that_Help_Battered_Immigrants-2006-MANUAL-BB.pdf/view (last visited Mar. 27, 2013); *Housing*, NAT'L IMMIGRANT WOMEN'S PROJECT RES. LIBRARY, <http://niwaplibrary.wcl.american.edu/public-benefits/housing> (last visited, Mar. 27, 2013).

³⁸ See *Programs of HUD*, U.S. DEP'T OF HOUS. AND URBAN DEV. (2006), available at <http://archives.hud.gov/pubs/ProgOfHUD06.pdf> (last visited Mar. 27, 2013)(listed as number 80).

³⁹ *Id.* at 81.

⁴⁰ *Id.* at 82.

⁴¹ *Id.* at 84.

⁴² *Id.* at 22.

⁴³ *Id.* at 57.

⁴⁴ *Id.* at 70.

⁴⁵ *Id.* at 74.

⁴⁶ *Id.* at 75.

⁴⁷ *Id.* at 78.

⁴⁸ *Id.* at 79.

⁴⁹ See Letter from Andrew Cuomo, Sec'y, U.S. Dep't of Hous. And Urban Dev., to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (last visited Mar. 27, 2013).

Department of Justice

- Victims of Crime (VOCA) Victim Compensation Funds⁵⁰
- Victim Rights and Services – Federal Victim Witness Coordinators, Emergency Witness Assistance, Witness Security Program⁵¹

Department of Labor

- Employment - *all vary by state and are available to battered qualified immigrants with work authorization*
 - One-Stop Career Centers Core and Intensive Services⁵²
 - Job Corps⁵³

Legal Services Corporation

- Legal Services Corporation funds can be used to represent victims of domestic violence, child abuse, and elder abuse and other U visa listed crimes including sexual assault and human trafficking⁵⁴

Social Security Administration

- Supplemental Security Income (SSI)—*subject to five-year bar*⁵⁵

⁵⁰ For state-specific details, see *Program Directory*, NAT'L ASS'N OF CRIME VICTIM COMP. BODS., <http://www.nacvcb.org/index.asp?sid=5> (last visited Mar. 27, 2013). Generally, the victim must (a) report the crime promptly to law enforcement, and cooperate with police and prosecutors (many states allow exceptions to this requirement, particularly for child victims); (b) submit a timely victim compensation application (some states provide exceptions); (c) have a cost or loss not covered by insurance or another government benefit program; and (d) not have committed a criminal act or some substantially wrongful act that caused or contributed to the crime (domestic violence, sexual assault and human trafficking victims are not be considered to have contributed to the crime) . Apprehension or conviction of the offender is not required. Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T-visas should be able to receive VOCA victim assistance to the same extent as refugees. For contact information for local crime victim service providers, see *Directory of Crime Victim Services*, OFFICE OF VIOLENCE AGAINST WOMEN, <http://ovc.ncjrs.gov/findvictimservices/search.asp> (last visited Mar. 27, 2013). For a state by state analysis of VOCA assistance to immigrant crime victims, application information and health care access by immigration status of victim, see *Post Assault Health Care and Crime Victims Compensation For Immigrant Victims of Violence*, LEGAL MOMENTUM AND NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Sep. 2010), http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc/view (last visited Mar. 27, 2013).

⁵¹ See generally *Services Available To Victims of Human Trafficking*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES (May 2012), available at http://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf (last visited Mar. 22, 2013).

⁵² For more information and to find a job resource center, see *Service Locator*, CAREER ONE-STOP, <http://www.servicelocator.org/> (last visited Mar. 27, 2013).

⁵³ For employment opportunities, visit *Job Search*, JOB CORPS, www.jobcorps.gov/employment/JobSearch.aspx (last visited Mar. 27, 2013).

⁵⁴ Access to legal services is based on victimization and immigrant crime victims are eligible for legal services that can include any assistance connected to the abuse. Legal services are not limited to seeking immigration relief or what form of immigration relief the victim might pursue. See Letter from Helaine M. Barnett, President, Legal Servs. Corp., to All LSC Program Directors (Feb. 12, 2006), available at <http://niwaplibrary.wcl.american.edu/cultural-competency/access-to-legal-services> (last visited Mar. 22, 2013). For further information regarding free legal advice and representation in public benefits, family law, evictions, and other civil matters, see *Legal Services Corporation—Funded Legal Services*, NAT'L IMMIGRANT LAW CTR. (Sep. 2012), available at <http://nilc.org/guideupdate.html> (last visited Mar. 27, 2013).

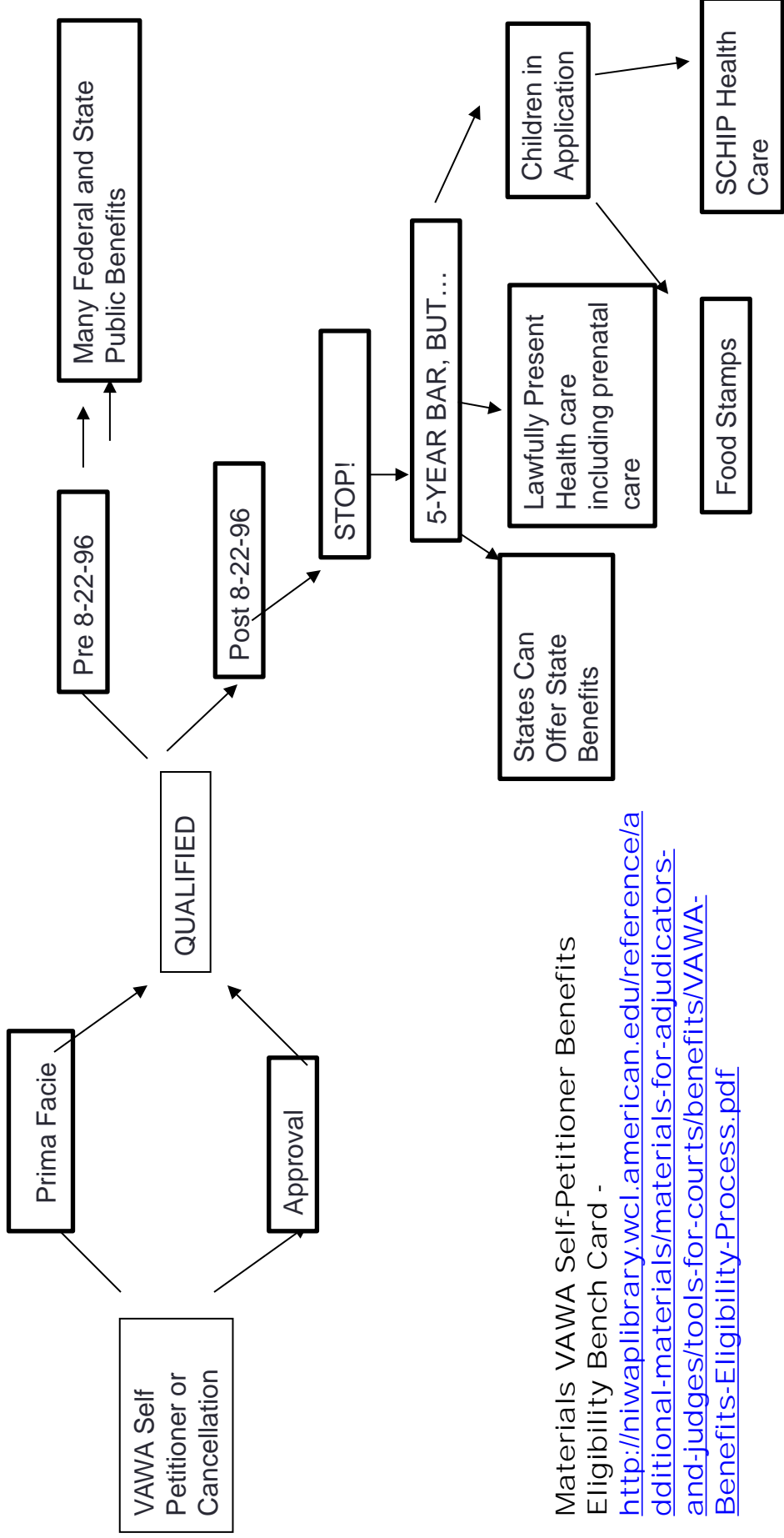
⁵⁵ For persons who are blind, disabled, or over 5 years of age with limited income and resources. Immigrants who entered before August 22, 1996, are eligible for Supplemental Security Income (SSI) only if they were qualified immigrants lawfully residing in the United States and were receiving SSI on August 22, 1996. See *Supplemental Security Income (SSI) For Noncitizens*, U.S. SOCIAL SECURITY ADMIN., <http://www.ssa.gov/pubs/11051.pdf> (last visited Mar. 27, 2013).

J. VAWA Public Benefits Flow Chart

Access to Federal and State Public Benefits for Battered Immigrant Spouses and Children of U.S. Citizens or Lawful Permanent Residents

Abused Family Members Who Have/Will Not Or Do Not Qualify to File Self-Petitions and Parents Abused By 21+ Year Old Sons or Daughters

Services necessary to protect life and safety, shelter, transitional housing, soup kitchens, victim services, police assistance, justice system access, emergency Medicare, Public Health Clinics



Materials VAWA Self-Petitioner Benefits Eligibility Bench Card - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/VAWA-Benefits-Eligibility-Process.pdf>

K. Evidence List: For Battered Immigrant Women Seeking Public Benefits

Evidence List

FOR BATTERED IMMIGRANT WOMEN SEEKING PUBLIC BENEFITS¹

This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in her application.

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively with battered immigrants preparing to apply for public benefits such as TANF, Food Stamps, Medicaid, and SSI. This checklist should be utilized as a guide to determine whether a battered immigrant is eligible to receive cash benefits. This checklist is not an exhausted list of documentation needed to prove eligibility requirements. Advocates are strongly encouraged to accompany their clients to the benefits agency to insure their clients are not denied these benefits by caseworkers who do not fully understand the process and eligibility requirements involved. Advocates should not be deterred from applying for a benefit if the applicant meets the requirements set forth below. It is important to apply for the benefit, receive a determination, and if the determination is unfavorable, appeal the decision. By working with this checklist, advocates can help improve the success battered women will have in obtaining public benefits.

1. IMMIGRATION DOCUMENTS PROVING QUALIFIED IMMIGRANT STATUS

Documented and undocumented battered immigrants are "qualified immigrants" if they prove the following:

Exists	Brought In	
_____	_____	VAWA Prima Facie Determination – i.e. Receipt Notice evidencing the filing of a VAWA Self-petition; OR
_____	_____	Approved VAWA self-petition; OR
_____	_____	Approved family-based petition; OR
_____	_____	Documents proving the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card).

2. DOCUMENTS PROVING ENTRY INTO THE UNITED STATES PRIOR

¹ This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) and Legal Momentum and Organizacion en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual" (Legal Momentum, Washington, D.C. 2002).

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TO AUGUST 22, 1996

Exists	Brought In	
_____	_____	Asylum application filed prior to 8/22/96; OR
_____	_____	Notice to Appear evidencing date of entry prior to 8/22/1996; OR
_____	_____	Order to Show Cause evidencing date of entry prior to 8/22/1996; OR
_____	_____	I-94 card with entry stamp prior to 8/22/1996; OR
_____	_____	Passport evidencing entry stamp prior to 8/22/1996; OR
_____	_____	Approved work authorization (approved prior to 8/22/96); OR
_____	_____	Documentation proving physical presence (copy of lease of new home, utility bills, letter from battered women’s shelter, monthly bank statement, etc., demonstrating continuous physical presence in the United States from 8/22/1996 to the present).

3. DOCUMENTS TO PROVE ABUSE

The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse's or parent's family member living in the same household.

Exists	Brought In	
_____	_____	Protective Order
_____	_____	Police reports
_____	_____	Transcript from 911 calls
_____	_____	Medical records
_____	_____	Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence)
_____	_____	Photographs of any injuries
_____	_____	Torn clothing or destroyed property or photographs of these
_____	_____	Affidavit from shelter workers
_____	_____	Affidavit from doctors, nurses, counselors, mental health professionals or social workers whom you or your children have spoken with or received treatment from in relations to the domestic violence.
_____	_____	Affidavit from neighbors, friends, or family who witnessed the abuse: witnessed any incident of the abuse, saw your bruises, heard you scream, witnessed your abuser’s threats against you, your children or your family members.

4. EVIDENCE THAT VICTIM IS NO LONGER RESIDING WITH THE ABUSER

Advocacy to Improve Services for Battered Migrant and Immigrant Women Living In Rural Communities

The battered immigrant or child must no longer live with the abuser. (Note that the benefits agency may decide that the battered immigrant is ineligible for benefits *if she is still living with the abuser.*)

Exists	Brought In	
_____	_____	Copy of lease agreement of new home
_____	_____	Letter from battered women's shelter, friend, family member evidencing place of residence.
_____	_____	Utility bills (i.e. Electric, Gas bills) evidencing new address
_____	_____	Monthly bank statement evidencing new address

5. EVIDENCE OF SUBSTANTIAL CONNECTION BETWEEN ABUSE AND NEED FOR PUBLIC BENEFITS

The battered immigrant or child must prove there is a "substantial connection" between the abuse and the need for the public benefit. To establish this connection, the applicant will need to assert that she has been a victim of abuse and that she is in need of public benefits in order:

- To help the victim of abuse be able to support herself economically without help from the abuser and/or the abuser's community.
- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse.
- To help the victim take care of the children when fear of the abuser interferes with child care.
- To meet nutritional needs resulting from the abuse or separation.
- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services that were lost because of the separation from the abuser.

6. EXEMPTION FROM DEEMING REQUIREMENTS

In order for any person to qualify to receive public benefits, the state benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. If a person obtained lawful permanent resident status through a family member, an affidavit of support is required. This affidavit states that the sponsor is willing to be financially responsible for that immigrant. Therefore when seeking public benefits, the benefits granting agency assumes, for the purposes of determining income eligibility, that the immigrant has full access to the income and assets of her sponsor. The following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:

??

Exists

Brought In

_____	_____	VAWA self-petitioners (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
_____	_____	VAWA cancellation of removal or suspension of deportation applicants (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
_____	_____	Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
_____	_____	Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition;
_____	_____	Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before and/or after obtaining lawful permanent residency;
		and
_____	_____	Certain indigent immigrants who the benefits provider determines to be unable to obtain food and shelter in the absence of assistance.

EVIDENCE LIST FOR BATTERED IMMIGRANT WOMEN SEEKING SOCIAL SECURITY NUMBERS

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively in obtaining social security numbers. Battered immigrants who receive a prime facie determination may be eligible to receive cash assistance. Many federal and state benefits agencies require a social security number in order to issue the cash benefit. Therefore, battered immigrants who do not have an INS issued work authorization will need to apply for a non-work social security number. Advocates are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are not denied non-work SSNs by caseworkers who do not fully understand the process and eligibility requirements involved in issuing non-working SSNs.

I. NON-WORKING SOCIAL SECURITY NUMBER

To obtain a non-work social security number, the applicant must be able to prove the following:

A. DOCUMENTS TO PROVE AGE

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Religious record showing age or date of birth
_____	_____	Hospital records of birth
_____	_____	Passport

B. TO PROVE IDENTITY

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Marriage records
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document

C. PROOF OF LEGAL REQUIREMENT

_____	_____	Letter from benefits agency stating client is eligible to receive the benefits but is required to obtain a non-work social security number in order to receive these benefits.
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2. WORK AUTHORIZED SOCIAL SECURITY NUMBER

To receive a work eligible social security number the immigrant must show that she has been authorized to work in the United States by the Immigration and Naturalization service. If the client does not have proof of work authorized immigration status, she may be eligible for a non-work social security number. The applicant must prove the following to receive a social security number:

A. DOCUMENTS TO PROVE AGE

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Religious record showing age or date of birth
_____	_____	Hospital records or birth
_____	_____	Passport

B. DOCUMENTS TO PROVE IDENTITY

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Marriage records
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document

C. DOCUMENTS PROVING WORK AUTHORIZED IMMIGRATION STATUS

Exists	Brought In	
_____	_____	Proof of lawful permanent resident or conditional resident status
_____	_____	Evidence that client was granted refugee status
_____	_____	Evidence that client was granted asylum status
_____	_____	Copy of valid INS work authorization card
_____	_____	Copy of non-immigrants visa which authorizes client to work
_____	_____	Evidence that client was granted temporary protective status
_____	_____	Non immigrant student seeking on campus employment, part time off campus employment or curricular practical training

3. OBTAINING A SOCIAL SECURITY NUMBER FOR A CHILD

If a child is a United States Citizen, the Social Security Administration must issue a social security number to that child regardless of whether the parents are documented immigrants. The applicant must be able to prove the following:

A. PROOF OF U.S. CITIZENSHIP STATUS

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Hospital records of birth
_____	_____	Passport

B. PROOF OF IDENTITY (FOR CHILDREN OVER AGE 7)

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document
_____	_____	Other similar document serving to identify the individual

L. Additional Resources From the National Immigrant Law Center

In addition, below you will find additional resources gathered from the National Immigration Law Center which will provide information on federally funded programs.

- 1) *Overview of Immigrant Eligibility for Federal Programs*, National Immigrant Law Center (Oct. 2011), http://nilc.org/table_ovrw_fedprogs.html.

Summary: This table provides an overview of immigrant eligibility for the major federal public assistance programs. The table also lists the states that provide assistance to immigrants who are not eligible for federally funded services.

- 2) Jonathan Blazer and Tanya Broder, *Overview of Immigrant Eligibility for Federal Programs*, National Immigrant Law Center (Oct. 2011), <http://nilc.org/overview-immeligfedprograms.html>.

Summary: This document describes some of the major public benefits programs, defines a qualified and a non-qualified immigrant, provides reasons for the denial of federal benefits to non-qualified immigrants, lists exceptions to the denial, and explains barriers that impede access to benefits for immigrants.

Part II. Programs Open to All Without Regard to Immigration Status

**A. AG order – Necessary Protect Life or Safety-
Final Regulation**

No. 731-TA-652 (Review), may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: January 8, 2001.

Donna R. Koehnke,
Secretary.

[FR Doc. 01-1221 Filed 1-12-01; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-444]

In the Matter of Certain Semiconductor Light Emitting Devices, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade
Commission.

ACTION: Institution of investigation
pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rohm, Inc., of Japan. A supplement to the Complaint was filed on January 4, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor light emitting devices, components thereof, and products containing same by reason of infringement of claims 1, 2, 4 and 6-45 of U.S. Letters Patent 6,084,899 and claims 1-5 and 9-23 of U.S. Letters Patent 6,115,399. The complaint further alleges that an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special

assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>).

FOR FURTHER INFORMATION CONTACT:

Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 9, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor light emitting devices, components thereof, or products containing same by reason of infringement of claims 1, 2, 4, 6-44 or 45 of U.S. Letters Patent 6,084,899 or claims 1-5, 9-22 or 23 of U.S. Letters Patent 6,115,399, and whether an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—
Rohm Co., Ltd., 21, Saiin Mizosaki-cho,
Ukyo-ku, Kyoto, 615-8585, Japan

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nichia Corporation, 491 Oka, Kaminaka-
Cho, Anan, Tokushima, 774-8601,
Japan

Nichia America Corporation, 3775
Hempland Road, Mountville, PA
17554

(c) Anne M. Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401-P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is

designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: January 10, 2001.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 01-1222 Filed 1-12-01; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[A.G. Order No. 2353-2001]

Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice of final order.

SUMMARY: This publication contains the final version of the Attorney General's Order that is issued pursuant to sections 401 and 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Order specifies the types of community programs, services, or assistance for which all aliens remain eligible. This publication also responds to comments submitted regarding the Order.

DATES: This Notice is effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT:
Jessica Rosenbaum, Office of Policy

Development, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone (202) 514-3737 for general information. For information regarding particular programs, contact the federal agency that administers the program.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act" or "the Act"). The Act, among other things, vests in the Attorney General the authority to specify certain types of community programs, services, or assistance for which all aliens remain eligible. Pursuant to the Act, the Attorney General issued an Order (AG Order No. 2049-96) ("the Order") implementing that authority, and making a "provisional specification" of such programs. The Order was published on August 30, 1996, at 61 FR 45985.

Under §§ 401 and 411 of the Act, aliens who are not "qualified aliens" (as defined in § 431 of the Act) are generally ineligible for federal, state, and local public benefits. However, there are a number of specified exceptions to those restrictions. Included in the list of statutory exceptions is a provision authorizing the Attorney General to identify programs, services, and assistance to which the Act's limitations on alien eligibility do not apply. Pursuant to §§ 401(b)(1)(D) and 411(b)(4), the Attorney General may specify only those types of programs, services, and assistance that meet all of the following three criteria: (1) Deliver in-kind services at the community level, including through public or private non-profit agencies; (2) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (3) are necessary for the protection of life or safety. Any programs that are exempted under this provision of the Act must meet all three of the foregoing requirements. A program meeting only one or two of the criteria does not qualify for exemption under this section of the Act.

Discussion of Comments

On September 15, 1997, the Department published a notice requesting public comments on the Order (62 FR 48308). The comment period ended on November 14, 1997. The Department received 48 comments from a variety of sources including private, non-profit organizations, as well as city, state, and federal agencies. The Department also received four

comments on the Order in response to the Attorney General's notice of proposed rule-making: "Verification of Eligibility for Public Benefits," which was published on August 4, 1998 (63 FR 41662). In developing this final Order, the Department of Justice also relied on the input of other appropriate federal agencies and departments. All comments have been considered in preparing this final Order. Any significant changes are discussed below.

Many commenters seemed to believe that unless the Attorney General exempted their program, they would be required to verify citizenship or immigration status of all applicants. While that is certainly true in some cases, a service provider should not assume that it must verify citizenship or immigration status simply because its program or service is not exempted by this Order. Service providers and other interested parties should refer to benefit-granting agencies' interpretations of the term "federal public benefit" as used in the Act in order to determine whether their program is a federal public benefit and therefore subject to the alienage restrictions of the Act. See, for example, the Department of Health and Human Services notice of interpretation of federal public benefit, 63 FR 41658 (Aug. 4, 1998) (identifying which of their programs provide "federal public benefits" subject to PRWORA's limitations on alien eligibility. HHS advises that HHS programs not listed in the notice, such as Community Health Centers, and HHS programs under the Ryan White CARE Act and the Older Americans Act, do not meet the statutory definition of "federal public benefit" and therefore do not have to verify the citizenship or immigration status of applicants or recipients under PRWORA.).

In the past, the Department of Justice has deferred to other benefit-granting agencies' interpretations of whether their programs fall within certain definitions under the Welfare Reform Act. See, e.g., Department of Justice, Verification of Eligibility for Public Benefits, 63 FR 41662, 41664 (1998) (to be codified at 8 CFR pt. 104) (proposed Aug. 4, 1998) (in establishing proposed regulatory definition of "federal public benefit," Immigration and Naturalization Service intends to give "all appropriate deference to benefit granting agencies' application of the definition to the programs they administer"); Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, 62 FR 61344, 61361 (1997) (directing interested parties with questions about the applicability of the Act to a benefit program to consult with the federal agency overseeing the program). Consistent with that practice, where commenters have raised questions about whether a particular program is a federal public benefit under the Act, the Department will grant all appropriate deference to the determination, if one has been made, by the benefit granting agency as to whether the program is a federal public benefit. Agencies and service providers should also note that section 432(d) of the Welfare Reform Act, which provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for Federal, State, or local public benefits, may be applicable to their programs. For more information about this exemption, see Department of Justice, Verification of Eligibility for Public Benefits, 63 FR 41662, 41664 (1998) (to be codified at 8 CFR pt. 104) (proposed Aug. 4, 1998).

The majority of commenters emphasized the need for the Attorney General to exempt their particular services because they believed them to be necessary for the protection of life or safety. Many of those commenters, however, did not take account of the legal requirement that a program or service must satisfy all three prongs of the test set forth by Congress. Any service that is exempted by the Order not only must be necessary to protect life or safety and be delivered in-kind at the community level, but also must not condition the provision, amount, or cost of services on a client's income. With respect to the last requirement, in other words, if a state or community service provider charges fees that vary with the clients' income level, or determines the clients' eligibility for services based upon their income or ability to pay, the program at issue does not satisfy prong two of the test and therefore is not covered by the Order regardless of how necessary for life or safety the program, service, or assistance may be.

Twenty comments were received from community services providers, while the rest were from concerned citizens, members of Congress, and city, state, and federal agencies. Many comments addressed a variety of concerns, but more than twenty-eight concerned services provided to people with HIV/AIDS. The majority of those comments asked the Attorney General to exempt categorically all programs funded under the Ryan White CARE Act, Housing Opportunities for People Living with AIDS (HOPWA) and the McKinney

Homeless Assistance Act due to the special nature of the AIDS epidemic. As already indicated, many of those programs may not be "federal public benefits" as determined by relevant benefit-granting agencies, and therefore an exemption under this Order is unnecessary. While the Act authorizes exemptions for "programs, services, or assistance" that meet the three-pronged test, the Attorney General has no authority to provide a blanket exemption for all programs authorized by a single statute. That is because one or more of those programs may fail to meet all of the requirements imposed by the statute. Agencies and service providers must assess each program individually to determine whether it meets the three-pronged test. While many, if not all, HIV/AIDS-related services are likely to meet the first and third prongs, any state or federally funded programs that are required as a condition of their funding to employ sliding scales, or that otherwise limit the access to services or the amount of such services according to a client's income or ability to pay would not qualify for exemption under the Attorney General's Order.

Thirteen comments were received concerning services for the elderly. The majority of those comments also sought categorical exemptions for services provided under a variety of statutes. Again, the Act does not give the Attorney General the authority to exempt groups of programs. For a program to be covered by the Order, it must meet all three prongs of the statutory test.

Twenty-three comments addressed the importance of shelter and safe housing. Those community programs cover a wide range of services from emergency shelter to lead paint abatement. While many shelter and housing programs are important to the protection of life or safety, each program must meet the requirements of the three-pronged test in order to be exempt under the Order. With respect to the specific issue of lead paint abatement programs, we note that HUD has determined that benefits under the Lead Hazard Control program are not federal public benefits within the meaning of section 401(c) of the Welfare Reform Act. In accordance with the Department's practice of deferring to the determinations of benefit granting agencies, we therefore note that there is no need to conduct any verification procedures with respect to the immigration status of individuals whose dwellings receive services under the Lead Hazard Control program. We therefore need not, at this time, consider

whether such benefits should be exempted under section 401(b).

Nine comments emphasized the importance of access to health care in general. One commenter described health centers that have a sliding scale of costs for services. Such programs do not qualify for coverage under the Order as they fail to meet the prong of the Order related to means testing. However, another commenter explained that their health centers have a fundamental obligation to serve all patients regardless of their ability to pay. As stated above, where community-level health programs serve all eligible clients regardless of their ability to pay and do not administer any type of sliding scale fee schedule or other income or resource test, they are covered by the Attorney General's Order.

Some commenters argued that the administrative burden that would result from having to verify immigration status would outweigh any proposed savings that could be derived from denying benefits to unqualified aliens. It should be understood, however, that the decision to deny federal, state, and local public benefits to aliens not qualified to receive them was made by Congress. Title IV of the Act does provide several exceptions to this blanket denial, including the programs covered by this Order and an exception from verification for all non-profit charitable providers. See the Department of Justice, Proposed Rule, Verification of Eligibility for Public Benefits, 63 FR 41662, 41677 (Aug. 4, 1998). All programs and services covered by the Order are exempt from any requirement that verification be conducted, unless service providers are mandated to conduct such verification pursuant to federal, state, or local law other than the Welfare Reform Act.

A number of commenters sought clarification as to whether service providers were obligated to verify a benefit seeker's immigration status prior to providing services covered by the Order. The services exempted by the Order are one of several categories of services that were designated by Congress to remain available to all aliens regardless of their status as qualified or not qualified for welfare benefits. Accordingly, service providers are not obligated to verify immigration status before providing those services unless they are required to do so by a law other than the Welfare Reform Act.

The remaining comments addressed services to migrant farmers, the disabled, victims of domestic violence, child care, and mental health services. While all of those concerns are

important to the protection of life or safety, each program must meet the requirements of the three-pronged test described above in order to be exempt under the Order.

Several providers of emergency shelter have expressed the concern that they may be barred from providing temporary housing to aliens not qualified for welfare benefits. The final Order, like the original Order, specifies that "short term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children" are deemed to be necessary for the protection of life or safety. Accordingly, programs and services of that type that deliver in-kind services at the community level and do not condition the provision of assistance, or the amount or cost thereof, on the individual recipient's income or resources are exempt from any requirement that verification be conducted, unless service providers are mandated to conduct such verification pursuant to federal, state, or local law other than the Welfare Reform Act.

Final Specification of Community Programs Necessary for the Protection of Life or Safety Under the Welfare Reform Act

Preamble

(1) The types of programs, services, and assistance enumerated in this Order are ones that Congress authorized the Attorney General to exempt from limitations on the ban on the availability of federal, state, or local public benefits imposed by Title IV of the Act.

(2) The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)).

(3) Neither states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.

(4) Thus, unless required by some legal authority other than the Act, benefit providers who satisfy the requirements of this Order are not required to verify the citizenship, nationality, or immigration status of applicants seeking benefits.

(5) If a benefit provider offers a number of services, only some of which are exempt from verification as a result of this Order, the benefit provider may conduct verification of the non-exempt programs or services as specified in the applicable portions of the "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 FR 61,344 (1997) or may be required to conduct verification as specified by any subsequent or superseding regulations.

(6) To the extent that it can be accomplished without undue administrative hardship, benefit providers should make every effort to provide information to all prospective benefit seekers about which benefits they qualify for and which benefits involve citizenship or immigration verification requirements.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services, or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification, and nothing herein should be so construed.

2. The government-funded programs, services, or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; do not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources, as discussed in paragraph 3, below; and serve purposes of the type described in paragraph 4, below, for the protection of life or safety. Specified programs must satisfy all three prongs of this test.

3. The community-based programs, services, or assistance specified in paragraphs 2 and 4 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services, or

assistance delivered at the community level, even if they serve purposes of the type described in paragraph 4 below, are not within this specification if they condition on the individual recipient's income or resources:

- (a) the provision of assistance;
- (b) the amount of assistance provided; or
- (c) the cost of the assistance provided on the individual recipient's income or resources.

4. Included within the specified programs, services, or assistance determined to be necessary for the protection of life or safety are:

(a) Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;

(c) Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

Dated: January 5, 2001.

Janet Reno,

Attorney General.

[FR Doc. 01-1158 Filed 1-12-01; 8:45 am]

BILLING CODE 4410-19-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2093-00]

Establishing an Immigration and Naturalization Service Data Management Improvement Act Task Force

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice establishing a Task Force.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and Public Law 106-215, the Attorney General is establishing an Immigration and Naturalization Service Data Management Improvement Act Task Force. This notice advises Federal, State, and local agencies, and private sector representatives that the Immigration and Naturalization Service (Service) is soliciting members from interested groups, associations, or individuals who may wish to serve on the Task Force.

Purpose of Task Force

The Task Force will evaluate and make recommendations on:

(1) How the Attorney General, in consultation with the Secretaries of State, Treasury, and Commerce can efficiently and effectively implement an integrated entry and exit data system;

(2) How the United States can improve the flow of traffic at airports, seaports, and land border ports-of-entry through—

(a) Enhancing systems for data collection and data sharing, including the integrated entry and exit data system, by better use of technology, resources, and personnel;

(b) Increasing cooperation between the public and private sectors;

(c) Increasing cooperation among Federal agencies and among Federal and State agencies; and

(d) Modifying information technology systems while taking into account the different data systems, infrastructure, and processing procedures at airports, seaports, and land border ports-of-entry; and

(3) The cost of implementing each of the Task Force's recommendations.

Further, no later than December 31, 2002 and no later than December 31 of each subsequent year the Task Force is in existence, the Attorney General shall submit a report to Congress containing the findings, conclusions, and recommendations of the Task Force.

Composition of Task Force

The Task Force shall be composed of 17 members, including the Attorney General, private sector representatives of affected industries and groups, and representatives from Federal, State, and local agencies, who have an interest in: immigration and naturalization; travel and tourism; transportation; trade; law enforcement; national security; or the environment. Participation on the Task Force will not be remunerated, however, travel and associated expenses may be reimbursed or borne by the Government.

**B. AG Order – Necessary to Protect Life and Safety
– Preamble Request for Comments**

were received by the Disability Rights Section.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until October 15, 1997.

Written comments and/or suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Office, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1534.

The information collection is listed below:

(1) Type of information collection. New Collection.

(2) The title of the form/collection. Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract:

Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 9, 1997.

Robert B. Briggs,

Department Clearance Officer.

[FR Doc. 97-24328 Filed 9-12-97; 8:45 am]

BILLING CODE 4410-13-M

DEPARTMENT OF JUSTICE

[AG Order No. 2115-97]

Request for Comments on the Attorney General's Specification of Community Programs Necessary for the Protection of Life or Safety Under the Welfare Reform Act

AGENCY: Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 vests in the Attorney General the authority to specify non-means-tested, government-funded

community programs, services, or assistance that are necessary for the protection of life or safety and for which all aliens remain eligible. On August 23, 1996, the Attorney General issued an Order implementing that authority, and making a "provisional specification." Before the provisional specification is finalized, the Department is publishing this Notice to solicit the input of federal, state, and local agencies operating programs or providing services or assistance that may be covered by that Order.

DATES: Comments must be received by November 14, 1997.

ADDRESSES: Address all comments to Wendy L. Patten, Counsel, Office of Policy Development, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC, 20530.

FOR FURTHER INFORMATION CONTACT: Wendy L. Patten, Counsel, Office of Policy Development, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC, 20530, (202) 514-5482.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the Act), which vests in the Attorney General the authority to specify non-means-tested, government-funded community programs, services, or assistance that are necessary for the protection of life or safety and for which all aliens remain eligible. Pursuant to the Act, on August 23, 1996, the Attorney General issued an Order (AG Order No. 2049-96) (Order) implementing that authority, and making a "provisional specification" of such programs. This Order was published on August 30, 1996 at 61 FR 45985.

Under §§ 401 and 411 of the Act, aliens who are not "qualified aliens" (as defined in § 431 of the Act are ineligible for federal, state, and local public benefits.¹ However, there are a number of specified exceptions to these restrictions.² Included within this list of

¹ The term "federal public benefit" is defined to include "any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." (Section 401(c)(1)(A)). The definition of state public benefit is identical to the federal benefit definition except that it refers to benefits provided by agencies of state or local governments or by appropriated funds of state or local governments. (Section 411(c)(1)(A)).

² In addition to the exception that is the subject of the Attorney General Order of August 23, 1996, there are a number of other categories of federal, state, and local public benefits that Congress expressly made available to other non-qualified aliens. These public benefits include specified types of emergency medical treatment and emergency disaster relief, along with other benefits

statutory exceptions is a provision authorizing the Attorney General to establish additional exceptions for certain types of programs, services, and assistance. The programs, services, and assistance that the Attorney General may specify are limited to those which (1) deliver in-kind services at the community level, including through public or private nonprofit agencies; (2) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (3) are necessary for the protection of life or safety. (Sections 401(b)(1)(D) and 411(b)(4).

The Department intends to publish an Order finalizing the implementation of that authority. Before it does so, the Department is publishing this Notice to solicit the input of federal, state, and local agencies operating programs or providing services or assistance that may be covered by the final Order. Responses to this solicitation will assist the Department in reaching a final determination regarding the types of programs, services, or assistance that should be covered by that Order. After reviewing any comments and consulting with other agencies, the Attorney General then will issue a final specification of programs, services, and assistance for which all persons remain eligible, regardless of immigration status.

If you believe that any program or programs you administer have been or may be affected by the Attorney General Order, the Department would appreciate receiving your comments. In your comments, please give the citations of any applicable federal, state, or local statutes or regulations that govern the creation, operation, or scope of your affected programs. Please also give a brief description of the structure of the program(s), your agency's view of whether the program, service, or assistance falls within the purview of the Attorney General Order, and any arguments to support that interpretation.

Dated: September 9, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-24272 Filed 9-12-97; 8:45 am]

BILLING CODE 4410-BB-M

as set forth in § 401(b) and § 411(b) of the Act, as amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33 (1997).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1872-97]

Pilot Programs for Employment Eligibility Confirmation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice prescribes guidelines under which employers may elect to participate in one or more of three pilot programs for employment eligibility confirmation to be conducted by the Immigration and Naturalization Service (Service) with the involvement of the Social Security Administration (SSA). This notice also requests comments from employers and other interested parties on the pilots. The Commissioner of the Service invites employers in states where the three pilot programs for employment eligibility confirmation will be conducted to contact the Service to elect to participate in one or more of them. The pilot programs build on the experience of the Service and SSA over the last 5 years in developing and operating employment verification pilot programs with the goal of enabling participating employers to verify their newly hired employees' work eligibility quickly, easily, and accurately.

DATES: There is no deadline for submission of election forms to participate in an employment verification pilot program(s), but interested employers should send their completed election forms to the Service as soon as possible to maximize their opportunity to participate.

ADDRESSES: Please submit your election forms, requests for information and any comments you may have on the pilot programs to the Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, Attention: SAVE Program Branch—Election Forms and/or Comments.

FOR FURTHER INFORMATION CONTACT:

John E. Nahan, Immigration and Naturalization Service, SAVE Program, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (202) 514-2317.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, enacted on September 30, 1996, provides that all

United States employers, subject to eligibility for participation, geographical limitations, and limitations of available Service and SSA resources, may elect to participate in one or more of three employment verification pilot programs to be conducted by the Service. The three pilot programs are: (1) the Basic Pilot; (2) the Citizen Attestation Pilot; and (3) the Machine-Readable Document Pilot.

II. Purpose

The purpose of these pilot programs is to implement IIRIRA's mandate to test three methods of providing an effective, nondiscriminatory work eligibility verification procedure focusing on electronic verification. Through an automated confirmation system, employers will match information provided by employees on the Form I-9, Employment Eligibility Verification, against existing information contained in SSA's or the Service's databases to confirm that an individual is eligible to work.

III. General Description of the Pilot Programs for Employment Eligibility Confirmation

The IIRIRA requires the Service to conduct three distinct pilot programs, each of which can last no longer than 4 years, unless otherwise directed by Congress. The programs include: (1) the Basic Pilot; (2) the Citizen Attestation Pilot; and (3) the Machine-Readable Document Pilot. Participation in the pilots will be voluntary on the part of employers, except with regard to the executive and legislative branches of the Federal Government and certain employers found to be in violation of sections 274A(e)(4) or 274B(g) of the Immigration and Nationality Act (Act), 8 U.S.C. 1101 et seq., in states where the pilots are being conducted. Although the decision for an employer to participate is voluntary, verification may not be selective; all employees subject to verification under the terms of a pilot program must be verified by an employer participating in that pilot.

A. Mandatory Elections

1. Federal Government Participation

Certain Federal Government entities are required by Section 402(e) of IIRIRA to elect to participate in at least one of the three pilot programs. The Secretary of each department of the executive branch is required to make an election of one or more of the pilot programs, but may limit the election to hiring in those states or geographic areas covered by the pilot(s) selected, and to specified divisions within the department, as long

C. HUD Shelter and Transitional Housing Letter

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

January 19, 2001

Dear HUD Funds Recipient:

It has come to HUD's attention that some agencies providing emergency shelter and transitional housing are not offering these services to battered immigrants. As we understand it, some agencies have been misinterpreting national policies which set forth the types of public benefits that are to be made available to all aliens, including those who have not established legal immigrant status.

Due to language, cultural and economic barriers, battered immigrants, particularly women and children, face extensive hurdles they must overcome in order to change their quality of life. Frequently, women and children who have displayed the courage to break the cycle of violence are penalized when benefits essential for rebuilding lives shattered by violence are withheld. Without securing emergency shelter and transitional housing, battered immigrants will be unable to successfully leave abusive homes.

Congress has recognized that certain services, such as emergency shelter and transitional housing, necessary to protect health and safety, should not be barred to individuals due to immigration status. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ('the Act'), Congress specifically authorized the Attorney General to designate the kinds of government-funded community programs, services, or assistance necessary to protect life or safety for which: all immigrants, including undocumented immigrants, will continue to be eligible (8 U.S.C. 1611 (b)(1)(D)). Despite the Act's restrictions on immigrant access to public benefits, it explicitly guaranteed access for all persons without regard to immigration status for:

“programs, services, or assistance... specified by the Attorney General, in the Attorney General's sole discretion after consultation with the appropriate Federal agencies and departments, which (i) deliver in-kind service at the community level, including through public and private nonprofit agencies; (ii) do not condition the provision of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.”

Pursuant to the authority set forth under Sections 401(b)(1)(D) and 411(b)(4) of the Act, after consulting with other Federal agencies, including the U.S. Department of Housing and Urban Development, the Attorney General exercised this discretion in Final Order Number 2353-2001, 66 Fed.Reg. 3613-3616 (1/16/01), which specifies the types of federally funded programs for which all aliens remain eligible. The Order specifically includes emergency and short-term shelter for victims of domestic violence and makes

these services available to battered immigrants, who because of their lack of legal immigration status, would otherwise be barred from participation in federal programs. Any programs to be exempted from requiring verification of immigration status under this provision of the Act must meet all three of the foregoing requirements.

The list of programs open to all individuals without verification of alien eligibility includes:

crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence (Specification 4(a)); and short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused or abandoned children. (Specification 4 (b))

Both emergency shelter and transitional housing programs are necessary for the protection of life or safety." Transitional housing is by nature short-term and intended to be a step from emergency shelter to permanent housing. Therefore, HUD-funded programs that provide emergency shelter and transitional housing for up to two (2) years, are to make these services equally available to all needy persons, including aliens who are not "qualified aliens" (as defined in Section 431 of the Act).¹ Two (2) years of transitional housing provides battered immigrants with emergency and short-term shelter, which gives them the opportunity to safely make the transition to freedom from their abusers. In addition, emergency and transitional housing will help to stabilize homeless families by providing basic needs and safety, which will prevent battered immigrants from returning to the homes of their abusers.

Accordingly, this policy directive clarifies that all programs administering HUD grants, which provide emergency shelter, transitional housing, short-term shelter and housing assistance to victims of domestic violence are deemed necessary, under the Order, for the protection of life and safety. Therefore, programs and services of this type that deliver in-kind services at the community level and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources are to make their programs available to all persons without verification of citizenship, nationality or immigration status, as set forth in the Order, unless mandated to conduct such verification pursuant to federal, state, or local law other than the Act.

In accordance with the Federal guidelines outlined in the Attorney General's Order and in this policy directive, all recipients of HUD funding operating emergency shelters and transitional housing programs can provide services to all eligible persons.

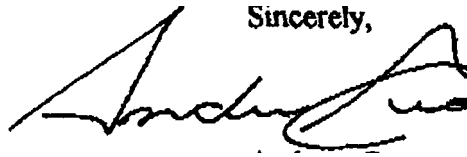
It should be noted that even if your program does not meet the three-prong test for exempted status as set out in the Attorney General's Order, battered immigrants who are qualified aliens as defined in Section 431 of the Act are not barred from receiving "federal public benefits." Qualified aliens are not subject to the Act's bar on "Federal public benefits" to non-"qualified aliens."

Disregarding the Federal laws, guidance and directives that protect and preserve the legal rights of otherwise eligible battered immigrants, particularly women and children, to gain much needed access to emergency shelter and transitional housing may result in imposition of appropriate sanctions.

Please contact the Office of Enforcement Discrimination Hotline at 1-800-669-9777, TDD at 1-800-927-9725, or on the Internet at www.hud.gov/hdiscrim.html to report any violations of this directive.

Recipients of HUD finds should also note that sections 432(d) of the Act, which provides that nonprofit charitable organizations are not required to verify the immigration status of applicants for federal, state or local public benefits, may be applicable to their programs. For more information about this exemption, see Department of Justice, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41,662,41664 (1998) (to be codified at 8 C.F.R. pt. 104) (proposed Aug. 4, 1998).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Cuomo". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Andrew Cuomo

D. Legal Service Program Letter

Program Letter 06-2

TO: All LSC Program Directors

FROM: Helaine M. Barnett, President *HMB*

DATE: February 21, 2006

SUBJECT: Violence Against Women Act 2006 Amendments

Introduction

This Program Letter is intended to provide basic guidance on the significant changes impacting both client eligibility for services as well as use of LSC funds to support those services pursuant to the reauthorization of the Violence Against Women Act of 2006 ("VAWA 2006") as part of the Department of Justice reauthorization bill.¹ VAWA 2006, which was signed into law by President George W. Bush on January 5, 2006, explicitly expands the scope of services that LSC grantees can provide to victims of domestic violence, sexual assault, trafficking and certain other crimes, regardless of their immigration status. (Public Law 103-322). The VAWA 2006 Amendments became effective upon enactment, thus, LSC grantees may provide services beginning January 5, 2006 to previously ineligible applicants for services notwithstanding LSC's alien eligibility regulations at 45 CFR Part 1626.

The VAWA 2006 Amendments now provide that subsection (a) (11) of section 504 of the LSC FY 1996 appropriations act (which restricts representation of aliens and has been carried forward in each subsequent appropriations act):

Shall not be construed to prohibit a recipient from providing related legal assistance to –

(i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

(ii) an alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).

Pub. L. 103-322, Section 104.

¹ "Violence Against Women and Department of Justice Reauthorization Act of 2005", P.L. 103-322

Specific note is made of the VAWA 2006 Savings Provision, which provides, “Nothing in this Act, or the amendments made by this Act, shall be construed to restrict the legal assistance provided to victims of trafficking and certain family members authorized under section 107(b)((1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 237105(b) (1).”

Summary of Permissible Representation by LSC Grantees

Based upon the current authority under the Kennedy Amendment,² the VAWA 2006 Amendments expand the exception to the general prohibition on accepting and representing undocumented applicants for services in three ways.

- First, recipients are now permitted to use both LSC and non-LSC funds to provide to an otherwise 1626-ineligible alien legal services that are “directly related” to the prevention of, or obtaining relief from, the battery or cruelty, sexual assault or trafficking, or the crimes such as those listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act [8 USC 1101(a)(15)(U)(iii)] or whose child has been similarly victimized. Previously, such legal assistance by grantees was permitted only if supported wholly with non-LSC funds.
- Second, recipients are now permitted to provide “related legal assistance” to otherwise ineligible aliens who are victims of domestic abuse even if they are not married to (or the child of) their abusers. Previously, such assistance was permitted only if the domestic abuse was perpetrated by the spouse (or parent) of the victim.
- Third, recipients may now also provide related legal assistance, supported with LSC funds, to new categories of otherwise ineligible aliens in addition to those who have been battered or subject to extreme cruelty.

This expanded scope of LSC recipients’ permissible representation authorized by VAWA 2006 is further summarized below and explained in greater detail through the Question-and-Answer format that follows.

May grantees now use LSC funds to provide legal assistance authorized by the VAWA 2006 Amendments?

Yes. As of January 5, 2006, LSC grantees are now permitted to use LSC funds, as well as non-LSC funds, to provide legal assistance to any victim covered by VAWA 2006

² Under the 1997 Kennedy Amendment, the statutory restriction on providing legal assistance to aliens not otherwise deemed eligible under Part 1626 was amended to permit grantees to provide legal assistance to otherwise 1626-ineligible aliens who are victims of domestic violence perpetrated by a spouse (or parent), provided that such assistance is funded wholly with non-LSC funds. The Kennedy Amendment is reflected in Part 1626, at section 1626.4.

and those previously covered by the Kennedy Amendment. Previously, such assistance was permitted only if supported wholly with non-LSC funds.³ Any Kennedy Amendment clients receiving services or whose cases were opened on or after January 5, 2006 may receive these LSC-funded services.

May an LSC grantee represent individuals who are eligible for LSC services under the VAWA 2006 Amendments notwithstanding 45 CFR 1626?

Yes. LSC grantees may begin representing persons eligible under this new authority beginning January 5, 2006, notwithstanding 45 CFR Part 1626. The new statutory provisions preempt the regulatory provisions.

Who is covered by the VAWA 2006 Amendments?

In addition to covering aliens who have been battered or subjected to extreme cruelty, the VAWA 2006 Amendments expand coverage to permit LSC grantees to serve victims of sexual assault or trafficking⁴ or aliens who qualify for a “U” visa under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA). A “U” visa provides for lawful temporary status for an alien who the Attorney General determines has suffered substantial abuse as a victim of certain criminal activity, possesses information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity and such criminal activity violated U.S. law or took place in the U.S.⁵ Certain family members of a “U” visa applicant may also apply for “U” visa relief.

The VAWA 2006 Amendments also cover any alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, sexual assault or

³ Please note that no specific accounting changes need to be made by LSC recipients. The rules, instructions and guidance set forth in the *LSC Audit Guide for Recipients and Auditors* and the *Accounting Guide* remain in full force and effect.

⁴ By the express terms of the VAWA 2006 Amendments, the authority of LSC recipients to provide unrelated legal assistance to victims of trafficking (and certain family members) under the Trafficking Victims Protection Act, as amended, is not restricted by the VAWA 2006 Amendments. Thus, the guidance provided by LSC Program Letter 05-2 remains in full force and effect, and LSC grantees can provide trafficking victims with any legal assistance as long as it is not otherwise restricted and is within the recipients’ priorities (or is an “emergency” under Part 1620.4).

⁵ The types of criminal activities covered by 101 (a)(15)(U)(iii) include crimes such as rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes or any similar activity in violation of Federal, State, or local criminal law. Eligibility for “U” visa protection requires having been a victim of a *criminal activity*. Victims are eligible for “U” visa immigration relief without requiring that the criminal case be ultimately prosecuted or that a conviction for the crime be obtained.

trafficking in the United States, or meets the qualifications of section 101(a)(15)(U) of the INA, without regard to the immigration status of the parent.

What is the scope of legal assistance that LSC grantees may provide?

Grantees may provide “related legal assistance” to persons covered by the VAWA 2006 Amendments. “Related legal assistance” is defined in the statute as “legal assistance directly related to the prevention of, or obtaining relief from the cruelty, sexual assault or trafficking, or the crimes listed in” section 101(a)(15)(U) of the INA. The original Kennedy Amendment contained a parallel definition that referred only to assistance related to domestic violence and extreme cruelty. LSC interprets the term “related legal assistance” to mean that grantees may provide legal assistance to help the affected alien or child to escape from the domestic violence, sexual assault, trafficking, or covered criminal activity, to ameliorate their effects or to protect against future domestic violence, sexual assault, trafficking, or criminal activity.

As was true under the Kennedy Amendment, the VAWA 2006 Amendments do not authorize a grantee to provide an ineligible alien who has suffered domestic abuse, sexual assault, battering, trafficking or criminal activity and who would otherwise be ineligible with any and all legal assistance that would fall within the grantee’s priorities. Grantees will have to make determinations regarding whether a particular service is directly related to preventing or obtaining relief from the domestic violence, sexual assault, trafficking, or criminal activity on a case-by-case basis.⁶

⁶ This is consistent with prior guidance offered by LSC in the Preamble to the current Part 1626 of the LSC regulations regarding cruelty and domestic abuse:

Although the question of whether a particular service is directly related to the abuse will need to be made on a case-by-case basis, the following provides some guidance. First, the definition would permit a recipient to use non-LSC funds to provide assistance on a broad range of family law issues, but would not permit assistance on matters that are not directly related to the abusive relationship. For example, a recipient could provide legal assistance to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, but could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children. Similarly, the definition would permit the recipient to use non-LSC funds to provide assistance to secure housing, medical or income assistance for the abused spouse and children, so that they would no longer have to be dependent on the abuser. However, absent some evidence that subsequent events were the direct result of the abuse, it would not permit them to challenge an eviction action by a landlord for non-payment of rent, sue the agency administering the medical assistance program for failure to pay for specific care, or to challenge a cutoff of public assistance for failure to meet work requirements. Finally the definition would permit the recipient to [...] assist the abused spouse or child to seek suspension of deportation, or to self-petition for immigrant status, a procedure which avoids the necessity of relying on the citizen/legal permanent resident abusive spouse or parent’s willingness to file or pursue the petition on their behalf. Both of these procedures are included in the Violence Against Women Act and the interim INS regulations which implement that act.

May LSC grantees assist an alien in filing for a “U” visa?

Yes. LSC grantees may assist an alien in the filing of the petition for a “U” visa.⁷

May a grantee assisting a client who is eligible on the basis of the client’s qualification for a “U” visa, continue representing that person if the Attorney General determines that the client does not meet the requirements of the law or the “U” visa is denied?

No. If there is a final administrative denial after the Attorney General determines that the client does not meet the requirements of the law and/or the client’s petition for a “U” visa is finally denied, unless the client is otherwise eligible for legal assistance, the grantee would have to discontinue representation of the client, consistent with the requirements of the local rules of professional responsibility.⁸

How should LSC grantees document the eligibility of a client provided services pursuant to the VAWA Amendments?

Pursuant to 45 CFR §1626.12, recipients are required to maintain “records sufficient to document the recipients compliance” with Part 1626. Under the current rule, for victims of domestic violence, grantees are excused from maintaining records regarding the immigration status on such persons, although they are still required to keep such records as demonstrate that the person was a victim of domestic violence. Since the new VAWA authority is essentially an expansion of the prior domestic violence victim authority, the same recordkeeping rules apply with respect to additional persons authorized to be served under the new law. Thus, for a client who is eligible for legal assistance because he or she is a victim of domestic abuse, sexual assault, trafficking or qualifies for a “U” visa, the grantee should keep such records as demonstrate that the person meets the statutory criteria (and is a victim of domestic abuse, sexual assault, trafficking or qualifies for a “U” visa) but would not otherwise have to record the immigration status of such clients.⁹

⁷ As of the date of this Program Letter, the U.S. Citizenship and Immigration Services of the Department of Homeland Security (the successor to the old Immigration and Naturalization Service) has not issued regulations setting forth the specific process and requirement for obtaining a “U” visa. However, in the absence of regulations, interim relief is available to crime victims through an early “U” visa application process. Nonetheless, VAWA 2006 requires: “Not later than 180 days after the enactment of this Act, the Attorney General, the Secretary of Homeland Security, and the Secretary of State shall promulgate regulations to implement the provisions contained in [...] this Act, and the amendments made by this Act,” at Sec. 828.

⁸ This follows the provision set forth in 45 C.F.R. § 1626.9.

⁹ To the extent that a client’s eligibility is based on “U” visa eligibility, the grantee will have to have such records as demonstrate that the client has a reasonable claim for a “U” visa. In determining whether a person is a victim of domestic violence, sexual abuse, trafficking or a “U” visa crime, i.e., therefore, eligible for LSC representation, LSC grantees may assist the individual to obtain available proof, e.g., court records and police reports or, in appropriate cases, assist the individual in reporting the crime to law enforcement.

Are these cases CSR reportable?

Yes. Because LSC funds may be used to provide service to LSC financially eligible persons under the VAWA 2006 Amendments, any cases accepted by grantees for financially eligible persons under this authority should be counted in the grantees' Case Service Reports ("CSR"). Such cases closed in 2006 should be reported in the program's CSR when they submit their 2006 CSR report in March, 2007, irrespective of whether LSC funds were actually expended to support the services provided in the case.

**E. Resources on Disaster Relief for Immigrants
From the National Immigration Resource Center**

Jonathan Blazer and Brett Murphy, *Addressing the Needs of Immigrants and Limited English Communities in Disaster Planning and Relief*, National Immigrant Law Center (Oct. 28, 2008), <http://nilc.org/08needslimitedeng.html>.

Summary: This document raises concerns regarding overlooking immigrants and other individuals with limited English proficiency during a natural disaster planning. It explains the problem of language barrier in detail, barriers that impede access to government benefits, and finally provides recommendations to overcome these barriers.

III. Federal Public Benefits

This section is organized by topic.

In addition to the materials contained here significant information on battered immigrant access to federal public benefits is contained in:

[AG Order No. 2129–97] Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (PRWORA) (Federal Register / Vol. 62, No. 221 / November 11, 1997) available at

http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/c_FR-1997%20interim%20verif%20guidance%20DOJ_OVW%2011.15.04.pdf/view

A. HUD

- 1. HUD Programs and Immigrant Eligibility**
- 2. 8 U.S.C. § 1611 – Definition of Federal Public Benefits Open to “Qualified Immigrants” (See 8 U.S.C. § 1641) and Government Funded Assistance Exempt From the Federal Public Benefits Definition and Therefor Open to All Immigrants**
- 3. 8 U.S.C. 1641 Qualified Immigrants Eligible for Federal Public Benefits**
- 4. HUD Budget Conference Report (2003)**
- 5. Letter from DHS to HUD Implementing 2003 Budget Directives (7.03.07)**
- 6. National Immigration Law Center: Rental Housing Programs: Public housing, Section 8, rural housing, and low-income tax credit housing**

16.2

HUD Programs and Immigrant Eligibility¹²

Section 214 of the Housing and Community Development Act restricts access to certain HUD programs to eligible immigrants including qualified.³ The following programs are only available to “qualified immigrants” as defined by the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) and immigrants considered “eligible immigrants” under Section 214 of the Housing and Community Development Act.⁴:

Public Housing Operating Fund	http://www.hud.gov/offices/pih/programs/ph/am/of/	HUD provides these operating subsidies to public housing agencies (PHAs) to help them meet operating and management expenses. A PHA can use operating funds for operating and management costs, including administration, routine maintenance, anti-crime and anti-drug activities, resident participation in management, insurance costs, energy costs, and costs, as appropriate, related to the operation and management of mixed finance projects among other things.
Public Housing Capital Fund	http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm	The Capital Fund is available by formula distribution for capital and management activities, including development, financing, and modernization of public housing projects, which includes redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and development of mixed-finance projects; vacancy reduction; addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment; planned

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² List compiled from <http://www.huduser.org/resources/hudprgs/ProgOfHUD06.pdf>

³ See 42 U.S.C. 1436(a) (2006).

⁴ Qualified immigrants include: (1) LPRs, including Amerasian immigrants; (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry, or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also qualified.

Jurisdictionally Sound Civil Protection Orders

		code compliance, management improvements, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with on-site computer access and training resources; demolition and replacement; resident relocation; capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents, and improve resident participation; capital expenditures to improve safety and security of residents; and homeownership activities, including programs under Section 32.
Public Housing Neighborhood Networks (NN) Program	www.hud.gov/offices/pih/programs/ph/ross/aboutnn.cfm	Grants awarded to PHAs for the purposes of providing computer and Internet access and job training to public housing residents.
Public Housing Homeownership (Section 32)	http://www.hud.gov/offices/pih/centers/sac/homeownership/index.cfm	The program offers public housing agencies (PHAs) a flexible way to sell public housing units to low-income families, with preference given to current residents of the unit(s) being sold. PHAs can retain and reuse the proceeds of the sale of public housing units to meet other low-income housing needs.
Section 8 Moderate Rehabilitation Single Room Occupancy (SRO)	www.hud.gov/offices/cpd/homeless/programs/sro/index.cfm	Assists very low-income, single, homeless individuals in obtaining decent, safe, and sanitary housing in privately owned, rehabilitated buildings.
Supportive Housing for the Elderly (Section 202) (Projects with project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdesc/eld202.cfm	Capital advances are made to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. The advance is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent (usually 30 percent of monthly adjusted income).
Supportive Housing for Persons with Disabilities (Section 811) (projects with project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm	Program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities.

Jurisdictionally Sound Civil Protection Orders

Renewal of Section 8 Project-Based Rental Assistance	http://edocket.access.gpo.gov/cfr_2008/aprqrtr/pdf/24cfr402.3.pdf	HUD renews Section 8 project-based housing assistance payments (“HAP”) contracts with owners of multifamily rental housing. The project-based rental assistance makes up the difference between what a low- and very low-income household can afford and the approved rent for an adequate housing unit in a multifamily project. Eligible tenants must pay the highest of 30 percent of adjusted income, 10 percent of gross income, or the portion of welfare assistance designated for housing or the minimum rent established by HUD.
Housing Choice Voucher Program	www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm	Through tenant-based vouchers, provides rental subsidies for standard-quality units that are chosen by the tenant in the private market.
Homeownership Voucher Assistance	http://www.hud.gov/offices/pih/programs/hcv/homeownership/	A public housing agency (PHA), at its option, may provide monthly assistance to families that have been admitted to the Section 8 Housing Choice Voucher program in accordance with HUD regulations, that meet certain criteria, and that are purchasing homes in an amount that would otherwise have been provided to that family as tenant-based voucher assistance.
Project-Based Voucher Program	http://www.hud.gov/offices/pih/programs/hcv/project.cfm	Rental assistance is available for eligible families who live in specific housing developments or units.

Community Development Programs

Community Development Block Grants	http://www.hud.gov/offices/cpd/communitydevelopment/programs/entitlement/index.cfm#eligiblegrantees	CDBG are awarded to metropolitan cities and urban counties on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.
Development Block Grants (Non-Entitlement) for States and Small Cities	http://www.hud.gov/offices/cpd/communitydevelopment/programs/stateadmin/index.cfm	Provides grants to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services to governments that are not metropolitan cities or part of an urban county.

Jurisdictionally Sound Civil Protection Orders

Community Development Block Grants (Section 108 Loan Guarantee)	http://www.hud.gov/offices/cpd/communitydevelopment/programs/108/index.cfm	Offers communities a source of financing for housing rehabilitation, economic development, and large-scale physical development projects.
Community Development Block Grants (Disaster Recovery Assistance)	http://www.hud.gov/offices/cpd/communitydevelopment/programs/dri/index.cfm	CDBG Disaster Recovery funds go to states and local governments in places that have been designated by the President of the United States as major disaster areas.
Community Development Block Grant Program Insular	http://www.hud.gov/offices/cpd/communitydevelopment/programs/insular/index.cfm	Provides annual grants to American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Marianas Islands to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.
The HOME Program: HOME Investment Partnerships	http://www.hud.gov/offices/cpd/affordablehousing/programs/home/	Grants to states and units of general local government to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans.
Brownfields Economic Development Initiative (BEDI)	www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm	Grants may be awarded to CDBG recipients for redevelopment of brownfields, to be used in conjunction with Section 108 Loan Guarantee assistance for the same project.
Economic Development Initiative (“Competitive EDI”) Grants	www.hud.gov/offices/cpd/economicdevelopment/programs/edi/index.cfm	Grants awarded to CDBG recipients to directly enhance the security of Section 108 guaranteed loans or to improve the viability of the same Section 108 assisted project.

Jurisdictionally Sound Civil Protection Orders

Renewal Communities	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm	Tax incentives for renewal of economically disadvantaged areas. The HUD Secretary is authorized to designate up to 40 “renewal communities” from areas nominated by states and local governments; at least 23 must be in rural areas.
Rural Housing and Economic Development Program	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rhed/index.cfm	Grants awarded to local rural nonprofit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies, state economic development, and community development agencies to meet rural communities’ housing and economic development needs.
Capacity Building for Community Development and Affordable Housing	www.hud.gov/offices/cpd/about/cpdta/index.cfm	Grants to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs. Grants only awarded to LISC, The Enterprise Foundation, Habitat for Humanity, and YouthBuild USA.
Cooperative Housing (Section 213)	http://www.hud.gov/offices/hsg/mfh/progdesc/coop213.cfm	Nonprofit corporations or trusts organized to construct homes for members of the corporation or beneficiaries of the trust; and qualified sponsors who intend to sell the project to a nonprofit corporation or trust are eligible to apply for federal mortgage insurance to finance cooperative housing projects.
Mark-to-Market Program	http://www.hud.gov/offices/hsg/omhar/	This program is designed to preserve long-term low-income housing affordability by restructuring FHA-insured or HUD-held mortgages for eligible multifamily housing projects.
Self-Help Housing Property Disposition	http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/laws/shop/	The program makes surplus federal properties available through sale at less than fair market value to states, their subdivisions and instrumentalities, and nonprofit organizations.

Jurisdictionally Sound Civil Protection Orders

HOPE VI	http://www.hud.gov/offices/pih/programs/ph/hope6/about/description.cfm	This program has been an important part of the transformation of public housing by encouraging public housing agencies (PHAs) to seek new partnerships with private entities to create mixed-finance and mixed-income affordable housing. In 2003, the HOPE VI program was expanded to assist local governments in the production of affordable housing in Main Street rejuvenation projects. The activities permitted under HOPE VI include, but are not limited to: the capital costs of demolition, major reconstruction, rehabilitation, and other physical improvements; the provision of replacement housing; management improvements; planning and technical assistance; and the provision of supportive services (including the funding, beginning in Fiscal Year 2000, of an endowment trust for supportive services).
Resident Opportunity and Self-Sufficiency (ROSS) Program	http://www.hud.gov/offices/pih/programs/ph/ross/	Under the ROSS program, the Secretary may make grants to public housing agencies (PHAs), recipients under the Native American Housing Assistance and Self-Determination Act (NAHASDA), resident management corporations (RMCs), resident councils or resident organizations, and nonprofit organizations supported by residents for the purposes of providing supportive services and resident empowerment activities to public and Indian housing residents, or to assist such residents in becoming economically self-sufficient.
Indian Community Development Block Grant (ICDBG) Program	www.hud.gov/offices/pih/ih/grants/icdbg.cfm	The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons.
Federal Guarantees for Financing for Tribal Housing Activities (Title VI)	www.hud.gov/progdesc/fintrib1.cfm	This program authorizes HUD to guarantee financial obligations issued by Indian tribes or tribally designated housing entities (TDHEs) to pay for eligible affordable housing activities under the Indian Housing Block Grant program (IHBG).
Native Hawaiian Housing Block Grant (NHHBG) Program	http://www.hud.gov/offices/pih/ih/codetalk/onap/nhhbgprogram.cfm	This new program is patterned after the Indian Housing Block Grant (IHBG) program, but contains changes to address the housing needs and circumstances of Native Hawaiians. The NHHBG program authorizes HUD to make grants to the State of Hawaii's Department of Hawaiian Home Lands (DHHL) to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. The DHHL must submit for HUD review a one-year and a 5-year housing plan containing the goals, mission, and methodology by which DHHL will accomplish its objectives during the grant period.

Jurisdictionally Sound Civil Protection Orders

<p>Fair Housing Assistance Program (FHAP) (State and Local Agencies Program)</p>	<p>http://www.hud.gov/offices/fheo/partners/FHAP/index.cfm</p>	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
<p>Fair Housing Initiatives Program (FHIP)</p>	<p>http://www.hud.gov/offices/fheo/partners/FHIP/fhip.cfm</p>	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
<p>Emergency Capital Repairs Program</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdsc/ecrp.cfm</p>	<p>Grants provided for substantial emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants.</p>

Community Development Block Grants (Section 107)

<p>Historically Black Colleges and Universities (HBCUs) Program</p>	<p>http://www.oup.org/programs/aboutHBCU.asp</p>	<p>The HBCU program helps HBCUs to expand their role and effectiveness in addressing community development needs in their own localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.</p>
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Jurisdictionally Sound Civil Protection Orders

Hispanic Serving Institutions Assisting Communities (HSIAC) Program	http://www.oup.org/programs/aboutHSIAC.asp	The HSIAC program helps Hispanic Serving Institutions (HSIs) to expand their role and effectiveness in addressing community development needs in their localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.
Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC)	http://www.oup.org/programs/aboutANNHIAC.asp	The Alaska Native/Native Hawaiian Institutions (AN/NHIs) program helps AN/NHIs to expand their role and effectiveness in addressing community development needs in their localities, including revitalization, housing, and economic development, principally for persons of low- and moderate-income.
Tribal Colleges and Universities Program (TCU)	http://www.oup.org/programs/aboutTCUP.asp	The TCU program assists TCUs in building, expanding, renovating, and equipping their own facilities.
Community Outreach Partnership Centers (COPC)	http://www.oup.org/programs/aboutCOPC.asp	The COPC program assists community colleges, colleges, and universities in establishing centers to carry out applied research and outreach activities addressing the problems of urban areas, in coordination with community-based organizations and local governments.
Community Development Work Study (CDWS) Program	http://www.oup.org/programs/aboutCDWSP.asp	The CDWS program assists colleges and universities, either directly or indirectly, or through area-wide planning organizations or states, in providing assistance to work study programs for economically disadvantaged and minority students in fields related to community development.

Programs to Combat Homelessness

Shelter Plus Care (S + C)	http://www.hud.gov/offices/cpd/homeless/programs/spusc/	Grants awarded to states and units of general local government for rental assistance, in combination with supportive services from other sources, to homeless persons with disabilities.
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Jurisdictionally Sound Civil Protection Orders

Emergency Shelter Grants (ESG) Program	http://www.hud.gov/offices/cpd/homeless/programs/esg/index.cfm	Provides grants to help increase both the number and quality of emergency and transitional shelters for homeless individuals and families. Grantees use ESG funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness. States, District of Columbia, Puerto Rico, metropolitan cities, urban counties, and U.S. territories are eligible.
Surplus Property for Use to Assist the Homeless (Title V)	www.hud.gov/offices/cpd/homeless/programs/t5/index.cfm	Makes suitable federal properties, which are categorized as unutilized, underutilized, excess, or surplus, available to states, local governments, and nonprofit organizations for use to assist homeless persons. HUD determines which properties are suitable for use to assist homeless persons. Health and Human Services Agency handles the applications from providers after suitable properties are released on the Federal Register.
Supportive Housing Program	http://www.hud.gov/offices/cpd/homeless/programs/shp/index.cfm	Grants offered through a competitive process for new construction, acquisition, rehabilitation, or leasing of buildings to provide transitional or permanent housing, as well as supportive services to homeless individuals and families; grants to fund a portion of annual operating costs; and grants for technical assistance.
Empowerment Zones	http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/index.cfm	Grants and tax incentives to locate businesses in, and hire residents of, economically disadvantaged areas.

Programs to Promote and Employment and Home Ownership Opportunities

Self-Help Homeownership Opportunity Program (SHOP)	http://www.ezrc.hud.gov/offices/cpd/affordablehousing/programs/shop/index.cfm	SHOP authorizes HUD to make competitive grants to national and regional nonprofit organizations and consortia that have experience in providing or facilitating self-help housing opportunities.
Single Family Property Disposition Program (Section 204(g))	http://www.hud.gov/offices/hsg/sfh/reo/reohome.cfm	Disposes of one-to-four family FHA properties (acquired by the FHA through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act) in a manner targeted to expanding homeownership opportunities.

Jurisdictionally Sound Civil Protection Orders

Counseling for Homebuyers, Homeowners, and Tenants (Section 106)	http://www.hud.gov/offices/hsg/sfh/hcc/hcc_home.cfm	Homeless individuals and families, potential renters, renters, potential homebuyers, homebuyers, and homeowners may seek the assistance of a HUD-approved housing counseling agency to meet a housing need or resolve a housing problem.
Family Self-Sufficiency Program	http://www.hud.gov/offices/pih/programs/hcv/fss.cfm	Promotes the development of local strategies to coordinate public and private resources that help housing choice voucher program participants and public housing tenants obtain employment that will enable participating families to achieve economic independence Public housing agencies are eligible.
Indian Housing Block Grant (IHBG) Program	www.hud.gov/offices/pih/ih/grants/ihbg.cfm	The Indian Housing Block Grant Program (IHBG) is a formula grant that provides a range of affordable housing activities on Indian reservations and Indian areas. The block grant approach to housing for Native Americans was enabled by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA).

Programs Designed to Assist Specific Populations (e.g. Children, the Elderly, Families Living with HIV/AIDS, Homewoners Facing Foreclosure)

Youthbuild	www.hud.gov/offices/cpd/economicdevelopment/programs/youthbuild/index.cfm	The Youthbuild program provides grants to public and private nonprofit entities to provide economically disadvantaged young adults with opportunities to obtain education, employment skills, and meaningful on-site work experience and to expand the supply of affordable housing for homeless and low- and very low-income persons.
Housing Opportunities for Persons with AIDS (HOPWA) Program	http://www.hud.gov/offices/cpd/aidshousing/programs/index.cfm	The HOPWA program provides formula allocations and competitively awarded grants to eligible states, cities, and nonprofit organizations to provide housing assistance and related supportive services to meet the housing needs of low-income persons and their families living with HIV/AIDS. These resources help clients maintain housing stability, avoid homelessness, and improve access to HIV/AIDS treatment and related care while placing a greater emphasis on permanent supportive housing.
Loss Mitigation	http://www.hud.gov/foreclosure/index.cfm	Helps homeowners with FHA-insured loans to effectively work with lenders to find creative solutions to avoid foreclosure.

Jurisdictionally Sound Civil Protection Orders

<p>Graduated Payment Mortgage (GPM) (Section 245(a))</p>	<p>http://www.federalgrantswire.com/section-245-graduated-payment-mortgage-program.html</p>	<p>Enables a household with a limited income that is expected to rise to buy a home sooner by making mortgage payments that start small and increase gradually over time. All FHA-approved lenders may make GPMs available to persons who intend to use the mortgage property as their primary residence and who expect to see their income rise appreciably in the future.</p>
<p>Home Equity Conversion Mortgage (HECM) Program (Section 255)</p>	<p>http://www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm</p>	<p>The Federal Housing Administration (FHA) mortgage insurance allows borrowers, who are at least 62 years of age, to convert the equity in their homes into a monthly stream of income or a line of credit.</p>
<p>Manufactured Homes Loan Insurance (Title I)</p>	<p>www.hud.gov/offices/hsg/sfh/title/manuf14.cfm http://www.hud.gov/offices/hsg/sfh/title/ti_about.cfm</p>	<p>Federal insurance of loans available to finance the purchase of manufactured homes. Any person able to make the cash investment and the loan payments is eligible to apply. However, the home must be the principal residence of the borrower.</p>
<p>Property Improvement Loan Insurance (Title I)</p>	<p>http://www.hud.gov/offices/hsg/sfh/title/title-i.cfm</p>	<p>Federal insurance of loans made available to finance property improvements. A person who is able to make loan payments and has at least a fifty percent ownership in the property to be improved is eligible to apply.</p>
<p>Good Neighbor Next Door</p>	<p>http://www.hud.gov/offices/hsg/sfh/reo/goodn/gnndabot.cfm</p>	<p>Provides law enforcement officers, teachers, firefighters, and emergency medical technicians with the opportunity to purchase homes located in revitalization areas at significant discount.</p>
<p>Multifamily Housing Service Coordinators</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdesc/servicecoord.cfm</p>	<p>This program provides funding for service coordinators who assist elderly individuals and persons with disabilities, living in federally assisted multifamily housing and in the surrounding area, to obtain needed supportive services from community agencies. Independent living with assistance is a preferable, lower cost housing alternative to institutionalization for many frail older persons and persons with disabilities.</p>

Jurisdictionally Sound Civil Protection Orders

Mortgage Insurance for Housing for the Elderly (Section 231)	www.hud.gov/offices/hsg/mfh/progdsc/renthsgeld231.cfm	Federal mortgage insurance made available to finance the construction or rehabilitation of rental housing for the elderly or handicapped.
Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted-living Facilities (Section 232 and Section 232/223(f))	http://www.hud.gov/offices/hsg/mfh/progdsc/nursing_alcp232.cfm	Federal mortgage insurance made available to finance or rehabilitate nursing, assisted-living, intermediate care, or board and care facilities.
Healthy Homes and Lead Hazard Control	http://www.hud.gov/offices/lead/index.cfm	This program addresses childhood lead-based paint poisoning and other childhood diseases associated with housing, such as allergies and asthma from residential exposure to mold, skin reactions to pesticides, and carbon monoxide poisoning. It promotes preventive measures to correct multiple safety and health hazards in the home environment through several components.
Supportive Housing for the Elderly (Section 202) (Projects without project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdsc/eld202.cfm	Capital advances are made to eligible private, nonprofit sponsors to finance the development of rental housing with supportive services for the elderly. The advance is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent (usually 30 percent of monthly adjusted income).
Assisted-Living Conversion Program (ALCP)	www.hud.gov/offices/hsg/mfh/progdsc/alcp.cfm	Provides grants to private nonprofit owners of eligible developments to convert some or all of the dwelling units in the development into an assisted-living facility for the frail elderly.
Supportive Housing for Persons with Disabilities (Section 811) (projects without project-based § 8 Assistance)	www.hud.gov/offices/hsg/mfh/progdsc/disab811.cfm	Program provides assistance to expand the supply of housing with the availability of supportive services for persons with disabilities.

Jurisdictionally Sound Civil Protection Orders

Programs to Insure/Guarantee Loans

<p>Loan Guarantee Recovery Fund for Church Arson and Other Acts of Terrorism (Section 4)</p>	<p>http://fhasecure.gov/offices/cpd/economicdevelopment/programs/section4/index.cfm</p>	<p>Provides guarantees for loans to certain nonprofit organizations damaged by arson or terrorism.</p>
<p>One-to-Four-Family Home Mortgage Insurance (Section 203(b))</p>	<p>www.hud.gov/offices/hsg/sfh/ins/203b--df.cfm</p>	<p>Federal mortgage insurance is provided to finance homeownership and the construction and financing of housing. Any person able to meet the cash investment, mortgage payment, and credit requirements are eligible to apply. The program is generally limited to owner-occupants.</p>
<p>Mortgage Insurance for Disaster Victims (Section 203(h))</p>	<p>www.hud.gov/offices/hsg/sfh/ins/203h-dft.cfm</p>	<p>Federal mortgage insurance for victims of a major disaster who have lost their homes and are in the process of rebuilding or buying another home. Any person whose home has been destroyed or severely damaged in a presidentially declared disaster area is eligible to apply for mortgage insurance under this program, even if they were renting the property. The borrower's application for mortgage insurance must be submitted to an FHA-approved lending institution within one year of the President's declaration of the disaster.</p>
<p>Rehabilitation Mortgage Insurance</p>	<p>http://www.hud.gov/offices/hsg/sfh/203k/203k--df.cfm</p>	<p>Insures loans to finance the rehabilitation or purchase and rehabilitation of one- to four-family properties. Any person able to make the cash investment and the mortgage payments is eligible to apply.</p>
<p>Mortgage Insurance for Older, Declining Areas (Section 223(e))</p>	<p>http://www.communityinvestmentnetwork.org/nc/signle-news-item-states/article/mortgage-insurance-for-older-economically-declining-areas-section-223e/?tx_ttnews[backPid]=1079&cHash=53bbfc8f18</p>	<p>Mortgage insurance granted to purchase or rehabilitate housing in older, declining urban areas. Home or project owners ineligible for FHA mortgage insurance because property is located in an older, declining urban area are eligible to apply.</p>
<p>Mortgage Insurance for Condominium Units (Section 234(c))</p>	<p>http://www.hud.gov/offices/hsg/sfh/ins/234c--df.cfm</p>	<p>Federal mortgage insurance is available to finance the purchase of individual housing units in proposed or existing condominiums. All FHA-approved lenders may make condominium loans in approved projects for any creditworthy owner-occupant.</p>

Jurisdictionally Sound Civil Protection Orders

Adjustable Rate Mortgages (ARMs) (Section 251)	http://www.hud.gov/offices/hsg/sfh/ins/251--df.cfm	Federal mortgage insurance is available for adjustable rate mortgages (ARMs). All FHA-approved lenders may make adjustable rate mortgages and creditworthy applicants who will be owner-occupants may qualify for such loans.
Energy Efficient Mortgage Insurance	http://www.hud.gov/offices/hsg/sfh/eem/energy-r.cfm	Federal mortgage insurance made available to finance the cost of energy efficiency measures.
Insured Mortgages on Hawaiian Home Lands (Section 247)	http://www.hud.gov/offices/hsg/sfh/nsc/assn247.cfm	FHA insures loans made to native Hawaiians to purchase one- to four-family dwellings located on Hawaiian homelands. Regulations pertaining to these loans are fundamentally the same as regular Section 203(b) loans except that they are only available to Native Hawaiians on Hawaiian homelands.
Insured Mortgages on Indian Land (Section 248)	www.hud.gov/offices/hsg/sfh/ins/sfh248.cfm	FHA insures loans made to Native Americans to buy, build, or rehabilitate houses on Indian land. These loans are fundamentally the same as regular Section 203(b) loans except that they are only available to Native Americans on Indian land.
Mortgage Insurance for Manufactured Home Parks (Section 207)	http://www.huduser.org/resources/hudprgs/ProgOfHUD06.pdf	Investors, builders, developers, cooperatives, and others meeting HUD's requirements may apply to an FHA-approved lending institution after conferring with the local HUD office for federal mortgage insurance to finance construction or rehabilitation of manufactured home parks.
Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220)	www.hud.gov/offices/hsg/mfh/progdsc/renturbanhsg220.cfm	Investors, builders, developers, individual homeowners, and apartment owners are eligible to apply for federally insured loans used to finance mortgages for housing in urban renewal areas (areas in which concentrated revitalization activities have been undertaken by local government), or to alter, repair, or improve housing in those areas.

Jurisdictionally Sound Civil Protection Orders

<p>Mortgage Insurance for Rental and Cooperative Housing (Section 221(d)(3) and Section 221(d)(4))</p>	<p>www.hud.gov/offices/hsg/mfh/progdsc/rentcoophsg221d3n4.cfm</p>	<p>Mortgage insurance to finance rental or cooperative multifamily housing for moderate-income households, including projects designated for the elderly. Single Room Occupancy (SRO) projects are also eligible for mortgage insurance. Section 221(d)(3) and (4) are HUD’s major insurance programs for new construction or substantially rehabilitated multifamily rental housing. Section 221(d)(3) is available to public, nonprofit, and cooperative mortgagors. Section 221(d)(4) mortgages are available to profit-motivated sponsors.</p>
<p>Existing Multifamily Rental Housing (Section 207/233(f))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdsc/purchasefi223f.cfm</p>	<p>Section 207/233(f) insures mortgage loans to facilitate the purchase or refinancing of existing multifamily rental housing. These projects may have been financed originally with conventional or FHA insured mortgages.</p>
<p>Mortgage Insurance for Housing for the Elderly (Section 231)</p>	<p>www.hud.gov/offices/hsg/mfh/progdsc/renthsgeld231.cfm</p>	<p>Federal mortgage insurance made available to finance the construction or rehabilitation of rental housing for the elderly or handicapped.</p>
<p>Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted-living Facilities (Section 232 and Section 232/223(f))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdsc/nursingalc232.cfm</p>	<p>Federal mortgage insurance made available to finance or rehabilitate nursing, assisted-living, intermediate care, or board and care facilities.</p>
<p>Supplemental Loans for Multifamily Projects (Section 241)</p>	<p>www.hud.gov/offices/hsg/mfh/progdsc/supplement241a.cfm</p>	<p>Federal mortgage loan insurance made available to finance improvements and additions to, and equipment for multifamily rental housing and healthcare facilities.</p>
<p>Hospitals</p>	<p>http://www.raonline.org/funding/funding_details.php?funding_id=95</p>	<p>Federal mortgage insurance is available to finance construction or rehabilitation of public or private nonprofit and propriety hospitals, including major movable equipment.</p>

Jurisdictionally Sound Civil Protection Orders

<p>Multifamily Mortgage Risk-Sharing Programs (Sections 542(b) and 542(c))</p>	<p>http://www.hud.gov/offices/hsg/mfh/progdesc/riskshare542c.cfm</p>	<p>Two multifamily mortgage credit programs under which Fannie Mae, Freddie Mac, and state and local housing finance agencies share the risk and the mortgage insurance premium on multifamily housing.</p> <p>Section 542(b) of the Housing and Community Development Act of 1992 authorizes HUD to enter into reinsurance agreements with Fannie Mae, Freddie Mac, qualified financial institutions (QFIs), and the Federal Housing Finance Board. The agreements provide for risk sharing on a 50-50 basis. Currently, only Fannie Mae and Freddie Mac have active risk-sharing programs with HUD.</p> <p>Section 542(c) enables HUD to carry out a program in conjunction with qualified state and local housing finance agencies (HFAs) to provide federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements. Agreements provide for risk sharing between 10 percent and 90 percent.</p>
<p>Loan Guarantees for Indian Housing (Section 184)</p>	<p>www.hud.gov/progdesc/ins/ec184.cfm</p>	<p>Authorized under the Housing and Community Development Act of 1992, the Section 184 Indian Loan Program is designed to offer home ownership, property rehabilitation, new construction, and refinance opportunities for eligible individual Native Americans, tribes, and Indian Housing authorities.</p>
<p>Loan Guarantees for Native Hawaiian Housing (Section 184A)</p>	<p>http://www.hud.gov/offices/pih/ih/codetalk/onap/program184a.cfm</p>	<p>The purpose of the Section 184A loan is to provide access to sources of private financing on Hawaiian homelands. Section 184A permits HUD to guarantee 100% of the unpaid principal and interest due on an eligible loan. The use of the Section 184A Loan Guarantee Program is limited to owner-occupant single-family dwellings located on Hawaiian homelands.</p>
<p>Ginnie Mae I Mortgage-Backed Securities</p>	<p>www.ginniemae.gov</p>	<p>Ginnie Mae guarantees investors (security holders) the timely payment of principal and interest on securities issued by private lenders that are backed by pools of Federal Housing Administration (FHA), Veterans Affairs (VA), Rural Housing Service (RHS), and Public and Indian Housing (PIH) mortgage loans. The full faith and credit guarantee of the U.S. Government that Ginnie Mae places on mortgage-backed securities lowers the cost of, and maintains the supply of, mortgage financing for government-backed loans.</p>
<p>Ginnie Mae II Mortgage-Backed Securities</p>	<p>www.ginniemae.gov</p>	<p>Ginnie Mae guarantees investors (security holders) the timely payment of principal and interest on securities issued by private lenders that are backed by pools of Federal Housing Administration (FHA), Veterans Affairs (VA), Rural Housing Service (RHS), and Public and Indian Housing (PIH) mortgage loans. The full faith and credit guarantee of the U.S. Government that Ginnie Mae places on mortgage-backed securities lowers the cost of, and maintains the supply of, mortgage financing for government-backed loans. The Ginnie Mae II program complements the Ginnie</p>

Jurisdictionally Sound Civil Protection Orders

		Mae I program.
Ginnie Mae Multiclass Securities Program	www.ginniemae.gov	In 1970, Ginnie Mae made history when it pooled government mortgage loans together and created the first mortgage-backed security (MBS). Ginnie Mae and the capital markets have evolved since 1970, and now play a pivotal role in improving the affordability of housing for all Americans by increasing the availability of investment capital to the housing sector. In 1994, Ginnie Mae broadened its investor base for MBSs with the introduction of an innovative and more efficient vehicle, the Real Estate Mortgage Investment Conduit (commonly known in the industry as a REMIC). The mortgage market has matured to include a variety of REMIC securities, each with a broad array of features and each with a different risk-return profile. In July 2004, Ginnie Mae complemented its REMIC product line with the launch of its stripped mortgage-backed securities (SMBS) Trust vehicle. The SMBS Trust product adds another investment type to sophisticated investors in Ginnie Mae MBSs seeking better market liquidity and management of MBS prepayment risk. Callable securities, another one of Ginnie Mae's Multiclass Securities products, give investors the option to redeem previously issued securities, allowing greater hedging flexibility.
Ginnie Mae Platinum Securities Program	www.ginniemae.gov	Ginnie Mae Platinum Securities allow investors to combine Ginnie Mae MBS pools with uniform mortgage interest rates and original terms to maturity into a single security, backed by the full faith and credit of the United States Government. Investors then receive a single payment from the combined securities every month, rather than separate payments from each individual security. Because it lowers administrative costs and improves liquidity, particularly for small pools, this feature serves to make the Ginnie Mae Platinum Security attractive. Ginnie Mae Platinum Securities can be used in structured finance transactions, repurchase transactions, and general trading.

Fair Housing and Equal Opportunity Programs

Fair Housing Assistance Program (FHAP) (State and Local Agencies Program)	http://www.hud.gov/offices/fheo/partners/FHAP/index.cfm	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts,</p>
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Jurisdictionally Sound Civil Protection Orders

		training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.
Fair Housing Initiatives Program (FHIP)	http://www.hud.gov/offices/fheo/partners/FHIP/fhip.cfm	<p>The right to equal opportunity in housing is ensured not only by the Fair Housing Act, but also by State and local laws. HUD provides FHAP grants annually on a noncompetitive basis to substantially equivalent State and local fair housing enforcement agencies.</p> <p>At the beginning of an agency's participation in the FHAP, we provide a flat amount of funds for capacity building. Following the period of capacity building, we will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law.</p>
Partnership for Advancing Technologies in Housing Initiative (PATH)	http://www.huduser.org/about/pdr_path.html	Analyzes the fair housing laws administered by a state or local fair housing agency for consistency with Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act). Assists state and local agencies that administer fair housing laws certified by HUD as “substantially equivalent” to the Fair Housing Act or Title VIII of the Civil Rights Act of 1968, as amended. This assistance includes support for complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The program is designed to build coordinated intergovernmental enforcement of fair housing laws and provide incentives for states and localities to assume a greater share of the responsibility for administering fair housing laws.

Advocates should research how their particular state allocates HUD funds. Some states allow families to prorate assistance to help cover housing costs of qualified immigrants in “mixed families” (families that are made up of “qualified immigrants” and ineligible persons).

The tables below indicate the programs that are not covered by Section 214 and are available to all people without regard to their status.

Jurisdictionally Sound Civil Protection Orders

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

8 U.S.C. § 1611 – Definition of Federal Public Benefits Open to “Qualified Immigrants” (See 8 U.S.C. § 1641) and Government Funded Assistance Exempt From the Federal Public Benefits Definition and Therefor Open to All Immigrants

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, an alien who is not a qualified alien (as defined in section [1641](#) of this title) is not eligible for any Federal public benefit (as defined in subsection (c) of this section).

(b) Exceptions

- (1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:
 - (A) Medical assistance under title XIX of the Social Security Act [[42 U.S.C. 1396](#) et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [[42 U.S.C. 1396b \(v\)\(3\)](#)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [[42 U.S.C. 601](#) et seq.], supplemental security income benefits under title XVI of such Act [[42 U.S.C. 1381](#) et seq.], or a State supplementary payment).
 - (B) Short-term, non-cash, in-kind emergency disaster relief.
 - (C) Public health assistance (not including any assistance under title XIX of the Social Security Act [[42 U.S.C. 1396](#) et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
 - (D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which
 - (i) deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and
 - (iii) are necessary for the protection of life or safety.
 - (E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [[42 U.S.C. 1471](#) et seq.], or any assistance under section [1926c](#) of title [7](#), to the extent that the alien is receiving such a benefit on August 22, 1996.
- (2) Subsection (a) of this section shall not apply to any benefit payable under title II of the Social Security Act [[42 U.S.C. 401](#) et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [[42 U.S.C. 433](#)], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [[42 U.S.C. 402 \(t\)](#)], or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996.
- (3) Subsection (a) of this section shall not apply to any benefit payable under title XVIII of the Social Security Act [[42 U.S.C. 1395](#) et seq.] (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits

payable under part A of such title [42 U.S.C. 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) of this section shall not apply to any benefit payable under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(5) Subsection (a) of this section shall not apply to eligibility for benefits for the program defined in section 1612 (a)(3)(A) of this title (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996.

(c) “Federal public benefit” defined

(1) Except as provided in paragraph (2), for purposes of this chapter the term “Federal public benefit” means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States

8 U.S.C. 1641 Qualified Immigrants Eligible for Federal Public Benefits

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. [1101\(a\)](#)].

(b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. [1101](#) et seq.],
- (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. [1158](#)],
- (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. [1157](#)],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. [1182\(d\)\(5\)](#)] for a period of at least 1 year,
- (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. [1253](#)] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. [1231\(b\)\(3\)](#)] (as amended by section 305(a) of division C of Public Law 104–208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. [1153\(a\)\(7\)](#)] as in effect prior to April 1, 1980;^[1] or
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term “qualified alien” includes—

- (1) an alien who—
 - (A) has been battered or subjected to extreme cruelty in the United States by a spouse or a 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, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and
 - (B) has been approved or has a petition pending which sets forth a prima facie case for—
 - (i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. [1154\(a\)\(1\)\(A\)\(ii\)](#), (iii), (iv)],
 - (ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. [1154\(a\)\(1\)\(B\)\(ii\)](#), (iii)],
 - (iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. [1254\(a\)\(3\)](#)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).^[2]
 - (iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. [1154\(a\)\(1\)\(A\)\(i\)](#)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. [1154\(a\)\(1\)\(B\)\(i\)](#)];^[3]
 - (v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. [1229b\(b\)\(2\)](#)];
- (2) an alien—
 - (A) whose child has been battered or subjected to extreme cruelty in the United States 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 the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)who meets the requirement of subparagraph (B) of paragraph (1);

(3)an alien child who—

(A)resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States 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, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)who meets the requirement of subparagraph (B) of paragraph (1); or

(4)an alien who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act ([8 U.S.C. 1101\(a\)\(15\)\(T\)](#)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section [1631\(f\)](#) of this title, concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

108TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
108-10

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2003, AND FOR OTHER PURPOSES

CONFERENCE REPORT

TO ACCOMPANY

H.J. Res. 2



FEBRUARY 13 (legislative day, FEBRUARY 12), 2003.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

84-817

WASHINGTON : 2003

MAKING FURTHER CONTINUING APPROPRIATIONS FOR
THE FISCAL YEAR 2003, AND FOR OTHER PURPOSES

FEBRUARY 13 (legislative day, FEBRUARY 12), 2003.—Ordered to be printed

Mr. YOUNG of Florida, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.J. Res. 2]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H.J. Res. 2), "making further continuing appropriations for the fiscal year 2003, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Consolidated Appropriations Resolution, 2003".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this joint resolution is as follows:

- Sec. 1. Short title.*
- Sec. 2. Table of contents.*
- Sec. 3. References.*

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES PROGRAMS APPROPRIATIONS, 2003

- Title I—Agricultural Programs*
- Title II—Conservation Programs*
- Title III—Rural Development Programs*
- Title IV—Domestic Food Programs*
- Title V—Foreign Assistance and Related Programs*
- Title VI—Related Agencies and Food and Drug Administration*
- Title VII—General Provisions*

Retains language proposed by the Senate amending the Federal Fire Prevention and Control Act of 1974 by recognizing Alaska Village Initiatives as an eligible grantee for assistance.

Retains language proposed by the Senate authorizing the Secretary of the Department of Homeland Security to acquire 178.5 acres in Clarke and Loudoun Counties, Virginia.

Deletes language proposed by the Senate directing a long-term health study of emergency service personnel. The conferees have instead included a similar provision as an administrative provision under FEMA.

Deletes language proposed by the Senate amending permanent law to expand eligibility for Federal housing assistance to certain groups of aliens. The conferees direct the Department to work with the Department of Justice to develop any necessary technical corrections to applicable housing statutes with respect to qualified aliens who are the victims of domestic violence and Cuban and Haitian immigrants to ensure that such statutes are consistent with the Personal Responsibility and Work Opportunity Act of 1996 and the Illegal Immigration Reform and Personal Responsibility Act of 1996.

A provision was included in the Senate bill under Division I, Transportation and Related Agencies, directing EPA to contract with the National Academy of Sciences. The conferees have included an identical provision as an administrative provision under EPA.

Includes new language amending title 31 of the United States Code regarding passenger carrier use by the NASA Administrator.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 2003 recommended by the Committee of Conference, with comparisons to the fiscal year 2002 amount, the 2003 budget estimates, and the House and Senate bills for 2003 follow:

[In thousands of dollars]	
New budget (obligational) authority, fiscal year 2002	\$123,820,208
Budget estimates of new (obligational) authority, fiscal year 2003	124,979,700
House bill, fiscal year 2003	122,596,881
Senate bill, fiscal year 2003	121,925,545
Conference agreement, fiscal year 2003	121,927,337
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 2002	- 1,892,871
Budget estimates of new (obligational) authority, fiscal year 2003	- 3,052,363
House bill, fiscal year 2003	- 669,544
Senate bill, fiscal year 2003	+ 1,792

DIVISION L—HOMELAND SECURITY ACT OF 2002 AMENDMENTS

In implementing this agreement, the departments and agencies affected in this division shall comply with the language and instructions set forth in the Senate explanatory statement as delineated in the CONGRESSIONAL RECORD of January 15, 2003, page S838, that are not otherwise contradicted by the committee of conference.



U.S. Citizenship
and Immigration
Services

May 5, 2005

Patricia S. Arnaudo
Director
Office of Public Housing – Management & Occupancy Division
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 4220
Washington, D.C. 20410

Dear Ms. Arnaudo:

This is in response to your request for information regarding the procedures for verification of immigration status in connection with applications for public housing made by battered immigrants.

A requirement for immigration status verification appears at 8 U.S.C. § 1642 (section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) (PRWORA), as amended by section 504 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and by section 5572 of the Balanced Budget Act of 1996. This provision requires the Attorney General to promulgate regulations requiring verification that an applicant for most federal public benefits is a “qualified alien” and is eligible to receive the benefit. Four groups of battered immigrants benefited from this expansion:

- (1) Battered immigrants filing self-petitions under the immigration provisions of the Violence Against Women Act (VAWA), and VAWA cancellation of removal and suspension of deportation applicants;
- (2) Children included as derivatives in a battered immigrant’s self-petition;
- (3) Battered immigrants who were the beneficiaries of I-130 family-based visa petitions filed by U.S. citizen or lawful permanent resident spouses or parents; and
- (4) Battered immigrant conditional or lawful permanent residents who had previously been barred from access to public benefits by deeming.

Currently, States may use the Department of Homeland Security’s automated Systemic Alien Verification for Entitlements (SAVE) system, which conducts primary verification of an individual’s immigration status, to fulfill status verification requirements. However, victims of domestic violence who have applied for or who have been approved for immigration status through the immigration provisions of VAWA may not appear in the SAVE system due to confidentiality provisions that attach to VAWA cases. These provisions prohibit DHS from releasing any

information about battered immigrants to anyone without the immigrant's consent.¹ DHS has determined that placing in the SAVE system information regarding battered immigrants who have applied for or received immigration relief through the VAWA immigration provisions puts the protection of such confidential information at risk. There are, however, limited exceptions to the confidentiality provisions, one of which expressly permits the disclosure of information to Federal, State, and local agencies providing benefits solely for making determinations of eligibility for benefits as a "qualified alien."²

To comply with the special confidentiality provisions but also enable benefit-granting agencies to verify immigration status, DHS has developed an alternative system for such verification. An agency seeking immigration status verification may fax a request for verification to DHS's Vermont Service Center, the location where self-petitions filed by battered immigrants are adjudicated. The system may be used in cases involving the following battered immigrants:

- (1) Battered immigrants filing self-petitions under the immigration provisions of the Violence Against Women Act (VAWA), and VAWA cancellation of removal and suspension of deportation applicants; and
- (2) Battered immigrants who were the beneficiaries of I-130 family-based visa petitions filed by U.S. citizen or lawful permanent resident spouses or parents.

The following are acceptable forms of documents for battered immigrants seeking immigration verification:

- Copy of I-360 Approval Notice Self-Petitioning Spouse of U.S.C. or L.P.R.;
- Copy of I-360 Establishment of Prima Facie Case; or
- Copy of I-130 Approval Notice for Petition for Alien Relative

Please note that while USCIS will be able to verify that an individual is the beneficiary of an I-130, the agency will not be able to verify that the applicant has been battered or subjected to extreme cruelty because the I-130 petition is not a vehicle through which status as a battered spouse or child is determined. Applicants who present to your agency a copy of an I-130 approval notice should present to you evidence of battery or extreme cruelty and your agency should make that determination.

I am attaching the sample form that should be used when seeking immigration status verification for battered immigrants from the Vermont Service Center. This form should be faxed on requesting agency letterhead to (802) 527-4864. Please send a separate form for the battered immigrant and each of his or her children included in his or her application. Be sure to reference the parent's case number on the child's status verification request.

¹ Section 384(a)(2) of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, codified at 8 U.S.C. § 1367. Victims of domestic violence protected by this provision are those filing self-petitions under INA § 204, applicants for a battered spouse waiver pursuant to INA § 216(c)(4)(C), and applicants for VAWA cancellation of removal, formerly INA § 244(a)(3), now INA § 240A(b)(2).

² 8 U.S.C. § 1367(b)(5).

Patricia S. Arnaudo

Page 3

An affirmative response from USCIS may mean that the applicant is a “qualified alien” for purposes of benefits under section 431 of PWRORA. Before that final determination can be made, your agency would need to determine that there is a substantial connection between the battery or extreme cruelty and the need for the benefit as cited by section 501 of IIRIRA before the applicant could be determined to be a “qualified alien.”

If you have any questions or require additional information, please feel free to contact me at (202) 514-4754.

Sincerely,

Pearl B. Chang

Attachment

Rental Housing Programs

Public housing, Section 8, rural housing, and low-income tax credit housing

Rental housing programs provide...

- **Public housing.** Apartments owned by local public housing authorities that tenants typically rent for a maximum of 30 percent of household income. Local housing authorities administer this program under rules set out by the U.S. Department of Housing and Urban Development (HUD).
- **Project-based Section 8 housing.** Apartments owned by private landlords who receive subsidies from HUD on behalf of eligible tenants. Tenants typically pay 30 percent of their income for rent.
- **Section 8 vouchers.** Issued by public housing authorities to eligible households to rent apartments or homes from private landlords. The voucher guarantees a payment to the landlord from the local housing authority for the difference between the maximum subsidy and the tenant household's share, usually 30 percent of income. The rent for the unit may exceed the maximum subsidy. Local housing authorities administer this program under HUD rules.
- **Section 515 rural rental housing.** Apartments in rural areas served by the Rural Housing Service (RHS) under the U.S. Department of Agriculture. The apartments are owned by private landlords who receive subsidies from RHS on behalf of eligible tenants. Residents in heavily subsidized units typically pay 30 percent of household income for rent. Residents in minimally subsidized units pay rent based on the cost of operating the complex.
- **Section 514/516 farm labor housing.** Apartments built specifically for farmworkers and their families, and owned by private or public landlords who receive subsidies from the RHS on behalf of eligible tenants. Tenants pay 30 percent of household income if the units are heavily subsidized or a flat rent in nonsubsidized units.
- **Low Income Housing Tax Credit (LIHTC) housing.** Apartments owned by private landlords who receive tax benefits in return for renting some or all the units to eligible tenants. All the units have flat

rents that are regulated under the LIHTC program, which is administered by the Internal Revenue Service.

Individuals or households qualify if...

- generally, their household income is less than 80 percent of the area's median income for families of the same size. (However, the LIHTC program has higher income limits, and the RHS Section 514/516 farm labor housing program has no income limits. For public housing, project-based Section 8 housing, and the voucher program, there are preferences for families with incomes below 30 percent of the area median income.)
- family size matches an available unit.
- they are good tenants and, for units with flat rents, have sufficient income to pay their portion of the rent.
- (in some cases) they meet special building requirements, such as being a senior, a person with disabilities, or a current or retired farmworker.

Special considerations for immigrants and their families

- Receipt of housing assistance is not considered in "public charge" determinations.
- HUD-funded programs that provide emergency shelter and transitional housing (for up to two years) are available to all immigrants, regardless of status.

HUD public housing and Section 8 programs

- At least one person in the household must be eligible, based on his or her immigration status, to reside in the housing (the eligible person may be a minor child).
- Household members ineligible for housing assistance based on their immigration status may live in an assisted unit, but the household's subsidy will be prorated, resulting in a higher rent.
- Immigration documents will be verified for current tenants and new applicants, but not for household members who do not claim eligibility based on immigration status.

Rental Housing Programs	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
HUD Public Housing and Section 8 Programs	HUD Public Housing and Section 8 Programs
Lawful permanent residents (LPRs) Lawful temporary residents under the general amnesty program created by the Immigration Reform and Control Act of 1986 Refugees , asylees, and persons granted withholding of deportation/removal Victims of trafficking Parolees Citizens of Micronesia , the Marshall Islands , and Palau Abused immigrants and Cuban/Haitian entrants are arguably eligible for these programs and have been granted access to public housing in some jurisdictions	Immigrants not listed as eligible
Rural Housing Programs	Rural Housing Programs
Section 515 rural rental housing: All immigrants , regardless of status, unless the RHS issues new regulations Section 514/516 Farm Labor Housing: LPRs (immigration status requirement applies only to head of household)	Section 515 rural rental housing: None , unless the RHS issues new regulations Section 514/516 Farm Labor Housing: Families in which the head of household is neither a citizen nor an LPR
Tax Credit (LIHTC) Housing	Tax Credit (LIHTC) Housing
All immigrants , regardless of status	None

NOTE: Federal housing programs do not require reporting to the INS except in the rare circumstances outlined on page 184. Immigrants in households with eligible members need not reveal the precise immigration status that makes them ineligible—they can simply indicate that they do not claim to be eligible based on immigration status.

IMPORTANT: Households with ineligible family members that were receiving assistance before June 19, 1995, may continue to reside in the housing and receive subsidies without proration as long as:

- the household head or his or her spouse is eligible, *and*
- the ineligible members are either the children or parents of the household head or spouse, *and*
- any other household members (such as uncles, aunts, nieces, nephews, and cousins) are eligible, *and*

- the household was determined eligible for assistance without proration before November 29, 1996.

RHS Section 514/516 farm labor housing

- Households are eligible for RHS Section 514/516 farm labor housing as long as the tenant signing the lease is an agricultural worker and a citizen or lawful permanent resident.

To apply, a person should...

- for public housing and Section 8 vouchers, contact the local housing authority.
- generally, for Section 8 project-based housing, RHS rental and farm labor housing, and LIHTC housing, visit the manager’s office for each development.
- contact HUD, RHS, or a legal services office to find out where else to apply.

continued next page >

► *continued from preceding page*

The laws governing housing programs appear at:

42 U.S.C. §§ 1401, *et seq.*, 24 C.F.R. §§ 5.500, *et seq.*, 880.101, *et seq.*, 960.201, *et seq.*, 982.1, *et seq.* (public housing and section 8), 42 U.S.C. §§ 1471, 1484-1486, 7 C.F.R. §§ 1930.101, *et seq.*, 1944.151, *et seq.* (RHS housing), 26 U.S.C. § 42, 26 C.F.R. §§ 1.42-0, *et seq.* (LIHTC housing); immigrant eligibility at 42 U.S.C. § 1436a, 24 C.F.R. §§ 5.500, *et seq.* (public housing and section 8), 42 U.S.C. §§ 1471 (section 515 rural rental housing and section 514/516 farm labor housing), 1484(f)(3) and 1486(g)(4) (section 514/516 farm labor housing), 7 C.F.R. § 1944.153 (section 514/516 farm labor housing); *see also* “Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions on Federal Means-Tested Public Benefits,” 65 Fed Reg. 49,994–95 (Aug. 16, 2000) (no HUD programs fall within the category of “federal means-tested public benefits”). *Important case: Yolano Donnelly Tenant Ass’n v. Pierce*, No. CIV S 86-0846 MLS (E.D. Cal. Sept. 18, 1986).

B. Health and HHS Funded Programs

- 1. HHS Funded Programs Open to All Immigrants**
- 2. CMS Memo on Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women**
- 3. Additional Resource Materials**

16.1

HHS Funded Programs Open to all Immigrants

Generally speaking, any HHS funded program that has not been classified by HHS as a “Federal Public Benefit” is open to all persons without regard to their immigration status. This memo contains the following program lists:

- Section 1 lists programs funded by HHS that are open only to qualified immigrants
- Section 2 lists programs funded by HHS that are open to all persons without regard to their immigration status
- Section 3 lists additional programs open to all persons without regard to their immigration status

SECTION 1: PROGRAMS OPEN ONLY TO QUALIFIED IMMIGRANTS

Currently, only thirty-one HHS funded programs have been classified as Federal Public Benefits. They are¹

Program Name	Eligibility
Adoption Assistance	Qualified immigrants only
Administration on Developmental Disabilities (ADD)—	Qualified immigrants only
State Developmental Disabilities Councils (direct services only)	Qualified immigrants only
Special Projects (direct services only)	Qualified immigrants only
University Affiliated Programs	Qualified immigrants only
Adult Programs/Payments to Territories	Qualified immigrants only
Agency for Health Care Policy and Research Dissertation Grants	Qualified immigrants only
Child Care and Development Fund	Qualified immigrants only
Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse	Qualified immigrants only
Foster Care	Qualified immigrants only
Health Profession Education and Training Assistance	Qualified immigrants only
Independent Living Program	Qualified immigrants only
Job Opportunities for Low Income Individuals (JOLI)	Qualified immigrants only
Low Income Home Energy Assistance Program (LIHEAP)	Qualified immigrants only
Medicare	Qualified immigrants only

¹ HHS Interpretation of PRWORA “Federal Public Benefit”, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

Immigration Relief for Child Sexual Assault Survivors

Mental Health Clinical Training Grants	Qualified immigrants only
Native Hawaiian Loan Program	Qualified immigrants only
Refugee Cash Assistance	Qualified immigrants only
Refugee Medical Assistance	Qualified immigrants only
Refugee Preventive Health Services Program	Qualified immigrants only
Refugee Social Services Formula Program	Qualified immigrants only
Refugee Social Services Discretionary Program	Qualified immigrants only
Refugee Targeted Assistance Formula Program	Qualified immigrants only
Refugee Targeted Assistance Discretionary Program	Qualified immigrants only
Refugee Unaccompanied Minors Program	Qualified immigrants only
Refugee Voluntary Agency Matching Grant Program	Qualified immigrants only
Reparation Program	Qualified immigrants only
Residential Energy Assistance Challenge Option (REACH)	Qualified immigrants only
Social Services Block Grants	Qualified immigrants only
State Chile Health Insurance Program (SCHIP)	Qualified immigrants only
Temporary Assistance for Needy Families (TANF)	Qualified immigrants only

Immigration Relief for Child Sexual Assault Survivors

SECTION 2: PROGRAMS OPEN TO ALL IMMIGRANTS

Programs Designed to Address the Specific Needs of Children and Families

	Website and Contact Information	Eligibility Requirements Unrelated to Immigration Status or Program Description	Eligibility
Abandoned Infants Assistance Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/aban_infant.htm 800.394.3366	Applicants: Public and private non-profit agencies are eligible to apply for these discretionary grants. Program Beneficiaries: Abandoned infants without regard to the infant's immigration status	All immigrants regardless of immigration status
Child Abuse and Treatment Act Research and Demonstration Project	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/captad.htm 800.394.3366	Projects have focused on every aspect of the prevention, identification, investigation, assessment and treatment of child abuse and neglect. Applicants: Grants are provided to State and local agencies and organizations as well as university—and hospital—affiliated programs.	All immigrants regardless of immigration status
Abandoned Infants Assistance Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/aban_infant.htm 800.394.3366	Applicants: Public and private nonprofit agencies are eligible to apply for these discretionary grants. Program Beneficiaries: Abandoned infants without regard to the infant's immigration status	All immigrants regardless of immigration status
Child Abuse and Treatment Act Research and Demonstration Project	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/captad.htm 800.394.3366	Projects have focused on every aspect of the prevention, identification, investigation, assessment and treatment of child abuse and neglect. Applicants: Grants are provided to State and local agencies and organizations as well as university and hospital affiliated programs	All immigrants regardless of immigration status
Community Based Child Abuse Prevention Program (CBCAP)	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/community.htm 800.394.3366	Discretionary grants may be awarded to selected Indian tribes, tribal organizations, and migrant programs to develop linkages with the statewide CBCAP program and/or to provide services otherwise consistent with the purposes of the CBCAP.	All immigrants regardless of immigration status
Compassion Capital Fund (CCF)	http://www.acf.hhs.gov/programs/ocs/ccf/ 800.422.4453	Eligibility requirements vary for the three grant programs funded by the CCF (The CCF Demonstration Program, The CCF Targeted Capacity Building Program, The CCF Communities Empowering Youth Program).	All immigrants regardless of immigration status
Head Start	http://www.acf.hhs.gov/programs/ohs/ or http://eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices/ 800.311.3435	You must be a parent or primary caregiver responsible for a child who is too young for public school. Income caps apply.	All immigrants regardless of immigration status
Mentoring Children of Prisoners Program	http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/mcpcfactsheet.htm 301.608.8098	Grant recipients are required to cultivate mentors from within the child's family and community through recruitment, screening, training, and monitoring and evaluation.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

Promoting Safe and Stable Families (PSSF)	http://www.acf.hhs.gov/ebrochure/childwelfare.htm	You must be a parent or primary caregiver responsible for a child(ren) under the age of 19 years, and you must need help to ensure the child(ren) is not separated from your home.	All immigrants regardless of immigration status
Children's Bureau Grant Programs (nondirect service components)	http://www.acf.hhs.gov/programs/cb/grants/gene ral/cb_grant.htm 800.394.3366	The Children's Bureau and ACYF fund service demonstration, research, technical assistance, and training projects focused on knowledge development and knowledge transfer in the areas of adoption, foster care and child maltreatment.	All immigrants regardless of immigration status
Youth Information, Training & Resource Centers	http://www.addyic.org/ or http://www.acf.hhs.gov/programs/add/states/youth_map.html	These youth grantees are undertaking projects which enable them to design and demonstrate youth information, training and resource centers for youth and emerging leaders with developmental disabilities.	All immigrants regardless of immigration status
Child Abuse and Neglect State Grants	http://www.acf.hhs.gov/programs/cb/grants/state_tribal/capta.htm 800.394.3366	To improve the national, State, community and family activities for the prevention, assessment, identification, and treatment of child abuse and neglect through research, demonstration service improvement, information dissemination, and technical assistance.	All immigrants regardless of immigration status
Child Support Enforcement Program (CSE)	http://www.acf.hhs.gov/opa/factsheets/cse_factsheet.html 202.401.9373	To assure that assistance in obtaining support (both financial and medical) is available to children through locating parents, establishing paternity and support obligations, and enforcing those obligations.	All immigrants regardless of immigration status
Child Welfare Training	http://www.acf.hhs.gov/programs/cb/grants/discretionary/cw_training.htm	This program upgrades the skills, knowledge and qualifications of prospective and current child welfare agency staff and supports special projects for training personnel to work in the field of child welfare. These discretionary grants are awarded to public and private nonprofit institutions of higher learning and are designed to assist State child welfare agencies in developing a stable and highly skilled workforce for providing effective child welfare services. Further, the Child Welfare Discretionary Grant Projects develop and maintain a strong UniversityPublic Agency Partnership toward the goal of identifying and developing the appropriate staff competencies.	All immigrants regardless of immigration status
Substance Abuse and Mental Health Services Administration (SAMSHA)			
Safe Schools/ Healthy Students Initiative	http://mentalhealth.samhsa.gov/schoolviolence/ 800.370.2943	Grants are available to local education authorities.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Substance Abuse and Mental Health Services Administration (SAMSHA)

Campus Suicide Prevention Grants	https://extranet.acf.hhs.gov/hhsgrantsforecast/index.cfm?switch=grant.view&gff_grants_forecastInfoID=10935 800.789.2647	Campus Suicide grants facilitate a comprehensive approach to preventing suicide in institutions of higher education. Public and State controlled institutions of higher education are eligible to apply.	All immigrants regardless of immigration status
Comprehensive Mental Health Services Program for Children and Their Families	http://mentalhealth.samhsa.gov/publications/allpubs/CA0013/default.asp 800.789.2647	Communities are given flexibility in how they organize their systems of care approach to meet the needs of their children and families. However, each of these grantfunded programs must include families as partners in designing the system of service delivery.	All immigrants regardless of immigration status
National Suicide Prevention Lifeline	http://www.suicidepreventionlifeline.org 1.800.273.TALK (8255)	The National Suicide Prevention Lifeline is a 24-hour, tollfree suicide prevention service available to anyone in suicidal crisis.	All immigrants regardless of immigration status
National Center for Trauma Informed Care	http://mentalhealth.samhsa.gov/nctic/default.asp 1. 866.254.4819	NCTIC offers consultation and technical assistance, education and outreach, and resources to support the creation of traumainformed environments with traumaspecific interventions that support consumers and survivors.	All immigrants regardless of immigration status
Partners for Recovery (PFR)	http://pfr.samhsa.gov/index.html	The PFR initiative supports and provides technical resources to those who deliver services for the prevention and treatment of substance use and mental health disorders and seeks to build capacity and improve services and systems of care.	All immigrants regardless of immigration status
The Protection and Advocacy for Individuals with Mental Illness Program (PAIMI)	http://mentalhealth.samhsa.gov/cmhs/P&A/default.asp 202.619.0257 or 1.877.696.6775 (toll free)	You or a family/household member must be facing mental illness and you must be a resident or in the process of becoming a resident of a facility rendering care or treatment.	All immigrants regardless of immigration status
The Recovery Community Services Program	http://rcsp.samhsa.gov/	RCSP grant projects design and deliver peertopeer recovery support services to help individuals in their communities initiate and sustain recovery and gain overall wellness.	All immigrants regardless of immigration status
SAMHSA Access to Recovery (ATR)	http://atr.samhsa.gov/	The selected grantees have designed their approach and targeted efforts to areas of greatest need, areas with a high degree of readiness, and to specific populations, including adolescents.	All immigrants regardless of immigration status
SAMHSA Disaster Relief Information	http://mentalhealth.samhsa.gov/disasterrelief/about.aspx	The SAMHSA website provides documents and resources for any person with or at risk for mental and substance abuse disorders.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

<p>Substance Abuse Prevention and Treatment Block Grants (SAPTBG)</p>	<p>http://www.samhsa.gov/grants/blockgrant/</p>	<p>You must need assistance or guidance regarding prevention of substance abuse or treatment of drug or alcohol dependency. You must also be either the parent or primary caregiver to a child(ren) under the age of 19 years, or you or any member of your family/household must be pregnant.</p>	<p>All immigrants regardless of immigration status</p>
<p>Suicide Prevention Resource Center</p>	<p>http://www.sprc.org/ 1.877.GETSPRC (438.7772)</p>	<p>Home of over 490 web pages and 250 library resources on suicide prevention information. Visitors can find a range of information from suicide prevention and mental health news to strategic tools for developing suicide prevention programs.</p>	<p>All immigrants regardless of immigration status</p>

Immigration Relief for Child Sexual Assault Survivors

PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Consolidated Health Centers	http://bphc.hrsa.gov/ Find a Health Center: http://findahealthcenter.hrsa.gov	Federally funded health centers provide a schedule of discounts corresponding to established charges for individuals with incomes at or below 200% of the Federal Poverty Guidelines.	All immigrants regardless of immigration status
Family Planning Services	http://www.hhs.gov/opa/index.html http://www.opaclearinghouse.org/db_search.asp 240.453.2888	Must characterize your financial situation as low income or as very low income. You or your family/household member must be pregnant, or you must be a parent or primary caregiver responsible for children under the age of 19 years.	All immigrants regardless of immigration status
Immunization Grants	http://www.cdc.gov/vaccines/programs/vfc/contactsstate.htm 800.CDC.INFO	You must be under the age of 19 years. You must also need financial assistance for health care/insurance costs, or you, your spouse, parents or children must receive or be eligible to receive Medicare, or you must be Native American/American Indian and you or your family member must be enrolled in a federally recognized American Indian tribe or Alaskan Native village.	All immigrants regardless of immigration status
Medicaid for an Emergency Medical Condition	http://www.cms.hhs.gov/EMTALA/01_overview.asp 800.575.WELL	Must be medical treatment for an emergency medical condition (EMC), including active labor and severe pain	All immigrants regardless of immigration status
Infant Adoption Awareness Training Program	http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/iaatp.htm 800.394.3366	Awards grants to adoption organizations to develop and implement programs to train the designated staff of eligible health centers in providing adoption information and referral to pregnant women on an equal basis with all other courses of action included in nondirective counseling for pregnant women.	All immigrants regardless of immigration status
The Ryan White HIV/AIDS Program	http://hab.hrsa.gov/default.htm 800.458.5231	You or your family/household members must have HIV (human immunodeficiency virus) or AIDS (acquired immune deficiency syndrome) and characterize your financial situation as low income or very low income.	All immigrants regardless of immigration status
Community Food & Nutrition Program (CFN)	http://www.acf.hhs.gov/programs/fbci/progs/fbci_cfn.html 800.281.9519	The Community Food and Nutrition Program is designed to improve the health and nutrition status of low-income people by increasing and improving access to, or information about, healthy, nutritious foods.	All immigrants regardless of immigration status

Immigration Relief for Child Sexual Assault Survivors

PROGRAMS TO PROMOTE SUICIDE PREVENTION AND MENTAL HEALTH

Family Violence Prevention Service (FVPA)	http://www.acf.hhs.gov/programs/fysb/content/familyviolence/index.htm 800.799.SAFE	You must be the victim of domestic violence in need of aid to obtain decent, safe, and/or sanitary housing	All immigrants regardless of immigration status
Homelessness Resource Center	http://www.nrchmi.samhsa.gov/ 800.444.7415	An interactive community of providers, consumers, policymakers, researchers, and public agencies at federal, state, and local levels. The center shares stateofthe art knowledge and promising practices to prevent and end homelessness through: training and technical assistance; publications and materials; online learning opportunities; networking and collaboration.	All immigrants regardless of immigration status
Maternity Group Homes for Pregnant and Parenting Youth	http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/mghfactsheet.htm 301.608.8098	The MGH Program supports homeless pregnant and parenting young people between the ages of 16 and 21, as well as their dependant children. Services are provided for up to 18 months, and an additional 180 days is allowed for youth under 18 years old.	All immigrants regardless of immigration status
Projects for Assistance in Transition from Homelessness	http://www.pathprogram.samhsa.gov	You must be homeless/live in a shelter and you or any of your family/household members must be facing mental illness.	All immigrants regardless of immigration status
Street Outreach Program (SOP)	http://www.1800runaway.org 301.608.8098	In order to qualify for this benefit program, you must be less than 22 years of age living on the street.	All immigrants regardless of immigration status
Support Services for Runaway and Homeless Youth Basic Centers	http://www.acf.hhs.gov/programs/fbci/progs/fbci_rhyouth.html 202.205.8306 Find a Center: http://www.1800runaway.org	Any State, unit of local government, public or private agency, Indian Tribe, organization, or institution is eligible to apply for these discretionary funds	All immigrants regardless of immigration status
Transitional Living Program for Homeless Youth	http://www.ncfy.com/ 301. 608.8098 http://www.1800runaway.org	You must be between the ages of 16 and 21 years of age and you must either be homeless or live in a shelter.	All immigrants regardless of immigration status

**PROGRAMS ADDRESSING DOMESTIC VIOLENCE,
SEXUAL ASSAULT, AND HUMAN TRAFFICKING**

National Domestic Violence Resource Network	http://www.acf.hhs.gov/programs/fysb/content/familyviolence/network.htm 800.537.2238	The Network is operated by the Pennsylvania Coalition Against Domestic Violence and provides information and resources, policy development, and technical assistance designed to enhance community response to and prevention of domestic violence.	All immigrants regardless of immigration status
National Sexual Assault Hotline	http://www.rainn.org/ 800.656.HOPE (4673)	This nationwide partnership of more than 1,100 local rape treatment hotlines provides victims of sexual assault with free, confidential services around the clock.	All immigrants regardless of immigration status
Rescue and Restore Victims of Human Trafficking Regional Program	http://www.acf.hhs.gov/grants/open/HHS2009.ACFORRZV0027.html 1.888.373.7888	Eligibility is open to all types of domestic applicants other than individuals.	All immigrants regardless of immigration status

MULTI-FACETED AND MISCELLANEOUS PROGRAMS

Administration on Developmental Disabilities (ADD) University Affiliated Programs (nonclinical disability assessment)	http://orsaminore.dreamhosters.com/handy/documenti/cfda/p93632.htm 202.690.6590	All immigrants regardless of immigration status
ADD Protection and Advocacy for Individuals with Developmental Disabilities (PADD)	http://www.acf.hhs.gov/programs/add/states/pnafactsheet.html http://www.acf.hhs.gov/programs/add/states/pas.html 202.690.5905	All immigrants regardless of immigration status
ADD State Developmental Disabilities Councils (nondirect service components)	http://www.acf.hhs.gov/programs/add/states/councilfactsheet.html http://www.acf.hhs.gov/programs/add/states/ddcs.html 202.690.6590	All immigrants regardless of immigration status
ADD Special Projects	http://www.acf.hhs.gov/programs/add/ 202.690.6590	All immigrants regardless of immigration status
Community Economic Development (CED) Program Grants	http://www.acf.hhs.gov/programs/ocs/ced/index.html 202.401.5663	All immigrants regardless of immigration status
Community Services Block Grant (CSBG)	http://www.acf.hhs.gov/programs/ocs/csbg/	All immigrants regardless of immigration status
Rural Community Facilities	http://www.acf.hhs.gov/programs/ocs/rf/fact_sheet.html	All immigrants regardless of immigration status

SECTION 3

In addition to these programs, certain offices in HHS have discretionary grants that vary from time to time. To find a listing of current opportunities, visit the offices' websites.

- Administration for Children & Family (ACF) Discretionary Grants <http://www.acf.hhs.gov/grants/open.html>
- Administration on Aging (AoA) Funding Opportunities <http://www.aoa.gov/doingbus/fundopp/fundopp.aspx>
- Center for Disease Control and Prevention Grants (CDC) <http://www.cdc.gov/od/pgo/funding/grants/grantmain.shtm>
- Health Resources and Services Administration <http://www.hrsa.gov/grants/default.htm>
- Maternal and Child Health Bureau (MCHB) Discretionary Grants <http://mchb.hrsa.gov/grants/default.htm>
- SAMHSA Grants <http://www.samhsa.gov/grants/2009/fy2009.aspx>
- Administration for Native American Programs http://www.acf.hhs.gov/programs/ana/programs/program_information.html
- Family and Youth Services Bureau Funding (nondirect services components)
http://www.acf.hhs.gov/grants/grants_fysb.html

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap



Center for Medicaid, CHIP and Survey & Certification

SHO # 10-006
CHIPRA # 17

July 1, 2010

Re: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women

Dear State Health Official:

This letter is one of a series that provides guidance on implementation of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. Section 214 of CHIPRA permits States to cover certain children and pregnant women in both Medicaid and the Children’s Health Insurance Program (CHIP) who are “lawfully residing in the United States” as described in section 1903(v)(4) and 2107(e)(1)(J) of the Social Security Act (the Act). The section 214 option may be applied to pregnant women in Medicaid and CHIP and/or to children up to age 19 for CHIP or up to age 21 for Medicaid (including targeted low-income children described in section 1905(u)(2)(B) of the Act).

Background

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193), placed limitations on Federal funding for health coverage of immigrant families. Section 403 of PRWORA imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid. Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition as described in section 1903(v)(2)(A) of the Act. The 5-year waiting period also applied to children and pregnant women under CHIP. Note that PRWORA did not affect eligibility of undocumented aliens; people who are undocumented were not eligible for Medicaid (except for emergency services) before PRWORA, and remain ineligible under CHIPRA.

Coverage Option Under CHIPRA

Section 214 of CHIPRA amends section 2107 of the Act to grant States the option to provide Medicaid and CHIP coverage to all children and pregnant women (including women covered during the 60-day postpartum period) “who are lawfully residing in the United States... and who are otherwise eligible for such assistance,” as described in section 1903 of the Act. States may

elect to cover these groups under Medicaid only or under both Medicaid and CHIP. The law does not permit States to cover these new groups only in CHIP, without also extending the option to Medicaid.

While the phrase “lawfully residing in the United States” has not previously been used when describing individuals who could be eligible for Medicaid and CHIP, it has been used in various other contexts, such as by the United States Department of Agriculture (USDA) and the Social Security Administration (SSA).

For example, for purposes of determining whether certain individuals are eligible to receive food stamps (now called the Supplemental Nutrition Assistance Program (SNAP)), regulations at 7 CFR 273.4(a)(7) state that “lawfully residing in the U.S.” means that the individual is lawfully present as defined in regulations at 8 CFR 103.12(a). Likewise, for purposes of Title II benefits under SSA, “lawfully residing in the U.S.” means that an individual is “lawfully present” as defined by 8 CFR 103.12(a) and is a resident of the U.S. as defined in SSA regulations and program instructions. In both of these programs, the terms “lawfully residing” and “lawfully present” are broader than the term “qualified alien” in section 431 of PRWORA (8 U.S.C. § 1641) with respect to immigration status (the term “qualified alien” does not include residence-based criteria). We have looked to these programs to assist us in defining “lawfully residing” for purposes of implementing section 214 of CHIPRA.

In interpreting “lawfully residing,” we will rely on existing immigration regulations for the purpose of defining lawful presence and longstanding Medicaid rules to establish residency. In other words, the “residing” part of the “lawfully residing” requirement is construed as synonymous with the longstanding Medicaid residency requirement, rather than as requiring a separate and redundant residency determination for the sole purpose of determining “lawful residence.” For example, a nonimmigrant visitor for business or pleasure may be lawfully present under immigration regulations, but not meet Medicaid or CHIP residency requirements, and therefore will not be able to qualify for Medicaid or CHIP.

Lawfully Present

Children and pregnant women that fall into one of the categories below will be considered lawfully present. Therefore, these individuals are eligible for Medicaid and CHIP coverage if the State elects the new option under CHIPRA, and the child or pregnant woman meets the State residency requirements and other Medicaid or CHIP eligibility requirements.

The basis of our construction of lawful presence is the broad definition provided in DHS regulations at 8 CFR 103.12(a) for the specific purpose of Title II Social Security benefits, with some revisions necessary for updating or clarifying purposes, or as otherwise deemed appropriate for the Medicaid and CHIP programs consistent with the Act.

A child or pregnant woman shall be considered lawfully present if he or she is:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (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;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));

- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or
- (9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

Under CHIPRA, a State electing to cover children or pregnant women who are considered to be lawfully residing in the U.S. must offer coverage to all such individuals who meet this definition of lawfully residing, and may not cover a subgroup or only certain groups (e.g., only the PRWORA group of qualified aliens, or only citizens of Compact of Free Association nations, or only aliens residing for a specified period, such as 3 years).

Residency

Children and pregnant women who meet the definition set forth above of “lawfully present” also must be residents of the State in which they are applying in order to qualify for Medicaid or CHIP. An individual would not be eligible for Medicaid or CHIP, even if he or she is considered to be lawfully present in the U.S., if the individual is not a resident of the State, as the individual would not be considered as either “lawfully residing” in the U.S. or as a State resident. At the same time, an individual would be eligible for Medicaid and CHIP if he or she is considered to be lawfully present in the U.S. and is a State resident, even if the individual’s current immigration status is of a temporary nature (such as TPS). Implementing regulations at 42 CFR 435.403 specify State residence in Medicaid to mean living in a State and having the intent to remain permanently for an indefinite period. Each individual should have an opportunity to establish that he or she lives in the State and intends to remain there.

Sponsor Deeming and “Public Charge”

The alien sponsor deeming requirements described in section 421 of PRWORA may not be applied to individuals covered under the new CHIPRA section 214 option. A sponsor’s income and resources are not considered when determining eligibility. In addition, no debt will be created for the sponsor by any services provided to such individuals who have been found eligible for Medicaid or CHIP. The cost of Medicaid or CHIP assistance will not be considered as an unreimbursed cost associated with the “public charge” provisions.

Eligibility Determinations and Redeterminations

Under CHIPRA, a State electing to cover children or pregnant women who are considered to be lawfully residing in the U.S. must offer coverage to all such individuals who meet this definition of lawfully residing, and may not cover a subgroup or only certain groups (e.g., only the PRWORA group of qualified aliens, or only citizens of Compact of Free Association nations, or only aliens residing for a specified period, such as 3 years).

States that elect the new option under CHIPRA must verify that the individual meets the definition of lawfully residing in the U.S. at the time of application, according to the rules established under section 1137(d) of the Act. Eligibility also must be verified at renewal. Consistent with other Medicaid requirements, the State should first rely on information provided at the time of initial application under the rules established at section 1137(d) to determine ongoing eligibility. States should only require the individual to provide further documentation or to re-verify satisfactory status if the State cannot verify continued eligibility based on the information already available to the State.

State Plan Amendments

A State may elect the section 214 CHIPRA option by submitting a State plan amendment (SPA) under Medicaid only or amendments under both Medicaid and CHIP. Section 214 of CHIPRA does not permit the application of this option under CHIP only. Attached are two draft State plan templates that States can use to elect the section 214 option under Medicaid and CHIP. States electing to provide CHIP coverage of children and/or pregnant women must submit concurrent CHIP and Medicaid SPAs to CMS for consideration. Also, a State must choose whether to adopt this option for children (all children up to age 19 for CHIP or up to age 21 for Medicaid), pregnant women, or both.

Federal Financial Participation

Because this is a new eligibility group, children up to age 19 covered under the section 214 option (at any income level) are considered targeted low-income children under section 2110(b) of the Act. As such, claims paid on behalf of children eligible under the new option created by section 214 may be matched at the enhanced title XXI match rate, regardless of whether the child is covered through Medicaid or a separate CHIP program. States also have the option under Section 115 of CHIPRA to claim regular Medicaid Federal Financial Participation (FFP) for the children enrolled in Medicaid or a CHIP-funded Medicaid expansion.

Medicaid eligible individuals for whom the State receives FFP at the CHIP enhanced rate and who would be subject to the 5-year waiting period under section 403 of PRWORA, must be claimed at the Medicaid FFP rate once these children have met the 5-year waiting period. For example, a child who entered the country on November 1, 2008 as a “qualified alien” (under section 431 of PRWORA) may be claimed at the enhanced rate until October 31, 2013, the end of the 5-year waiting period for that child. Subsequently, a State must cover this child using title XIX funds. Therefore, States that choose to claim the title XXI enhanced match must have a process for tracking these children in order to determine when the regular matching rate would come into effect. States may continue to claim enhanced title XXI enhanced matching for children under age 19 who are lawfully residing in the U.S. and who are not considered qualified aliens under PRWORA as described above.

For all others who obtain Medicaid coverage due to this option, which includes children ages 19 to 21, and pregnant women enrolled in Medicaid, FFP is available at the Medicaid matching rate. The increased Federal medical assistance percentage, as described under the American Recovery and Reinvestment Act of 2009, will apply to medical assistance payments for this population. Pregnant women covered under the new CHIPRA pregnant women option (section 111) under a CHIP plan will qualify for the CHIP enhanced match rate.

CMS looks forward to its continued work with States on the implementation of the CHIPRA eligibility expansion to lawfully residing pregnant women and children. Thank you for your continued commitment to providing health coverage through these critical programs. If you have questions regarding this letter, please contact Victoria Wachino, Director, Family and Children's Health Programs Group, at 410-786-5647.

Sincerely,

Cindy Mann

Enclosures
State Plan Amendment templates

cc:
CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Page 7 – State Health Officials

Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy

Enclosure

Section 4. Eligibility Standards and Methodology – Expanding Coverage to Individuals Lawfully Residing in the US

Section 4. Eligibility Standards and Methodology

4.1.10 _____ Check if the State is electing the option under section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) to provide coverage to the following otherwise eligible pregnant women and children as specified below who are lawfully residing in the United States including the following:

A child or pregnant woman shall be considered lawfully present if he or she is:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;

- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (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;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or
- (9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

_____ **The State elects the CHIPRA section 214 option for children up to age 19**

_____ **The State elects the CHIPRA section 214 option for pregnant women through the 60-day postpartum period**

4.1.10.1_____ The State provides assurance that for individuals whom it enrolls in CHIP under the CHIPRA section 214 option that it has verified, both at the time of the individual’s initial eligibility determination and at the time of the eligibility redetermination, that the individual continues to be lawfully residing in the United States. The State must first attempt to verify this status using information provided at the time of initial application. If the State cannot do so from the information readily available, it must require the individual to provide documentation or further evidence to verify satisfactory immigration status in the same manner as it would for anyone else claiming satisfactory immigration status under section 1137(d) of the Act.

Revision: CMS-PM-

ATTACHMENT 2.6-A

Page 2

OMB No.:

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State**

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Citation(s)	Condition or Requirement
42 CFR 435.406	<p>3. Is residing in the United States (U.S.), and--</p> <ul style="list-style-type: none">a. Is a citizen or national of the United States;b. Is a qualified alien (QA) as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended, and the QA’s eligibility is required by section 402(b) of PRWORA as amended, and is not prohibited by section 403 of PRWORA as amended;c. Is a qualified alien subject to the 5-year bar as described in section 403 of PRWORA, so that eligibility is limited to treatment of an emergency medical condition as defined in section 401 of PRWORA;d. Is a non-qualified alien, so that eligibility is limited to treatment of an emergency medical condition as defined in section 401 of PRWORA;e. Is a QA whose eligibility is authorized under section 402(b) of PRWORA as amended, and is not prohibited by section 403 of PRWORA as amended.<ul style="list-style-type: none"><input type="checkbox"/> State covers all authorized QAs.<input type="checkbox"/> State does not cover authorized QAs.f. State elects CHIPRA option to provide full Medicaid coverage to otherwise eligible pregnant women or children as specified below who are aliens lawfully residing in the United States; including the following:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (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;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

(9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

___ Elected for pregnant women.
___ Elected for children under age ____.

g. ____ The State provides assurance that for an individual whom it enrolls in Medicaid under the CHIPRA section 214 option, it has verified, at the time of the individual’s initial eligibility determination and at the time of the eligibility redetermination, that the individual continues to be lawfully residing in the United States. The State must first attempt to verify this status using information provided at the time of initial application. If the State cannot do so from the information readily available, it must require the individual to provide documentation or further evidence to verify satisfactory immigration status in the same manner as it would for anyone else claiming satisfactory immigration status under section 1137(d) of the Act.

TN No: _____ Approval Date _____ Effective Date _____
Supersedes
TN No. _____

- 1) *A Quick Guide to Immigrant Eligibility for ACA and Key Federal Means-tested Programs*, National Immigrant Law Center (Jan. 29, 2013), <http://nilc.org/search.html?act=now&srch=a+quick+guide>

Summary: This table lists several federally funded programs and provides an overview of the types of immigrants that will qualify for each benefit.

- 2) *“Lawfully Present” Individuals Eligible under the Affordable Care Act*, National Immigrant Law Center (Sept. 2012), <http://www.nilc.org/ACAfacts.html>.

Summary: This document provides a description of the immigrants who are considered lawfully present under the Affordable Care Act (ACA), and the coverage options that they will qualify for.

- 3) *“Lawfully Residing” Children and Pregnant Women Eligible for Medicaid and CHIP*, National Immigrant Law Center (Sept. 2012), <http://www.nilc.org/lawfullyresiding.html>

Summary: This document lists the immigration categories that are considered “lawfully present” for Medicaid and CHIP eligibility purposes.

- 4) *Children of Immigrants and Healthcare Coverage*, First Focus (Mar. 2011), <http://www.firstfocus.net/library/fact-sheets/children-of-immigrants-and-healthcare-coverage>

Summary: This document describes programs such as the Children’s Health Insurance Program Reauthorization Act (CHIPRA) and the Affordable Care Act (ACA), and how these laws can help children in low-income families.

- 5) *FREQUENTLY ASKED QUESTIONS Exclusion of Youth Granted “Deferred Action for Childhood Arrivals” from Affordable Health Care*, National Immigrant Law Center (Sept. 2013), <http://www.nilc.org/acadacafaq.html>.

Summary: This document describes the restricted access to healthcare received by certain class of people, when these restrictions go into effect, the care DACA-eligible people have access to in terms of health insurance, and the key policy concerns in terms of health restrictions.

- 6) *FREQUENTLY ASKED QUESTIONS The Affordable Care Act & Mixed-Status Families*, National Immigrant Law Center (Oct. 2013), <http://www.nilc.org/ACAfacts.html>.

Summary: This document describes the meaning of a mixed family; people who are eligible to get a DACA status in a mixed family; coverage provided by the Affordable Care Act, CHIP, and Medicaid for members who qualify for a mixed family status; and other avenues for immigrants who do not have SSN or may not be eligible for one.

- 7) *Documents Typically Used by Lawfully Present Immigrants*, National Immigrant Law Center (Oct. 2013), <http://www.nilc.org/lawfullyresiding.html>.

Summary: This chart lists the various types of documents a person depending on their immigration status.

C. Education

- 1. Student Aid Eligibility - Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act**
- 2. 2009-2010 FAFSA on the Web (FOTW) Home Page and Related Questions**
- 3. Chapter 28: Higher Education Resources And Student Assistance Programs Student Assistance General Provisions Relating To Student Assistance Programs**
- 4. U.S. Immigration and Customs Enforcement Student and Exchange Visitor Program Overview**
- 5. U.S. Immigration and Customs Enforcement Letter to Special Attorney Deputy General of North Carolina Department of Justice, Mr. Thomas Ziko**

Publication Date: June 4, 2010

DCL ID: GEN-10-07

Subject: Student Aid Eligibility - Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act

Summary: This letter describes the process by which a person who has documentation provided by the Department of Homeland Security’s United States Citizenship and Immigration Service that supports a finding that the person is a “Battered Immigrant” and meets the definition of a “qualified alien” can qualify for Title IV, HEA program assistance.

Dear Colleague:

Background:

Under certain conditions and with the documentation described below, some non-U.S. citizens who are “Battered Immigrants-Qualified Aliens” and their designated children may receive federal student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA).

Normally, when a U.S. citizen (or lawful permanent resident) marries an alien and wishes to bring his or her spouse to the U.S., the U.S. citizen petitions the Department of Homeland Security’s (DHS’s) United States Citizenship and Immigration Service (USCIS) office so the alien spouse may legally reside in the U.S. However, sometimes in the case of domestic violence, the abusing citizen-spouse threatens the alien-spouse and/or controls the petitioning process. Immigrants who are spouses of U.S. citizens or spouses of lawful permanent residents, and who are victims of domestic violence, as determined by the USCIS, may be deemed “qualified aliens,” which under the Violence Against Women Act (VAWA) makes them and their designated children eligible for “federal public benefits,” including federal student financial assistance under Title IV of the HEA. The VAWA allows the battered immigrant to self-petition the USCIS for such a determination without the cooperation or knowledge of the abuser.

Due to confidentiality concerns,¹ information about such battered immigrants is not maintained in the Department of Homeland Security’s Systematic Alien Verification for Entitlements system that is generally used for computer matching between the Department of Education (ED) and DHS. Instead, DHS has a unit separate from its central or regional offices that maintains information on VAWA Battered Immigrants.

As a result, the submission of a Free Application for Federal Student Aid (FAFSA) by a Battered Immigrant-Qualified Alien will not yield a positive match

with DHS. Also, the collection from the applicant by a postsecondary educational institution of USCIS-provided documentation and its submission to the local USCIS office with a G-845S Document Verification Request form, as provided for other types of eligible noncitizens, will not provide verification of the applicant's status as a qualified alien.²

The guidance in this letter describes the documentation process that must be used for a person who requests Title IV eligibility based upon his or her status as a "Battered Immigrant-Qualified Alien."

Generally, a Battered Immigrant-Qualified Alien receives an Alien Registration Number (A-Number) upon arrival to the U.S. When completing the FAFSA, the Battered Immigrant will indicate on the FAFSA that they are an eligible noncitizen and provide their "A-Number." While Battered Immigrants are not "eligible noncitizens" for the purpose of the ED/DHS computer match, as indicated above, they are noncitizens who, as determined by DHS-USCIS, are eligible for federal benefits, including Title IV student assistance.

Documentation Requirements:

The documentation that must be provided depends on the applicant's DHS-USCIS Case Type, as described below.

1. Type of Case: Self-petitioning cases under VAWA

Description –When an immigrant self-petitions DHS-USCIS for a status of Battered Immigrant-Qualified Alien (by filing an I-360 form), the USCIS will make an initial determination to:

- (1) deny the petition,
- (2) approve the petition, or
- (3) find that a "prima facie" case has been established.

Either the approval of the self-petition or a finding of a "prima facie" case establishes an otherwise eligible applicant's eligibility for Title IV, HEA program assistance. However, a finding of a "prima facie" case will have an expiration date. As a result, for "prima facie" cases, Title IV eligibility will end the day after the expiration date, unless the USCIS has changed the applicant's status to "approved," or has extended the expiration date of the "prima facie" case.

Documentation – The USCIS will respond to an applicant's self-petition by issuing to the applicant an I-797, Notice of Action form.

NOTE: The I-797 form is used by the USCIS for many purposes, so it is critical that it be carefully reviewed.

Approval - USCIS will provide a DHS-USCIS Form I-797, Notice of Action form, indicating the applicant's status. When a self-petitioning spouse is approved, the I-797 will indicate "Notice Type: Approval Notice" and the Section reference will read, "Self-Petitioning Spouse

of U.S.C. or L.P.R.” In the narrative below, there will be a statement such as, “The above petition has been approved.” When the I-797 has the above designations, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required.

In cases where the self-petitioning spouse’s application has been approved, a separate I-797 form will be issued by USCIS with the names and dates of birth of any children listed by the applicant. That I-797 form will read, “Notice Type: Notice of Dependent Child (ren), Section: Self-Petitioning Spouse of U.S.C. or L.P.R.” In the narrative it will state, “The following derivative children are named on the approved Petition” and then the names and birth dates of the child (ren) will be provided. These children, if otherwise eligible, may receive Title IV, HEA program assistance and no verification with DHS-USCIS is required.

The status of a child listed on a self-petitioner’s notice of action when the petition has been approved by DHS-USCIS continues even after the child has reached the age of majority.

In some cases, a dependent child can be the self-petitioner and therefore the I-797 form would read, “Notice Type: Approval Notice, Section: Self-Petitioning Child of U.S.C. or L.P.R.” in a case where the U.S. citizen or lawful permanent resident is abusing the child.

When the I-797 form has the above designations, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required.

“Prima Facie” Case - The I-797, Notice of Action will sometimes indicate “Section: Self-Petitioning Spouse of U.S.C. or L.P.R. ESTABLISHMENT OF PRIMA FACIE CASE.” This status is usually provided for a period of up to 180 days (as indicated on the I-797, Notice of Action form). As long as the I-797 form has not expired, an otherwise eligible applicant can be awarded and disbursed Title IV, HEA program assistance and no verification with DHS-USCIS is required. Also, at times, DHS-USCIS will extend the “prima facie” case for a specific period of time until the case is either approved or denied. As long as the expiration date has not occurred, an otherwise eligible Title IV, HEA applicant is eligible to receive Title IV, HEA program assistance. It is our understanding that a self-petitioner can submit a written request for an extension up to 15 days prior to the expiration date and receive an extension. Unless the I-360 application has been denied, the petitioner should receive an extension of the “prima facie” case on a subsequent I-797 form.

The I-797 may include a section with the names and dates of birth of any children of the self-petitioning spouse. These children are also eligible to receive Federal Title IV student aid under the “prima facie”

determination of the parent with the same expiration date limitation. The child's eligibility continues even after the child has reached the age of majority, as long as the I-797 has not expired.

Other General Notes:

- a. While the dependent children may be listed on the parent's self-petition approval, each of the eligible children must individually make a separate request for deferred action to DHS-USCIS.
- b. If the self-petitioning spouse is ultimately denied approval, then the dependent children initially listed on the petitioner's I-797 would also be denied and therefore not be eligible for Title IV, HEA program assistance.
- c. In some cases, the USCIS will initially acknowledge the receipt of the self-petition. An acknowledgment does not make the applicant (or his/her named dependent children) eligible for Title IV, HEA program assistance.
- d. The USCIS may also issue a Notice of Deferred Action. This is an administrative choice to give lower priority for removal of the immigrant from the U.S. Again, because the I -797 Notice of Action can be used for a wide variety of purposes (beyond the scope of Title IV, HEA program eligibility), and as the "Case Type" heading on the form indicates, this notice of deferred action could be applicable to cases unrelated to a self-petitioning case under VAWA; therefore, the Notice of Deferred Action alone cannot be used as documentation of a self-petitioner. Instead, the self-petitioner must provide either a copy of the self-petitioner approval notice or a notice of action that establishes a "prima facie" case (that has not expired). Generally, a Notice of Deferred Action has a termination date, therefore prior to the termination date, an otherwise eligible applicant also providing a copy of the self-petitioner's approval status or that of the establishment of a "prima facie" case may be awarded and disbursed Title IV, HEA program assistance. However, after the termination date of the Notice of Deferred Action, the applicant is no longer eligible to receive Title IV, HEA funds. The applicant may request and receive a supplemental notice extending the termination date and therefore regain Title IV eligibility.

2. Type of Case: Suspension of deportation cases under VAWA

Description - An immigration judge can issue an order to suspend the deportation of the abused spouse, parent, or child under VAWA. An otherwise eligible applicant whose immigration court order has not expired may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS.

Documentation – The applicant receives a copy of the Immigration Court Order. If the court order clearly indicates suspension of deportation by the immigration judge, an otherwise eligible applicant may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS. Often, the institution

may be unclear about the court's order; we suggest that the institution follow the instructions below to obtain verification from USCIS.

3. Type of Case - Cancellation of removal cases under VAWA

Description – An immigration judge can issue an order to cancel the removal of the abused spouse, parent, or child under VAWA. An otherwise eligible applicant whose immigration court order has not expired may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS.

Documentation – The applicant receives a copy of the Immigration Court Order. If the court order clearly indicates cancellation of removal by the immigration judge, an otherwise eligible applicant may be awarded and disbursed Title IV, HEA program assistance and no verification is required with DHS-USCIS. Often, the institution may be unclear about the court's order; we suggest that the institution follow the instructions below to obtain verification from USCIS.

Financial Aid Administrator Action:

Since the applicants above will not successfully pass the computer match conducted between ED and DHS, the financial aid administrator must collect and examine a copy of the USCIS-provided documents described above and retain a copy of the documents in the student's financial assistance file. If the documents support the applicant's status under VAWA and have not expired, an otherwise eligible student can be awarded and disbursed Title IV, HEA program assistance and verification with DHS-USCIS is not required. It is important for financial aid administrators and others at the institution to bear in mind the confidential and sensitive nature of the documents establishing the student's Battered Immigrant-Qualified Alien status, and the institution's obligation to comply with the privacy requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99.

The financial aid administrator must also check the student's response to the citizenship question on the FAFSA. Most of the affected students will indicate that they are eligible noncitizens. By following the guidance in this letter, the financial aid administrator will resolve the fact that the student did not successfully pass the computer match. However, it is also possible that the student may indicate that he or she is neither a citizen, nor an eligible noncitizen. In this case, the student should correct the FAFSA and indicate that the student is an eligible noncitizen. This is an important correction needed to allow for the calculation of an Expected Family Contribution (EFC). Indicating that the student is neither a citizen, nor an eligible noncitizen, will cause the FAFSA to be rejected.

Students who apply for Title IV, HEA program assistance in a subsequent year may rely upon the original DHS-USCIS documentation provided, as long as that documentation has not expired. If the documentation has expired, the applicant is required to obtain new DHS-USCIS documentation. When the documentation has not expired, but was provided in a prior award year, the institution must have the student provide a written and dated statement indicating that their DHS-USCIS immigration status as provided under VAWA remains in effect without change. This documentation must remain in the applicant's financial assistance file at the institution.

Procedures when the documentation is lost, the institution is unclear about the documentation, or the documentation has expired:

In the event that:

- The student has lost or cannot provide a copy of his or her USCIS-provided documentation,
- The institution has reservations about the documentation provided by the applicant or is unclear about the outcome reflected in the documentation, or
- The documentation has expired,

the financial aid administrator must submit a completed G-845S form and attach copies of any documentation provided by the applicant. When completing the G-845S form, check "Box 8 – Other" and write-in "VAWA verification" and submit the information to DHS-USCIS for a VAWA verification determination at the following address (NOTE: This is not the Buffalo Field Office address.).

DHS-USCIS
186 Exchange Street
Buffalo, NY 14204

Eligibility for Title IV, HEA program assistance as a Battered Immigrant – Qualified Alien will be based on the results of the G-845S submission to the Buffalo office of DHS-USCIS.

For further information or to contact the Department of Education on this topic:

If you have any questions regarding this letter, please contact Dan Klock via e-mail at dan.klock@ed.gov or Carney McCullough via e-mail at carney.mccullough@ed.gov.

We appreciate your cooperation and assistance in helping these applicants as we work to implement this new process.

Sincerely,

Daniel T. Madzellan
Delegated the Authority to Perform

the Functions and Duties of the
Assistant Secretary for
Postsecondary Education.

¹ 8 USC 1367(a)(2) prohibits DHS from using or disclosing to anyone, other than a sworn officer of DHS, *any* information related to the beneficiary of a protected application, which includes all applications under VAWA.

² ED has developed this guidance in conjunction with DHS-USCIS to establish these special procedures for an institution to verify a student's Battered Immigrant-Qualified Alien status. Due to the confidential and sensitive nature of this information, if an institution requires that the applicant information be verified, the institution must send such verification inquiries to the specific office address at the end of this guidance, rather than to its local DHS-USCIS office. Local DHS-USCIS offices will not be able to verify Battered Immigrant-Qualified Alien status.

Attachments/Enclosures:

[GEN-10-07: Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act in PDF Format, 284KB, 6 Pages](#)

[G-845S: Document Verification Request Form in PDF Format, 120KB, 2 Pages](#)

2009-2010 FAFSA on the Web (FOTW) Home Page



FAFSA
Free Application for Federal Student Aid

FAFSA Home Student Aid on the Web Application Deadlines PIN Site Help Contact Us FAQs Site Map About Us

- 1 Before Beginning a FAFSA
- 2 Filling Out a FAFSA
- 3 FAFSA Follow-Up

Special Announcements

Updated information available for the new **TEACH grant**.

Important information about two grant programs.

Looking for an early start on the financial aid process



You can use FAFSA4caster to learn about the financial aid process and get an early estimate of your eligibility for federal student aid.

[Link to FAFSA4caster](#)

[English](#) | [Español](#)



Federal Student Aid FAFSA

We have simplified the process of filling out the FAFSA. You can follow each section all of the way through for a comprehensive set of instructions.

1 Before Beginning a FAFSA

Get organized!

To simplify the application process, gather required documents and other information ahead of time.

- [Determine Your Dependency Status](#)
- [FAFSA on the Web Worksheet](#)
- [Search for School Codes](#)
- [Students & Parents Apply For a PIN](#)
- [Check Application Deadline Dates](#)

2 Filling Out a FAFSA

Fill out the application!

The FAFSA contains questions that ask about you, your financial information, your school plans, and more.

- [Fill Out Your FAFSA](#)
- [Open Your Saved FAFSA or Correction Application](#)
- [Sign Electronically With Your PIN](#)

3 FAFSA Follow-Up

View your results online!

You can check the status of your application, make corrections to a processed FAFSA, and get other information.

- [Check Status of a Submitted FAFSA or Print Signature Page](#)
- [Make Corrections to a Processed FAFSA](#)
- [Add or Delete a School Code](#)
- [View and Print Your Student Aid Report](#)

FAFSA ALERTS:

FAFSA Deadlines:

Scheduled Maintenance:

FAFSA on the Web will be

FOTW Questions 14—Selection options

- 6 Preparer's Information
- 7 Review FAFSA and Apply Signatures
- 8 Submit Your FAFSA

Your middle initial (question 3):	<input type="text"/>
Your permanent mailing address (include apt. number) (question 4):	Only use letters (A-Z), numbers (0-9), periods (.), commas (,), apostrophes ('), dashes (-), number symbols (#), at symbols (@), percent symbols (%), ampersands (&), slashes (/), or blanks (spaces). No other characters are allowed. Use street address abbreviations such as apt (apartment) or ave (avenue) if the address extends beyond the space provided. 4 Any Street
Your city (and country if not U.S.) (question 5):	Chicago
Your state (question 6):	Illinois
Your ZIP Code (question 7):	60606 (Data cannot be entered in this field.) 352-12-1234
Your Social Security Number (question 8):	
Your date of birth (question 9):	Enter this date in "mmdyyyyy" format. For example, 08171975 for August 17, 1975. 02151988
Your permanent telephone number (question 10):	Provide the area code first. Enter the numbers, without parentheses and dashes. For example, 2026561212. 3125551212
Your driver's license number (if any) (question 11):	<input type="text"/>
Your driver's license state (question 12):	Select
Are you a U.S. citizen (question 14)?	Select Select Yes, I am a U.S. citizen (or U.S. national) No, but I am an eligible noncitizen No, I am not a citizen or eligible noncitizen



FOTW Question 14—Selecting Eligible Noncitizen

	provided. <input type="text" value="4 Any Street"/>
Your city (and country if not U.S.) (question 5):	<input type="text" value="Chicago"/>
Your state (question 6):	<input type="text" value="Illinois"/>
Your ZIP Code (question 7):	<input type="text" value="60606"/>
Your Social Security Number (question 8):	(Data cannot be entered in this field.) <input type="text" value="352-12-1234"/>
Your date of birth (question 9):	Enter this date in "mmddyyyy" format. For example, 08171975 for August 17, 1975. <input type="text" value="02151988"/>
Your permanent telephone number (question 10):	Provide the area code first. Enter the numbers, without parentheses and dashes. For example, 2025551212. <input type="text" value="3125551212"/>
Your driver's license number (if any) (question 11):	<input type="text"/>
Your driver's license state (question 12):	<input type="text" value="Select"/>
Are you a U.S. citizen (question 14)?	<input type="text" value="No, but I am an eligible noncitizen"/>

FOTW Question 15



FAFSA
Free Application for Federal Student Aid

Help Contact Us FAQs Live Help

- 1 Info About You (the Student)**
- 2 Your Dependency Status
- 3 Your Parents' Information
- 4 Your Finances
- 5 Schools to Receive Your Results
- 6 Preparer's Information
- 7 Review FAFSA and Apply Signatures
- 8 Submit Your FAFSA

Info About You (the Student)

Your Alien Registration Number (question 15):

An answer is required, unless you are a citizen of Canada, the Federated States of Micronesia, the Marshall Islands, or Palau.

An Alien Registration Number can be 8 or 9 numbers. If your Alien Registration Number is 8 numbers, enter a zero (0) in front of the Alien Registration Number.

This question does not display if the student indicated that he/she is a U S Citizen

[NEED HELP?](#)

[SAVE](#)

[VIEW FAFSA SUMMARY](#)

[EXIT](#)

[PREVIOUS](#)

[NEXT](#)

Site Last Updated: Sunday, February 1, 2009

Privacy

FOTW Question 15—Alien Registration Number completed



FAFSA
Free Application for Federal Student Aid

Help Contact Us FAQs Live Help

- 1** Info About You (the Student)
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Info About You (the Student)

Your Alien Registration Number (question 15):

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[PREVIOUS](#)

[NEXT](#)

[NEED HELP?](#)

[SAVE](#)

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Site Last Updated: Sunday, February 1, 2009



LEXSTAT 20 U.S.C. 1091

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*** CURRENT THROUGH PL 111-10, APPROVED 3/20/2009 ***
*** WITH A GAP OF PL 111-8 ***

TITLE 20. EDUCATION
CHAPTER 28. HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE PROGRAMS
STUDENT ASSISTANCE
GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

Go to the United States Code Service Archive Directory

20 USCS § 1091

§ 1091. Student eligibility [Caution: See prospective amendment note below.]

(a) In general. In order to receive any grant, loan, or work assistance under this title, a student must--

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487 [20 USCS § 1094], except as provided in subsections (b)(3) and (b)(4), and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c);

(3) not owe a refund on grants previously received at any institution under this title, or be in default on any loan from a student loan fund at any institution provided for in part E [20 USCS §§ 1087aa et seq.], or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

(4) file with the Secretary, as part of the original financial aid application process, a certification,[,] which need not be notarized, but which shall include--

(A) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

(B) such student's social security number, except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(5) be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, [or] a citizen of any one of the Freely Associated States; and

(6) if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining funds under this title, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this title obtained by fraud.

(b) Eligibility for student loans.

(1) In order to be eligible to receive any loan under this title (other than a loan under section 428B or 428C [20 USCS § 1078-2 or 1078-3]) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title [20 USCS §§ 1070a et seq.], shall--

20 USCS § 1091

(A) (i) have received a determination of eligibility or ineligibility for a Pell Grant under such subpart 1 for such period of enrollment; and (ii) if determined to be eligible, have filed an application for a Pell Grant for such enrollment period; or

(B) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period, and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1 [20 USCS §§ 1070a et seq.].

(2) In order to be eligible to receive any loan under section 428A [20 USCS § 1078-1] for any period of enrollment, a student shall--

(A) have received a determination of need for a loan under section 428(a)(2)(B) of this *title* [20 USCS § 1078(a)(2)(B)];

(B) if determined to have need for a loan under section 428 [20 USCS § 1078], have applied for such a loan; and

(C) has applied for a loan under section 428H [20 USCS § 1078-8], if such student is eligible to apply for such a loan.

(3) A student who--

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate, shall be, notwithstanding paragraph (1) of subsection (a), eligible to apply for loans under part B or D of this *title* [20 USCS §§ 1071 et seq. or 1087a et seq.]. The eligibility described in this paragraph shall be restricted to one 12-month period.

(4) A student who--

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding paragraph (1) of subsection (a), eligible to apply for loans under part B, D, or E [20 USCS §§ 1071 et seq., 1087a et seq., or 1087aa et seq.] or work-study assistance under part C of this *title* [42 USCS §§ 2751 et seq.].

(5) Notwithstanding any other provision of this subsection, no incarcerated student is eligible to receive a loan under this title.

(c) Satisfactory progress.

(1) For the purpose of subsection (a)(2), a student is maintaining satisfactory progress if--

(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

(2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) for a grant, loan, or work assistance under this title.

(3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on--

(A) the death of a relative of the student,

(B) the personal injury or illness of the student, or

(C) special circumstances as determined by the institution.

(d) Students who are not high school graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, D, and E of this *title* [20 USCS §§ 1070a et seq., 1070b et seq., 1070c et seq., and 1071 et seq., 42 USCS §§ 2751 et seq., 20 USCS §§ 1087a et seq., and 1087aa et seq.], the student shall meet one of the following standards:

(1) The student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

20 USCS § 1091

(2) The student shall be determined as having the ability to benefit from the education or training in accordance with such process as the State shall prescribe. Any such process described or approved by a State for the purposes of this section shall be effective 6 months after the date of submission to the Secretary unless the Secretary disapproves such process. In determining whether to approve or disapprove such process, the Secretary shall take into account the effectiveness of such process in enabling students without high school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing such process, and shall also take into account the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions.

(3) The student has completed a secondary school education in a home school setting that is treated as a home school or private school under State law.

(4) The student shall be determined by the institution of higher education as having the ability to benefit from the education or training offered by the institution of higher education upon satisfactory completion of six credit hours or the equivalent coursework that are applicable toward a degree or certificate offered by the institution of higher education.

(e) Certification for GSL eligibility. Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this *title* [20 USCS §§ 1071 et seq.] prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this title, if--

- (1) checks for the loans are mailed to the eligible institution prior to disbursements;
- (2) the disbursement is not made until the review is complete; and
- (3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

(f) Loss of eligibility for violation of loan limits.

(1) No student shall be eligible to receive any grant, loan, or work assistance under this title if the eligible institution determines that the student fraudulently borrowed in violation of the annual loan limits under part B, part D, or part E of this *title* [20 USCS §§ 1071 et seq., 1087a et seq. or 1087aa et seq.] in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits under such part B, part D, or part E [20 USCS §§ 1071 et seq. 1087a et seq. or 1087aa et seq.].

(2) If the institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, such institution shall allow the student to repay any amount borrowed in excess of such limits prior to certifying the student's eligibility for further assistance under this title.

(g) Verification of immigration status.

(1) In general. The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that such individual is in compliance with the requirements of subsection (a)(5) shall be verified prior to the individual's receipt of a grant, loan, or work assistance under this title.

(2) Special rule. The documents collected and maintained by an eligible institution in the admission of a student to the institution may be used by the student in lieu of the documents used to establish both employment authorization and identity under section 274A(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a) to verify eligibility to participate in work-study programs under part C of this *title* [42 USCS §§ 2751 et seq.].

(3) Verification mechanisms. The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

(4) Review. In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)--

(A) the institution--

- (i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

- (ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitute reasonable evidence indicating such status--

- (i) the institution shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

20 USCS § 1091

(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(h) Limitations of enforcement actions against institutions. The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status--

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under subsection (h)(4)(A)(i) [(g)(4)(A)(i)], was required to provide a reasonable opportunity to submit documentation, or

(3) because the institution, under subsection (h)(4)(B)(i) [(g)(4)(B)(i)], was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student.

(i) Validity of loan guarantees for loan payments made before immigration status verification completed. Notwithstanding subsection (h) [(g)], if--

(1) a guaranty is made under this title for a loan made with respect to an individual,

(2) at the time the guaranty is entered into, the provisions of subsection (h) had been complied with,

(3) amounts are paid under the loan subject to such guaranty, and

(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.

(j) [Deleted]

(k) Special rule for correspondence courses. A student shall not be eligible to receive grant, loan, or work assistance under this title for a correspondence course unless such course is part of a program leading to an associate, bachelor or graduate degree.

(l) Courses offered through telecommunications.

(1) Relation to correspondence courses.

(A) In general. A student enrolled in a course of instruction at an institution of higher education that is offered in whole or in part through telecommunications and leads to a recognized certificate, or a recognized associate, baccalaureate, or graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

(B) Exception. Subparagraph (A) shall not apply to an institution or school described in section 3(C) [3(3)(C)] of the Carl D. Perkins Career and Technical Education Act of 2006 [20 USCS § 2302(3)(C)].

(2) Restriction or reductions of financial aid. A student's eligibility to receive grants, loans, or work assistance under this title shall be reduced if a financial aid officer determines under the discretionary authority provided in section 479A [20 USCS § 1087tt] that telecommunications instruction results in a substantially reduced cost of attendance to such student.

(3) Special rule. For award years prior to the date of enactment of this subsection [enacted July 23, 1992], the Secretary shall not take any compliance, disallowance, penalty, or other action against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this title if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.

(4) Definition. For the purposes of this subsection, the term "telecommunications" means the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, except that such term does not include a course that is delivered using video cassette or disc recordings at such institution and that is not delivered in person to other students of that institution.

20 USCS § 1091

(m) Students with a first baccalaureate or professional degree. A student shall not be ineligible for assistance under parts B, C, D, and E of this title [20 USCS §§ 1071 et seq., 42 USCS §§ 2751 et seq., 20 USCS §§ 1087a et seq., 20 USCS §§ 1087aa et seq.] because such student has previously received a baccalaureate or professional degree.

(n) Data base matching. To enforce the Selective Service registration provisions of section 1113 of Public Law 97-252 [50 USCS Appx. § 462(f)], the Secretary shall conduct data base matches with the Selective Service, using common demographic data elements. Appropriate confirmation, through an application output document or through other means, of any person's registration shall fulfill the requirement to file a separate statement of compliance. In the absence of a confirmation from such data matches, an institution may also use data or documents that support either the student's registration, or the absence of a registration requirement for the student, to fulfill the requirement to file a separate statement of compliance. The mechanism for reporting the resolution of nonconfirmed matches shall be prescribed by the Secretary in regulations.

(o) Study abroad. Nothing in this Act shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this title, without regard to whether such study abroad program is required as part of the student's degree program.

(p) Verification of social security number. The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution under subsection (a)(4) and shall enforce the following conditions:

(1) Except as provided in paragraphs (2) and (3), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this part because social security number verification is pending.

(2) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant, loan, or work assistance under this title until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

(3) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, and a correct social security number cannot be provided by such student, and a loan has been guaranteed for such student under part B of this title [20 USCS §§ 1071 et seq.], the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, but such guaranty shall not be voided or otherwise nullified with respect to such disbursements made before the date that the lender and the guaranty agency receives such notice.

(4) Nothing in this subsection shall permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against--

(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.

(q) Verification of income data.

(1) Confirmation with IRS. The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the information specified in *section 6103(l)(13) of the Internal Revenue Code of 1986* [26 USCS § 6101(l)(13)] reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications.

(2) Notification. The Secretary shall establish procedures under which an applicant is notified that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under *section 6103(l)(13) of the Internal Revenue Code of 1986* [26 USCS § 6103(l)(13)].

(r) Suspension of eligibility for drug-related offenses.

(1) In general. A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:

20 USCS § 1091

If convicted of an offense involving:

The possession of a controlled substance: Ineligibility period is:
 First offense 1 year
 Second offense 2 years
 Third offense Indefinite.

The sale of a controlled substance: Ineligibility period is:
 First offense 2 years
 Second offense..... Indefinite

(2) Rehabilitation. A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if--

(A) the student satisfactorily completes a drug rehabilitation program that--

(i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and

(ii) includes two unannounced drug tests; or

(B) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) Definitions. In this subsection, the term "controlled substance" has the meaning given the term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(s) Students with intellectual disabilities.

(1) Definitions. In this subsection the terms "comprehensive transition and postsecondary program for students with intellectual disabilities" and "student with an intellectual disability" have the meanings given the terms in section 760 [20 USCS § 1140].

(2) Requirements. Notwithstanding subsections (a), (c), and (d), in order to receive any grant or work assistance under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], or part C [42 USCS §§ 2751 et seq.], a student with an intellectual disability shall--

(A) be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;

(B) be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and

(C) meet the requirements of paragraphs (3), (4), (5), and (6) of subsection (a).

(3) Authority. Notwithstanding any other provision of law unless such provision is enacted with specific reference to this section, the Secretary is authorized to waive any statutory provision applicable to the student financial assistance programs under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], or part C [42 USCS §§ 2751 et seq.] (other than a provision of part F [20 USCS §§ 1087kk et seq.] related to such a program), or any institutional eligibility provisions of this title, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection may receive such financial assistance.

(4) Regulations. Notwithstanding regulations applicable to grant or work assistance awards made under section 401 [20 USCS § 1070a], subpart 3 of part A [20 USCS §§ 1070b et seq.], and part C [42 USCS §§ 2751 et seq.] (other than a regulation under part F [20 USCS §§ 1087kk et seq.] related to such an award), including with respect to eligible programs, instructional time, credit status, and enrollment status as described in section 481 [20 USCS § 1088], the Secretary shall promulgate regulations allowing programs enrolling students with intellectual disabilities otherwise determined to be eligible under this subsection to receive such awards.

HISTORY:

(Nov. 8, 1965, P.L. 89-329, Title IV, Part G[F], § 484, as added Oct. 3, 1980, P.L. 96-374, Title IV, Part E, § 451(a) in part, 94 Stat. 1448; April 7, 1986, P.L. 99-272, Title XVI, Subtitle C § 16032(a), (b), 100 Stat. 354; Oct. 17, 1986, P.L. 99-498, Title IV, §§ 406(a), 407(a), 100 Stat. 1454, 1479; Nov. 6, 1986, P.L. 99-603, Title I, Part C, § 121(c)(3), 100 Stat. 3388; June 3, 1987, P.L. 100-50, § 15(7)-(9), 101 Stat. 356, 357; July 18, 1988, P.L. 100-369, §§ 1, 2, 6, 102 Stat. 835, 836; Oct. 24, 1988, P.L. 100-525, § 2(g), 102 Stat. 2611; Nov. 5, 1990, P.L. 101-508, Title III, Subtitle A, § 3005(b), 104 Stat. 1388-27; April 9, 1991, P.L. 102-26, § 2(b), (c)(2), (d)(2), 105 Stat. 123, 124; July 25, 1991, P.L. 102-73, Title VIII, § 801(a), 102 Stat. 359; July 23, 1992, P.L. 102-325, Title IV, Part G, § 484, 106 Stat. 615; Dec. 20, 1993, P.L. 103-208,

§ 2(h)(13)-(25), 107 Stat. 2476; Oct. 20, 1994, P.L. 103-382, Title III, Part E, § 360A, 108 Stat. 3969; Sept. 30, 1996, P.L. 104-208, Div C, Title V, Subtitle A, § 507(b), 110 Stat. 3009-673; Oct. 7, 1998, P.L. 105-244, Title IV, Part G, § 483, 112 Stat. 1735.)

(As amended Feb. 8, 2006, P.L. 109-171, Title VIII, Subtitle A, §§ 8020(c), 8021, 120 Stat. 178; Aug. 12, 2006, P.L. 109-270, § 2(c)(2), 120 Stat. 746; Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(a), 122 Stat. 3287.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title", referred to in this section, is Title IV of Act Nov. 8, 1965, P.L. 89-329, which appears as *20 USCS §§ 1070* et seq. and *42 USCS §§ 2751* et seq.

"This Act", referred to in this section, is Act Nov. 8, 1965, P.L. 89-329, 79 Stat. 1219, popularly known as the Higher Education Act of 1965, which appears generally as *20 USCS §§ 1001* et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The second comma following "certification" has been enclosed in brackets in subsec. (a)(4) to indicate the probable intent of Congress to delete such punctuation.

The word "or" has been inserted in brackets in subsec. (a)(5) to indicate the probable intent of Congress to include such word.

The bracketed reference "(g)" has been inserted in subsecs. (h)(2), (3), and (i) in order to effectuate the probable intent of Congress, as subsec. (h) was redesignated subsec. (g) by Act Dec. 20, 1993, P.L. 103-208.

The bracketed section number "3(3)(C)" has been inserted in subsec. (l)(1)(B) to indicate the number probably intended by Congress.

A prior § 1091 (Act Nov. 8, 1965, P.L. 89-329, Title IV, § 501, as added June 29, 1967, P.L. 90-35, § 2(c), 81 Stat. 82; June 23, 1972, P.L. 92-318, Title I, § 141(b)(1), 86 Stat. 285) was repealed by Act Oct. 12, 1976, P.L. 94-482, Title I, § 151(a)(2), 90 Stat. 2151. Such section provided for statement of purpose and authorization of appropriations for an education assistance program.

Prospective amendment:

Amendment of section, effective July 1, 2010. Act Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(a)(1), (2), (5)-(7), (9), 122 Stat. 3287, 3288, 3289, provides: "Section 484 (*20 U.S.C. 1091*) is amended--

"(1) in subsection (a)--

"(A) in paragraph (4)(B), by striking 'number,' and all that follows through the semicolon and inserting 'number;'; and

"(B) in paragraph (5)--

"(i) by inserting 'or' after 'a permanent resident of the United States,'; and

"(ii) by striking 'citizen or permanent resident' and all that follows through the semicolon and inserting 'citizen or permanent resident;';

"(2) in subsection (b)(1), by inserting ', or under section 428H [*20 USCS § 1078-8*] pursuant to an exercise of discretion under section 479A [*20 USCS § 1087tt*]' after '428C';

** * * * *

"(5) by striking subsection (l) and inserting the following:

" '(l) Courses offered through distance education.

(1) Relation to correspondence courses.

(A) In general. A student enrolled in a course of instruction at an institution of higher education that is offered principally through distance education and leads to a recognized certificate, or recognized associate, recognized baccalaureate, or recognized graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

20 USCS § 1091

" (B) Exception. An institution of higher education referred to in subparagraph (A) shall not include an institution or school described in section 3(3)(C) of the Carl D. Perkins Career and Technical Education Act of 2006 [20 USCS § 2302(3)(C)].

" (2) Reductions of financial aid. A student's eligibility to receive grants, loans, or work assistance under this title shall be reduced if a financial aid officer determines under the discretionary authority provided in section 479A [20 USCS § 1087tt] that distance education results in a substantially reduced cost of attendance to such student.

" (3) Special rule. For award years beginning prior to July 1, 2008, the Secretary shall not take any compliance, disallowance, penalty, or other action based on a violation of this subsection against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this title if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.;

"(6) by striking subsection (q) and inserting the following:

" (q) Use of income data.

(1) Matching with IRS. The Secretary, in cooperation with the Secretary of the Treasury, is authorized to obtain from the Internal Revenue Service such information reported on Federal income tax returns by applicants, or by any other person whose financial information is required to be provided on the Federal student financial aid application, as the Secretary determines is necessary for the purpose of--

" (A) prepopulating the Federal student financial aid application described in section 483 [20 USCS § 1090]; or

" (B) verifying the information reported on such student financial aid applications.

" (2) Consent. The Secretary may require that applicants for financial assistance under this title provide a consent to the disclosure of the data described in paragraph (1) as a condition of the student receiving assistance under this title. The parents of an applicant, in the case of a dependent student, or the spouse of an applicant, in the case of an applicant who is married but files separately, may also be required to provide consent as a condition of the student receiving assistance under this title.;

"(7) in subsection (r)(2)--

"(A) in subparagraph (A), by striking 'or' at the end of clause (ii);

"(B) by redesignating subparagraph (B) as subparagraph (C); and

"(C) by inserting after subparagraph (A) the following new subparagraph:

" (B) the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program that complies with such criteria as the Secretary shall prescribe in regulations for purposes of subparagraph (A)(i); or';

** * * * *

"(9) by adding after subsection (s) (as added by paragraph (7)) the following:

" (t) Data analysis on access to Federal student aid for certain populations.

(1) Development of the system. Within one year of enactment of the Higher Education Opportunity Act [enacted Aug. 14, 2008], the Secretary shall analyze data from the FAFSA containing information regarding the number, characteristics, and circumstances of students denied Federal student aid based on a drug conviction while receiving Federal aid.

" (2) Results from analysis. The results from the analysis of such information shall be made available on a continuous basis via the Department website and the Digest of Education Statistics.

" (3) Data updating. The data analyzed under this subsection shall be updated at the beginning of each award year and at least one additional time during such award year.

" (4) Report to Congress. The Secretary shall prepare and submit to the authorizing committees, in each fiscal year, a report describing the results obtained by the establishment and operation of the data system authorized by this subsection.;"

Effective date of section:

This section took effect on October 1, 1980, pursuant to § 1393(a) of Act Oct. 3, 1980, P.L. 96-374, which appears as 20 USCS § 1001 note.

Amendments:

20 USCS § 1091

1986. Act April 7, 1986 (effective on enactment as provided by § 16041 of such Act, which appears as *20 USCS § 2071* note), in subsec. (a), in para. (4), substituted "any" for "such" wherever appearing, and, in para. (5), substituted "(which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number)" for "which need not be notarized" redesignated former subsec. (b) as subsec. (c); and added new subsec. (b).

Act Oct. 17, 1986 (effective on enactment as provided by § 2 of such Act, which appears as *20 USCS § 1001* note) substituted the text of this section for text which read:

"(a) In order to receive any grant, loan, or work assistance under this title, a student must--

"(1) be enrolled or accepted for enrollment at an institution of higher education that is an eligible institution in accordance with the provisions of section 487;

"(2) except as otherwise specifically provided, be carrying or planning to carry at least one-half the normal full-time workload for the course of study the student is pursuing, as determined by the institution;

"(3) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing according to the standards and practices of the institution at which the student is in attendance;

"(4) not owe a refund on grants previously received at any institution under this title, or be in default on any loan from a student loan fund at any institution provided for in part E, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution; and

"(5) file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution.

"(b) In order to be eligible to receive any loan under this title (other than a loan under section 428B or 428C) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title, shall--

"(1) have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or

"(2) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period; and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.

"(c) Any permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands shall be eligible for assistance under this title to the same extent that citizens of the United States are eligible for such assistance."

Act Nov. 6, 1986 (effective Oct. 1, 1988 except as provided in § 121(c)(4) of such Act, which appears as *42 USCS § 1320b-7* note), added subsecs. [h](c), [i](d) and [j](e).

1987. Act June 3, 1987 (effective as if enacted as part of the Higher Education Amendments of 1986, as provided by § 27 of the 1987 Act, which appears as *20 USCS § 1001* note), in subsec. (a)(1), inserted ", except as provided in subsection (b)(2)"; in subsec. (b), designated the former introductory matter as new para. (1), redesignated former paras. (1) and (2) as new subparagraphs (A) and (B), respectively, and added new para. (2); in subsec. (d), in para. (1), deleted "or" following the semicolon, substituted para. (2) for one which read:

"(2)

(A) be counseled prior to admissions or be administered a nationally recognized standardized or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which he has applied; and

(B) with respect to applicants who are unable to satisfy the institution's admissions testing requirements specified in subparagraph (A), be enrolled in an institutionally prescribed program or course of remedial or developmental education, not to exceed one academic year or its equivalent."

and added para. (3) and the concluding matter; and in subsec. (f), added the sentence beginning "In carrying out the provisions . . .".

1988. Act July 18, 1988 (effective on enactment as provided by § 13(b)(2) of such Act, which appears as a note to this section), in subsec. (a)(1), substituted "subsections (b)(3) and (b)(4)" for "subsection (b)(2)".

20 USCS § 1091

Such Act further (effective as provided by § 13(a) of such Act which appears as a note to this section), in subsec. (b)(1), substituted "section 428B or 428C" for "section 428A, 428B, or 428C", substituted subpara. (A) for one which read: "have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or ", redesignated para. (2) as para. (3), added a new para. (2), and added para. (4).

Act Oct. 24, 1988 (effective as if included in Act Nov. 6, 1986, as provided by § 2(s) of such Act, which appears as 8 *USCS* § 1101 note) redesignated subsecs. (c)[(h)]-(e)[(j)] as subsecs. (h)-(j), respectively, and inserted headings for such subsections; and, in subsec. (i) as redesignated, in paras. (2)-(4), substituted "(h)(4)(A)(ii)", "(h)(4)(B)(ii)" and "(h)(5)(B)" for "(c)(4)(A)(ii)", "(c)(4)(B)(ii)" and "(c)(5)(B)", respectively; and, in subsec. (j) as redesignated, in the introductory matter and in para. (2), substituted "subsection (h)" for "subsection (c)" and, in the concluding matter, deleted "of" preceding "the entity".

1990. Act Nov. 5, 1990 (applicable as provided by § 3005(c) of such Act, which appears as 20 *USCS* § 1088 note, and repealed by Act April 9, 1991) substituted subsec. (d) for one which read:

"(d) A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this title shall--

"(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

"(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

"(3)

(A) be administered a nationally recognized, standardized, or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which the applicant has applied; and

(B) with respect to applicants who are unable to satisfy the institutions' admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

"In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school."

1991. Act April 9, 1991 (applicable as provided by § 2(d)(1) of such Act, which appears as 20 *USCS* § 1085 note), in subsec. (a)(1), inserted ", and not be enrolled in an elementary or secondary school"; and substituted subsec. (d) for one which read:

"(d) Ability to benefit. A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this title shall--

"(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier;

"(2) be counseled prior to admission and be enrolled in and successfully complete the institutionally prescribed program of remedial or developmental education not to exceed one academic year or its equivalent; or

"(3)

(A) be administered a nationally recognized, standardized, or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which the applicant has applied; and

(B) with respect to applicants who are unable to satisfy the institutions' admissions testing requirements specified in subparagraph (A), be enrolled in and successfully complete an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

"In order to be eligible for assistance a student cannot be enrolled in either an elementary or a secondary school."

Such Act further (applicable as above) repealed § 3005(a) of Act Nov. 5, 1990, P.L. 101-508, 104 Stat. 1338-27, applicable to any grant, loan, or work assistance to cover the cost of instruction cor periods of enrollment beginning on or after Jan 1, 1991. Such section amended subsec. (d) to read as follows:

"(d) Ability to benefit. In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary."

Act July 25, 1991 added subsec. (k).

20 USCS § 1091

1992. Act July 23, 1992 (effective on and after 12/1/87, as provided by § 484(b)(2) of such Act, which appears as a note to this section), in subsec. (b), in para. (4), substituted "part B, D, or E or work-study assistance under part C" for "part B", and added para. (5).

Such Act further (effective on enactment, as provided by § 498 of such Act, which appears as *20 USCS § 1088* note), in subsec. (a), in para. (1), inserted "(including a program of study abroad approved for credit by the eligible institution at which such student is enrolled)", and substituted para. (4) for one which read: "file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and"; substituted subsec. (d) for one which read: "(d) Testing of students who are not high school graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, D and E of this title, the student shall pass an independently administered examination approved by the Secretary."; in subsec. (f), added the sentence beginning "Nothing in this subsection shall preclude . . ."; in subsec. (g), designated the existing provisions as para. (1) and in such para., inserted ", part D" in two places and "fraudulently" in two places, and added para. (2); substituted subsec. (h) for one which read:

"(h) Immigration status verification required. The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

"(1)

(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

"(2) If the student is not a citizen or national of the United States, there must be presented to the institution either--

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that--

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)--

"(A) the institution--

"(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status--

"(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

"(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

20 USCS § 1091

"(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status--

"(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

"(B) the fair hearing process (which includes, at a minimum, the requirements of paragraph (6)) shall be made available with respect to the individual.

"(6) The minimal requirements of this paragraph for a fair hearing process are as follows:

"(A) The institution provides the individual concerned with written notice of the determination described in paragraph (5) and of the opportunity for a hearing respecting the determination.

"(B) Upon timely request by the individual, the institution provides a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status.

"(C) Not later than 45 days after the date of an individual's request for a hearing, the official will notify the individual in writing of the official's decision on the appeal of the determination."

Such Act further (effective as above, except for the addition of subsec. (m)(1), which is effective 10/1/92, as provided by § 498 of such Act, which appears as *20 USCS § 1088* note, and subsec. (n), which is effective 12/1/87, as provided by § 484(i) of such Act, as added by § 2(k)(8) of Act Dec. 20, 1993, P.L. 103-208, which appears as a note to this section), added subsecs. (l)-(q).

Such Act further amended the directory language of Act July 25, 1991, P.L. 102-73, Title VIII, § 801(a), 102 Stat. 359, without affecting the text of this section.

1993. Act Dec. 20, 1993, § 2(h)(13)-(25) (effective as if included in Act July 23, 1992, P.L. 102-325, except that *20 USCS § 1098a* shall not apply to the amendments made by this Act, as provided by § 5(a) of such Act, which appears as *20 USCS § 1003* note), in subsec. (a), in para. (4)(B), inserted ", except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau", in para. (5), substituted "able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident" for "in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident"; in subsec. (b), in para. (2), in subpara. (A), deleted "and" after the concluding semicolon, in subpara. (B), substituted "; and" for the concluding period, and added subpara. (C), and, in para. (3), substituted "part B or D" for "part B"; deleted subsec. (f), which read: "(f) Verification limitations. Notwithstanding any other provision of law, the Secretary may not require, or prescribe regulations that require, institutions to verify the accuracy of data used to determine the eligibility for any program under this title for more than 30 percent of the applicants in any award year. In carrying out the provisions of this subsection no eligible institution shall be required to verify more than 30 percent of such applicants in any award year. Nothing in this subsection shall preclude the Secretary from verifying all applications for aid through the use of any means available, including through the exchange of information with any other Federal agency."; in subsec. (g), inserted a comma after "Part D" in two places; in subsec. (h)(4)(B), substituted "constitute" for "constitutes"; in subsec. (i), in para. (2), and substituted "documentation, or" for "documentation,", in para. (3), substituted "(h)(4)(B)(i)" for "(h)(4)(B)(ii)" and substituted the concluding period for ", or", and deleted para. (4), which read: "(4) because of a fair hearing process described in subsection (h)(5)(B)."; in subsec. (n), substituted "parts B, C," for "part B, C,"; in subsec. (q)(2), substituted "documented evidence of a social security number that is determined by the institution to be correct" for "a correct social security number"; and redesignated subsecs. (g)-(q) as subsecs. (f)-(p), respectively.

1994. Act Oct. 20, 1994, substituted subsec. (j), for one which read: "(j) Students attending institutions in the freely associated states and eligibility for trio programs. Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A or part C of this title."

1996. Act Sept. 30, 1996 (effective on enactment as provided by § 591 of such Act, which appears as *8 USCS § 1101* note), in subsec. (g)(4)(B), substituted cl. (i) for one which read: "(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,".

20 USCS § 1091

1998. Act Oct. 7, 1998 (effective on 10/1/98, as provided by § 3 of such Act, which appears as *20 USCS § 1001* note), in subsec. (a), in para. (4), in the introductory matter, substituted "the Secretary, as part of the original financial aid application process, a certification," for "the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a document" and, in para. (5), substituted "a citizen of any one of the Freely Associated States" for "or a permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands"; in subsec. (d), in the introductory matter, deleted "either" preceding "one", and added para. (3); substituted subsec. (j) for one which read:

"(j) Assistance under subparts 1, 3, and 6, and chapter 1 of subpart 2, of part A, and part C. Notwithstanding any other provision of law, a student shall be eligible, if otherwise qualified, for assistance under subparts 1, 3, and 6, and chapter 1 of subpart 2, of part A, and part C, of this title, and 1070d-31 et seq., and 1070a-11 et seq., and, if the student is otherwise qualified and--

"(1) is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; or

"(2) meets the requirements of subsection (a)(5) and attends a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.";

in subsec. (l), substituted para. (1) for one which read: "(1) relation to correspondence courses. A student enrolled in a course of instruction at an eligible institution of higher education (other than an institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act) that is offered in whole or in part through telecommunications and leads to a recognized associate, bachelor, or graduate degree conferred by such institution shall not be considered to be enrolled in correspondence courses unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of such courses."; and added subsec. (q).

Such Act further (applicable as provided by § 483(f)(2) of such Act, which appears as a note to this section) added subsec. (r).

2006. Act Feb. 8, 2006 (effective 7/1/2006, as provided by § 8001(c) of such Act, which appears as *20 USCS § 1002* note), in subsec. (a), in para. (5), substituted "; and" for a concluding period, and added para. (6); in subsec. (l)(1), in subpara. (A), deleted "for a program of study of 1 year or longer" following "certificate" and deleted "unless the total amount of telecommunications and correspondence courses at such institution equals or exceeds 50 percent of the total amount of all courses at the institution" following "corresponding courses", and substituted subpara. (B) for one which read:

"(B) Requirement. An institution of higher education referred to in subparagraph (A) is an institution of higher education--

"(i) that is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

"(ii) for which at least 50 percent of the programs of study offered by the institution lead to the award of a recognized associate, baccalaureate, or graduate degree.";

in subsec. (q), substituted para. (1) for one which read: "(1) Confirmation with IRS. The Secretary of Education, in cooperation with the Secretary of the Treasury, is authorized to confirm with the Internal Revenue Service the adjusted gross income, Federal income taxes paid, filing status, and exemptions reported by applicants (including parents) under this title on their Federal income tax returns for the purpose of verifying the information reported by applicants on student financial aid applications."; and, in subsec. (r)(1), substituted the introductory matter for matter which read: "A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:".

Act Aug. 12, 2006, purported to amend subsec. (l)(1)(B)(i) by substituting "section 3(C) of the Carl D. Perkins Career and Technical Education Act of 2006" for "section 521(4)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998", but the amendment was made by substituting "section 3(C) of the Carl D. Perkins Career and Technical Education Act of 2006" for "section 3(3)(C) of the Carl D. Perkins Vocational and Technical Education Act of 1998" in subsec. (l)(1)(B) in order to effectuate the probable intent of Congress.

2008. Act Aug. 14, 2008 (effective on enactment as provided by § 485(b) of such Act, which appears as a note to this section), in subsec. (d), added para. (4); deleted subsec. (j), which read:

"(j) Assistance under Subparts 1 and 3 of Part A, and Part C. Notwithstanding any other provision of law, a student shall be eligible until September 30, 2004, for assistance under subparts 1 and 3 of part A, and part C if the student is otherwise qualified and--

"(1) is a citizen of any one of the Freely Associated States and attends an institution of higher education in a State or a public or nonprofit private institution of higher education in the Freely Associated States; or

"(2) meets the requirements of subsection (a)(5) and attends a public or nonprofit private institution of higher education in any one of the Freely Associated States.";

and added subsec. (s).

Redesignation:

Part F of Title IV of Act Nov. 8, 1965, P.L. 89-329, was redesignated Part G of such Title by Act Oct. 17, 1986, P.L. 99-498, Title IV, § 406(a), 100 Stat. 1454, effective on enactment, as provided by § 2 of such Act, which appears as *20 USCS § 1001* note.

Other provisions:

Financial aid to students not deemed income or resources for purposes of certain Social Security Act programs. Act Oct. 16, 1968, P.L. 90-575 Title V, § 507, 82 Stat. 1063; Oct. 17, 1979, P.L. 96-88, Title III, § 301(a)(1), 93 Stat. 677, provided that: "For the purpose of any program assisted under title I, IV, X, XIV, XVI, or XIX of the Social Security Act [*42 USCS §§ 301 et seq., 601 et seq., 1201 et seq., 1351 et seq., 1381 et seq., or 1396 et seq.*], no grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Secretary of Education shall be considered to be income or resources."

Application of Act Oct. 17, 1986. Act Oct. 17, 1986, P.L. 99-498, Title IV, § 407(b), 100 Stat. 1494, provides:

"(1) Sections 483(e) and 484(d) of the Act [*20 USCS § 1090(e)*, subsec. (d) of this section] as amended by this section shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(2) The changes made in section 484(a)(1) of the Act [subsec. (a)(1) of this section] shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

"(3) Section 484(c) of the Act [subsec. (c) of this section] as amended by this section shall apply only to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, to individuals who were not awarded such assistance for any preceding period of enrollment.

"(4) Sections 484(f), 485(b), and 487(a)(10) of the Act [subsec. (f) of this section and *20 USCS §§ 1092(b), 1094(a)(10)*] as amended by this section shall apply only to periods of enrollment beginning on or after July 1, 1987."

Repeal of provision for studies and evaluations. Act Oct. 17, 1986, P.L. 99-498, Title XIII, Part A, § 1301, 100 Stat. 1579; June 3, 1987, P.L. 100-50, § 23(1), 101 Stat. 362, which formerly appeared as a note to this section, was repealed by Act Oct. 31, 1998, P.L. 105-332, § 6(a), 112 Stat. 3127. Such note provided for a survey on grades of students.

Repeal of provision relating to Alien Youth Education Opportunity Panel. Act Oct. 17, 1986, P.L. 99-498, Title XII, Part G, § 1361, 100 Stat. 1588, which formerly appeared as a note to this section, was repealed by Act Oct. 31, 1998, P.L. 105-332, § 6(a), 112 Stat. 3127. Such note provided for establishment of an Alien Youth Education Opportunity panel.

Effective date of July 18, 1988 amendments. Act July 18, 1988, P.L. 100-369, § 13, 102 Stat. 838, provides:

"(a) General Rule. Except as otherwise provided, the amendments made by this Act to title IV of the Higher Education Act of 1965 [amending this section and former *20 USCS § 1078-1*] shall be effective for any loan for which the eligibility of the borrower is certified by the institution 30 days after the date of enactment of this Act.

"(b) Special Rules.

(1) The amendments made by section 5 [amending this section and *20 USCS §§ 1077, 1078*] shall be effective with respect to loans made on or after October 1, 1988.

"(2) The amendments made by sections 6, 7, 8, 9, 10, 11, and 12 [amending this section, *20 USCS §§ 1058, 1061, 1062, 1070a-1, 1070a-3, 1070a-4, 1070a-6, 1071, 1077, 1078, 1087-2, 1087dd, 1087ee, 1087nm, 1087ss, 1087vv, 1132d-1, 1132g-1, 1134m*, and *48 USCS § 1905*] shall take effect on the date of enactment of this Act."

Effective date of July 23, 1992 amendment of subsec. (b). Act July 23, 1992, P.L. 102-325, Title IV, Part G, § 484(b)(2), 106 Stat. 615, provides: "The amendments made by paragraph (1)(A) of this subsection shall be effective on and after December 1, 1987."

Effective date of subsec. (n). Act July 23, 1992, P.L. 102-235, Title IV, Part G, § 484(i), as added Dec. 20, 1993, P.L. 103-208, § 2(k)(8), 107 Stat. 2486 (effective as if included in Act July 23, 1992, P.L. 102-325, except that *20 USCS § 1098a* shall not apply to the amendments made by this Act, as provided by § 5(a) of such Act, which appears as *20 USCS § 1003* note), provides: "The amendments made by subsection (g) [adding subsecs. (m)-(q) of this section] with respect to the addition of subsection (n) shall be effective on and after December 1, 1987."

Application of Oct. 7, 1998 amendment adding subsec. (r). Act Oct. 7, 1998, P.L. 105-244, Title IV, Part G, § 483(f)(2), 112 Stat. 1737, provides: "The amendment made by paragraph (1) [adding subsec. (r) of this section], regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance to cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act."

Effective date of Aug. 14, 2008 amendments. Act Aug. 14, 2008, P.L. 110-315, Title IV, Part G, § 485(b), 122 Stat. 3290, provides: "The amendments made by subsection (a) [amending this section] shall take effect on July 1, 2010, except that the amendments made by paragraphs (3), (4), and (8) of such subsection [adding subsec. (d)(4), deleting subsec. (j), and adding subsec. (s) of this section] shall take effect on the date of enactment of this Act."

NOTES:

Code of Federal Regulations:

Office of Postsecondary Education, Department of Education--Institutional eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

Office of Postsecondary Education, Department of Education--Student assistance general provisions, 34 CFR Part 668.

Office of Postsecondary Education, Department of Education--Federal Perkins loan program, 34 CFR Part 674.

Office of Postsecondary Education, Department of Education--Federal supplemental educational opportunity grant program, 34 CFR Part 676.

Related Statutes & Rules:

This section is referred to in *20 USCS §§ 1002, 1070, 1070a, 1070a-34, 1070b-1, 1070b-2, 1077, 1078, 1078-2, 1078-6, 1078-8, 1087dd, 1088, 1092, 1093, 1094, 1096, 1135c, 2753; 25 USCS § 3353, 42 USCS §§ 2753, 12591, 12602.*

Research Guide:

Federal Procedure:

17A Fed Proc L Ed, Health, Education, and Welfare § 42:1887.

Am Jur:

3A *Am Jur 2d, Aliens and Citizens* § 20.

3C *Am Jur 2d, Aliens and Citizens* § 2208.

25 *Am Jur 2d, Drugs and Controlled Substances* § 207.

Law Review Articles:

David. The Revenue Reconciliation Act of 1990: practical considerations. 5 *Prac Tax Law* 15, Spring 1991.

Interpretive Notes and Decisions:

Regulations promulgated by Secretary of Education governing amount of tuition and other fees post secondary schools must refund when student receiving federal aid under Title IV of Higher Education Act, *20 USCS §§ 1070-1099*,

20 USCS § 1091

withdraws from school violated § 1091 where they utilized entirely different method of computing amount of money schools could retain upon student withdrawal rather than simply effecting statutory scheme. *California Cosmetology Coalition v Riley* (1997, CA9 Cal) 110 F3d 1454, 97 CDOS 2659, 97 Daily Journal DAR 4763 (criticized in *Coalition of New York State Career Sch. v Riley* (1997, CA2 NY) 129 F3d 276).

20 USCS § 1091(r), which renders students convicted of drug offenses ineligible to receive federal education grants, loans, or work assistance, does not violate Double Jeopardy Clause because nothing on face of statute suggests that Congress intended to create anything other than civil remedy, mere fact that it has some punitive or deterrent effect does not place its civil penalties within purview of Double Jeopardy Clause, and it is rationally related to several nonpunitive purposes, including rehabilitation of student drug offenders, promotion of school safety and drug-free learning environments, and ensuring that public money is spent on providing educational opportunities for law-abiding students. *Students for Sensible Drug Policy Found. v Spellings* (2008, CA8 SD) 523 F3d 896.

District court properly dismissed suit that asserted constitutional challenges to 20 USCS § 1091(r), statute that rendered students convicted of drug offenses ineligible to receive federal education grants, loans, or work assistance, because suit did not assert any legally actionable claims; 20 USCS § 1091(r) did not violate Double Jeopardy Clause because nothing on face of statute suggested that Congress intended to create anything other than civil remedy, mere fact that it had some punitive or deterrent effect did not render statute punitive for double jeopardy purposes, and statute was rationally related to several nonpunitive purposes, including rehabilitation of student drug offenders, promotion of school safety and drug-free learning environments, and ensuring that public money was spent on educating law-abiding students. *Students for Sensible Drug Policy Found. v Spellings* (2008, CA8 SD) 523 F3d 896.

Secretary of Education's refund regulation, 34 CFR § 688.22, under which refund calculation is not affected by any unpaid charges of government but only by student's unpaid charges, is reasonable interpretation of conflicting statutory mandates found in 20 USCS §§ 1091 and 1092. *Career College Ass'n v Riley* (1996, App DC) 317 US App DC 232, 82 F3d 476.

Alien's claim against United States Department of Education arising from university's cancellation of alien's student financial aid after alien was unable to provide university proof of her citizenship is dismissed, where although Secretary of Education is responsible for administering higher education financial assistance programs, participating institutions are responsible for actual award and payment of financial assistance to individual students in accordance with regulations established by Secretary, because alien's claim arising from university's cancellation of aid did not state claim against Department of Education or its agencies. *Taha v INS* (1993, ED Pa) 828 F Supp 362.

Student's action against loan servicers, seeking injunction compelling them to provide him additional guaranteed student loans, is denied summarily, where notwithstanding default status of 1986 student loan, student stated on subsequent applications that he had never defaulted on student loan, and where defendants demanded return of funds loaned on basis of incorrect applications, because defendants complied with applicable federal law and regulations by demanding return of funds and filing default claim with guarantee agency for entire unpaid balance. *Pace v Suntech, Inc.* (1995, SD Miss) 900 F Supp 20.

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Aliens who may be Unlawfully Present in the United States and their Access to Public Post-Secondary Educational Institutions

Student and Exchange Visitor Program Overview

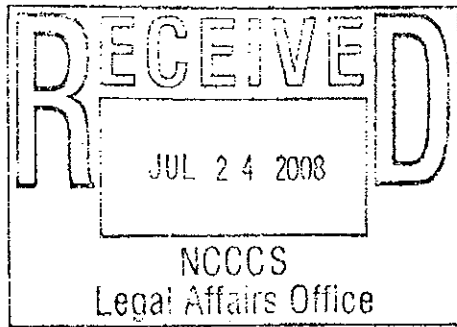
U.S. Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) strives to balance the goal of securing our borders with the goal of welcoming international students and exchange visitors who seek to participate in educational and cultural programs in the United States. To accomplish this goal, SEVP uses the Student and Exchange Visitor Information System (SEVIS), a web-based information system that allows SEVP to track and monitor schools, programs, and certain nonimmigrants who are lawfully present in the United States.

Current Department of Homeland Security (DHS) Reporting Requirements

Using SEVIS, SEVP tracks and monitors nonimmigrants in F, M, and J visa status, which includes students, exchange visitors, and their dependents. Schools are required to update SEVIS throughout the duration of a student or exchange visitor's approved participation in U.S. educational or cultural programs. Pursuant to 8 C.F.R. § 214.3(g)(3)(ii)(A), schools are required to report to the government within 21 days when a student or exchange visitor in F, M, or J nonimmigrant status fails to maintain his or her status or complete his or her program. Other than these reporting requirements for nonimmigrant students and exchange visitors in F, M, or J status who have registered with SEVP and are in SEVIS, no other provisions exist that require schools to report students who are unlawfully present to the government. Unless a nonimmigrant has an F, M, or J visa, DHS/ICE does not have the authority to require any school to request or determine a student's immigration status (i.e., whether or not he or she is legally allowed to study).

State Rules on Unlawfully Present Students

Some states have their own law or policy that prohibits aliens who are unlawfully present in the country from enrolling in the state's public post-secondary institutions. DHS does not authorize or require any such rules; they are outside DHS' authorities.



Office of State and Local Coordination
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

JUL - 9 2008

Mr. Thomas J. Ziko
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

Dear Mr. Ziko:

Thank you for your letter of May 28, 2008, to Michael Chertoff, Secretary of Homeland Security. Your letter was referred to U.S. Immigration and Customs Enforcement (ICE), within the Department of Homeland Security, for response.

You inquired whether 8 U.S.C. § 1621 prohibits NCCCS from requiring North Carolina community colleges to enroll illegal aliens in post-secondary education courses, absent state legislation. Please note that admission to public post-secondary educational institutions is not one of the benefits regulated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is not a public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). In this respect, Section 411(c)(1)(B) of PRWORA, codified at 8 U.S.C. § 1621(c)(1)(B), addresses benefits "for which payments or assistance are provided. . .", such as monetary assistance for post-secondary education.

Therefore, the individual states must decide for themselves whether or not to admit illegal aliens into their public post-secondary institutions. States may bar or admit illegal aliens from enrolling in public post-secondary institutions either as a matter of policy or through legislation. Please note, however, that any state policy or legislation on this issue must use federal immigration status standards to identify which applicants are illegal aliens. In the absence of any state policy or legislation addressing this issue, it is up to the schools to decide whether or not to enroll illegal aliens, and the schools must similarly use federal immigration status standards to identify illegal alien applicants.

We hope that this response satisfies your concerns. Please contact us if you have any further questions.

Sincerely,

Sheriff (Ret.) Jim Pendergraph
Executive Director
Office of State and Local Coordination

D. Food Stamps

For more information on the eligibility of immigrant children for food stamps, please look at the link below from the National Immigrant Law Center.

Link: <http://www.nilc.org/children-foodstamps-iru03.html>

E. Low-Income Home Energy (LIHEAP) and Weatherization Assistance Programs (WAP)

1. Payments for Heating, Cooling, and Weatherization

2. Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law

Low-Income Home Energy (LIHEAP) and Weatherization Assistance Programs (WAP)

Payments for heating, cooling, and weatherization

The Low-Income Home Energy Assistance Program (LIHEAP)...

- provides states with block grants, from the U.S. Department of Health and Human Services (HHS), to help low-income households defray the cost of heating or cooling and weatherizing their homes.
- sends the federal block grant to state social services agencies, welfare departments, or similar agencies which, in turn, often contract with local providers, such as community action agencies, to operate the programs. The names of the programs and services provided vary throughout the country.
- furnishes the highest level of assistance to households with the lowest incomes and highest energy costs or needs, taking into account family size.

LIHEAP programs typically include...

- **Heating or Cooling Assistance Programs.** Payments to help persons defray the costs of heating or cooling their residences.
- **Energy Crisis Intervention Programs.** Emergency payments to cover unpaid energy bills or the costs of weather-related emergencies.
- **Weatherization Assistance.** In some areas, LIHEAP funds are occasionally used for weatherization assistance, such as insulation, weather sealants, and other energy-related home repairs.

Households qualify for LIHEAP in which...

- one or more individuals in the household are receiving Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, or certain veterans' benefits or payments; *or*
- household income does not exceed 60 percent of the state median income or 150 percent of the federal poverty level, whichever is greater.

NOTE: There are exceptions to the income cap. A state may not exclude a household from eligibility solely on the basis of their income, if their income is less than 110 percent of that state's poverty level.

However, a state may give priority to households with the highest home energy costs or needs in relation to household income.

ALSO NOTE: The term "household" means "any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent."

The U.S. Department of Energy's Low-Income Weatherization Assistance Program (WAP)...

- provides weatherization, such as insulation, weather sealants, and other energy-related home repair, for low-income units.
- is administered by the states, which subcontract with local providers such as community action agencies or other public or nonprofit agencies who then enter into agreements with homeowners and landlords to weatherize their properties.
- is supplemented by some states with contributions from utility companies and other sources.
- follows LIHEAP's immigrant eligibility rules.

NOTE: Agencies using both WAP and LIHEAP funds for weatherization activities may follow either WAP or LIHEAP income eligibility and priority rules (which differ in some respects).

Special considerations for immigrants and their families in LIHEAP and WAP programs

- Advocates argue that all households or family units which include a U.S. citizen or "qualified" immigrant should be eligible for LIHEAP and WAP. Federal agencies have not issued guidance on this issue.

To apply, an applicant should...

- gather documents proving income and showing utility expenses and bills, energy needs, and type and location of housing.
- apply through local programs administering LIHEAP or WAP funds.

continued following table ►

LIHEAP and DOE Weatherization Assistance Programs	
ELIGIBLE IMMIGRANTS	INELIGIBLE IMMIGRANTS
LIHEAP Heating, Cooling, and Crisis Assistance Programs	LIHEAP Heating, Cooling, and Crisis Assistance Programs
<p>“Qualified” immigrants Victims of trafficking and their derivative beneficiaries</p>	<p>“Not qualified” immigrants</p>
LIHEAP Weatherization Assistance and DOE Weatherization Assistance Programs	LIHEAP Weatherization Assistance and DOE Weatherization Assistance Programs
<p>Multi-Unit Dwellings Families living in multi-unit dwellings are eligible without regard to the immigration status of the inhabitants.</p>	<p>Multi-Unit Dwellings None</p>
<p>Single-Unit Dwellings “Qualified” immigrants Victims of trafficking and their derivative beneficiaries</p>	<p>Single-Unit Dwellings “Not qualified” immigrants</p>

► *continued from page 150*

The law governing LIHEAP appears at:

Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. §§ 8621, *et seq.*, 45 C.F.R. §§ 96.80, *et seq.*, Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658 (Aug. 4, 1998), Memorandum from Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services to Low-Income Home Energy Assistance Program (LIHEAP) Grantees and Other Interested Parties, Re: Revision-Guidance on the Interpretation of “Federal Public Benefits” Under the Welfare Reform Law (June 15, 1999).

The law governing WAP appears at:

42 U.S.C. §§ 6861, *et seq.*, 10 C.F.R. §§ 440.1 *et seq.*; immigrant eligibility at Weatherization Program Notice 98-1, Gail McKinley, Acting Director, Office of State Community Programs, Energy Efficiency and Renewable Energy, Re: Program Year 1998 Weatherization Grant Guidance (effective Nov. 19, 1997).

REVISION - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law

THIS CONTAINS INFORMATION ISSUED BY THE U.S. ADMINISTRATION FOR CHILDREN AND FAMILIES IN LIHEAP INFORMATION MEMORANDUM TRANSMITTAL NO.

LIHEAP-IM-99-10,

DATED

6/15/99

TO:

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP) GRANTEEES AND OTHER INTERESTED PARTIES

SUBJECT:

REVISION - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law

RELATED REFERENCES:

Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended; the Personal and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, signed into law on August 22, 1996; Federal Register notice dated August 26, 1997 (62 FR 45256) providing guidance on the definition of "Federal Means-Tested Public Benefits" under PRWORA for HHS programs; Federal Register notice dated August 4, 1998 (63 FR 41658) providing guidance on the definition of "Federal Public Benefits" under PRWORA for HHS programs; Federal Register notice dated August 4, 1998 (63 FR 41662) from the Department of Justice issuing a "Proposed Rule on Verification of Eligibility for Public Benefits" under PRWORA; Federal Register notice dated November 17, 1997 (62 FR 61344) from the Department of Justice issuing "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996"; LIHEAP Information Memorandum 97-25, dated 8/28/97; and LIHEAP Information Memorandum 98-25, dated August 6, 1998.

PURPOSE:

TO AMEND ADVICE given to LIHEAP grantees about the definition of "Federal Public Benefits" for non-qualified aliens under the 1996 welfare reform law for HHS programs, as it applies to use of LIHEAP funds for weatherization of multi-unit buildings.

BACKGROUND:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, was signed into law by the President on

August 22, 1996. PRWORA, popularly known as the welfare reform law, established the Temporary Assistance to Needy Families (TANF) program to replace the Assistance to Families With Dependent Children (AFDC) program. In addition, PRWORA restricts the access of certain categories of immigrants to specified Federal benefits, including some benefits administered by the Department of Health and Human Services (HHS).

On August 26, 1997, HHS published a notice in the Federal Register (62 FR 45256) providing guidance on the definition of "Federal Means-Tested Public Benefits" (applicable to benefits for "qualified aliens") under PRWORA for HHS programs. On August 4, 1998, HHS published a notice in the Federal Register (63 FR 41658) entitled "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit'", providing guidance on the definition of "Federal Public Benefits" (applicable to benefits for "non-qualified aliens"). (See LIHEAP Information Memoranda 97-25, dated 8/28/97 and LIHEAP Information Memorandum 98-25, dated 8/6/98, respectively, for more information.)

CONTENT:

We have received inquiries about the treatment of LIHEAP funds used for weatherization of multi-unit buildings pursuant to the HHS notice published in the Federal Register on August 4, 1998 (63 FR 41658), and LIHEAP Information Memorandum 98-25, dated August 6, 1998.

The HHS Federal Register notice identified 31 programs that provide Federal public benefits, and LIHEAP is one of those programs. As noted in the HHS Federal Register notice, not all of the benefits or services provided by these programs are Federal public benefits. The use of LIHEAP funds to weatherize multi-unit buildings was given as an example of a benefit that is not a Federal public benefit, and, therefore, providers would not be required to verify the alienage and citizenship of residents. The reasoning given in the HHS Federal Register notice was incorrect for why this benefit is not a Federal public benefit, but the conclusion is correct: LIHEAP funds used to weatherize multi-unit buildings are not Federal public benefits, and providers should not verify alien and citizen eligibility.

To be considered a Federal public benefit, the HHS Federal Register notice stated that the benefit must meet a two-part test. First, it must be provided to an individual, household or family eligibility unit; and second, the individual, household or family must, as a condition of receipt, meet specified criteria, such as income or residency in order to receive the benefit. The HHS Federal Register notice stated that the use of LIHEAP funds to weatherize multi-unit buildings was not a Federal public benefit because the eligibility of individuals is not considered in determining whether such funds will be used to improve the building, which is the second part of the test. In fact, LIHEAP grantees are allowed to use Department of Energy rules applicable to the DOE Low Income Weatherization Assistance Program (LIWAP) for their LIHEAP funds spent on weatherization. Under one of those rules, 2/3 of the residents of a multi-unit building must meet income eligibility criteria in order for the building to be weatherized with DOE or LIHEAP funds. Accordingly, LIHEAP Information Memorandum 98-25, dated

8/6/98, clarified that determinations would need to be made to ensure that 2/3 of the units meet the citizenship and alienage criteria for assistance. This has caused some confusion.

It has now been determined that weatherization of multi-unit buildings is not a Federal public benefit because it does not meet the first part of the test, that is, it is not a benefit provided to an individual, household or family eligibility unit. Weatherization of a multi-unit building is a benefit conferred on a community of people, much in the same way as benefits provided under Title I, Part A of the Elementary and Secondary Education Act (ESEA) are benefits conferred on a student body at a school. Under Title I of ESEA, funds are provided directly to a school system which then uses those funds to improve services that are provided by the individual schools to individual students. The eligibility of a school to receive this benefit is based in part on the income eligibility of a portion of students attending the school. The Conference Report to PRWORA specifically stated that it was the intent of the conferees that Title I of ESEA not be considered a Federal public benefit "because the benefit is not provided to an individual, household, or family eligibility unit." (H.Rept. No. 104-725 at page 380 (1996)).

We believe this same reasoning should be applied to the use of LIHEAP funds for the weatherization of multi-unit buildings.

Based on the above analysis, we are withdrawing that portion of our LIHEAP Information Memorandum 98-25 that states that residents in 2/3 of the units must be qualified aliens before the building could be weatherized. As stated above, providers do not need to verify alienage or citizenship of any of the building residents, since LIHEAP funds for weatherization of a multi-unit building are not considered Federal public benefits.

This guidance, however, does not apply to single family dwelling units. Weatherization services performed on or provided to single-family dwelling units are considered to be Federal public benefits, because they are provided to an individual, household or family eligibility unit. Therefore, weatherization services performed on or provided to a single-family dwelling unit are subject to the alien verification requirements.

IMPLEMENTATION OF ALIEN VERIFICATION REQUIREMENTS

We would also like to remind you that agencies providing Federal public benefits must be in full compliance with the alien verification requirements within 2 years of publication of a Justice Department final rule. Until a final rule is published, verification of alien status may be carried out using the Justice Department's proposed rule issued on 8/4/98 (63 FR 41662), in conjunction with the Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which Justice published earlier in the Federal Register at 62 FR 61344 on November 17, 1997; but verification is not required by Federal rules at this time. A copy of Justice's proposed rule and the Interim

Guidance may be obtained from the Federal Register website at "www.access.gpo.gov/nara".

In addition to questions about the application of the "Federal Public Benefits" definition to the weatherization of multi-unit buildings, HHS received several other comments on its August 4, 1998 Federal Register notice as it relates to LIHEAP and several of the other HHS programs. We are reviewing these comments and considering whether changes to the proposed rule should be made. We anticipate publicly addressing comments on the Notice shortly.

INQUIRIES TO:

Janet M. Fox, Director
Division of Energy Assistance
Office of Community Services, ACF, HHS
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447
Telephone: (202) 401-9351
Fax: (202) 401-5718

_____/s_____
Janet M. Fox
Director
Division of Energy Assistance
Office of Community Services

Part IV. State Benefits Comparison Charts: By Topic

A. Multiple Benefits

- 1. Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services**
- 2. Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children**
- 3. Quick Guide For State Court Judges On Common Issues That Arise From Parties' Immigration Status: Economic Remedies**

Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services¹

By Jordan Tacher and Leslye E. Orloff
National Immigrant Women's Advocacy Project (NIWAP)

April 17, 2013

For What Public Benefits Do Undocumented Domestic Violence Victims Qualify?

In 1996 Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act or PRWORA)² and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)³ severely limited access to “federal public benefits” and “federal means-tested public benefits” for many immigrants. This legislation also guaranteed as a matter of federal law and orders issued by the U.S. Attorney General that undocumented immigrants be provided access to programs and services necessary to “protect life and safety.”⁴

Programs that meet the following criteria are required by federal law to provide services to all persons without regard to immigration status:⁵

- offer in-kind services (services such as food, shelter, and other commodities);
- provide services at the community level;
- provide services regardless of the individual's income or resources; and
- are necessary to protect life or safety

Housing⁶

- Short-term shelter (defined as emergency shelter and transitional housing) for up to two years for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children⁷
- In-kind emergency disaster relief⁸

¹ This document was developed under grant number SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the author(s) and do not necessarily represent the official position or policies of the State Justice Institute.

² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2267 (1996) [hereinafter PRWORA].

³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996) [hereinafter IIRAIRA].

⁴ IIRAIRA § 508, 8 U.S.C. § 1642(d) (2011).

⁵ 8 U.S.C. § 1611(b)(1)(E) (2011). See also *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613, at 3616 (Jan. 16, 2001).

⁶ See Letter from Andrew Cuomo, Sec'y, U.S. Dep't of Hous. And Urban Dev., to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (last visited Mar. 27, 2013); 8 U.S.C. § 1611(b)(1)(D) (2011). See also *Final Specification*, supra note 4. Federal preemption precludes states from restricting access to services and programs necessary to protect life and safety. See Rocio Molina, Leslye Orloff and Benish Anver, *Federal Preemption of State Laws That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (January 11, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/federal-preemption/State%20Services%20and%20Federal%20Preemption%201-11-13%20%20FINAL.pdf/view> (last visited Apr. 11, 2013).

⁷ 8 U.S.C. § 1611(b)(1)(D) (2011). See also *Final Specification*, supra note 4.

⁸ Exempt from immigrant access restrictions. PRWORA § 401(b)(2), 8 U.S.C. § 1611(b)(2).

Nutrition Assistance⁹

- Soup kitchens¹⁰
- Community food banks¹¹
- Senior nutrition programs and other nutritional programs for persons requiring special assistance
- Assistance under the National School Lunch Act, the Child Nutrition Act of 1966, or SNAP for children under 18¹²
- Special Supplemental Nutrition Program for Women, Infants and Children (WIC)¹³

Legal Services

- Organizations may use any source of funding including Legal Services Corporation funds to provide free legal services to victims (or immigrants whose child has been a victim) of domestic violence, child abuse, elder abuse, sexual assault, human trafficking and victims of U Visa crimes¹⁴ without regard to the victim's immigration status.¹⁵

Health Care

- Emergency Medicaid¹⁶
- To protect life or safety, health services such as the following are required by law for all immigrants, regardless of status:¹⁷
 - Mental health, crisis counseling, and intervention programs
 - Medical and public health services (including treatment and prevention of diseases and injuries, such as immunizations)
 - Substance abuse assistance
- Health Resources and Services Administration Programs (HRSA) funded community, migrant and primary healthcare programs¹⁸
- Public health assistance for immunization, testing and treatment of communicable diseases and school vaccinations¹⁹

Education

- Public elementary and secondary education²⁰

⁹ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹⁰ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹¹ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹² PRWORA, 8 U.S.C. § 1612(a)(2)(J), 1615(a) (2011).

¹³ 7 C.F.R. § 246.7(c)(3)

¹⁴ U Visa crimes include: rape; torture; trafficking; incest; domestic violence; sexual assault; stalking; prostitution; female genital mutilation; involuntary servitude; slave trade; being held hostage; kidnapping, abduction; peonage, false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury, attempt, solicitation, or conspiracy to commit any of these or similar crimes. 8 U.S.C. 1101(a)(15)(U). 8 C.F.R. § 214.14(a)(9) (2008).

¹⁵ *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 103-322 (2006); Letter from Helaine M. Barnett, President, Legal Servs. Corp., to All LSC Program Directors (Feb. 12, 2006), *available at* <http://niwaplibrary.wcl.american.edu/cultural-competency/access-to-legal-services>.

¹⁶ Emergency Medicaid is exempt from immigrant restrictions under PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).

¹⁷ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹⁸ For the location of HHS funded health care programs open to all persons without regard to immigration status, *see Find a Health Center*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVICES ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 27, 2013).

¹⁹ Immunization and treatment of communicable diseases is exempt from immigrant restrictions. PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(1)(C) (2011). This includes diseases such as tuberculosis, HIV, leprosy, and other sexually transmitted diseases. *See Immunizations*, CTRS. FOR MEDICAID AND MEDICARE SVCS. (Jun. 15, 2012), *available at* <http://www.cms.gov/Medicare/Prevention/Immunizations/index.html?redirect=/immunizations/> (last visited Mar. 27, 2013).

- Child Care and Development Fund (CCDF)²¹
Safety Services Required
- Those relating to child protection, adult protective services, violence and abuse prevention, and protections for victims of domestic violence²²
- Victims of Crime (VOCA) Victim Compensation Funds²³

For What Additional Public Benefits Do Domestic Violence Victims Who are Lawfully Present Qualify?²⁴

There are four different categories of immigrants who qualify to receive federal and/or state public benefits.

- Persons Residing Under Cover of Law (PRUCOL)
 - Can access certain state funded benefits in some states
- Immigrants who are lawfully present
 - For health care access purposes of the Patient Protection and Affordable Care Act of 2009 including access to health care for children and pregnant women²⁵
- “Qualified immigrants”²⁶ who entered the country *before* August 22, 1996 can access
 - Federal public benefits,²⁷
 - State public benefits, and
 - Federal means-tested public benefits
- “Qualified immigrants” who entered the country *on or after* August 22, 1996 can access
 - Federal public benefits,
 - Must wait until 5 years after receipt of “qualified immigrant” status to receive federal means-tested public benefits, and

²⁰ See *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

²¹ If undocumented parents have children who are U.S. citizens, lawful permanent residents or qualified immigrants, Child Care Development Fund child care is available to such children without regard to the immigrant parent’s immigration status. See U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES; CHILD CARE BUREAU, *Clarification of Interpretation of “Federal Public Benefit” Regarding CCDF Services Program Instruction (ACYF-PI-CC-98-08)* (Nov. 25, 1998), available at <http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/Clarification%20of%20Interpretation%20of%20Federal%20Public%20Benefits%20Regarding%20Child%20Care%20and%20Development%20Fund%20Services.pdf/view> (last visited April 11, 2013).

²² 8 U.S.C. § 1611(b)(1)(D) (2011). See also *Final Specification*, *supra* note 4.

²³ Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T-visas should be able to receive VOCA victim assistance to the same extent as refugees. For state by state details on access to VOCA assistance for immigrant survivors, see *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence*, NIWAP, LEGAL MOMENTUM, & MORGAN LEWIS LLC (Sep. 17, 2007), available at http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc (last visited Apr. 10, 2013).

²⁴ This Bench Card summarizes benefits open to abused immigrants. For a detailed analysis, by immigration status, of whether an immigrant can be considered lawfully present or a qualified immigrant See *Immigration Status: Work Authorization, Public Benefits and Ability to Sponsor Children* available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/Immigration%20Status-%20Work%20Authorization-%20Public%20Benefits%20and%20the%20Ability%20to%20Sponsor%20Children%204.17.13.xlsx/view>

²⁵ Patient Protection and Affordable Care Act of 2009, Pub. L. 111-148, 124 Stat. 119-1025 (2009).

²⁶ A qualified immigrant is defined by 8 U.S.C. 1641 to include: lawful permanent residents, asylees, refugees, persons paroled for more than one year (generally most available to Cuban immigrants); persons granted withholding of removal or conditional entry, Cuban and Haitian Entrants, VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, battered immigrants with prima facie determinations or approved family based visa petitions, and T-visa applicants).

²⁷ 8 U.S.C. § 1611(c)(1) (2011) defines federal public benefit as Any grant, contract, loan, professional or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by the United States or by funds of the United States.

- May qualify for state public benefits

VAWA immigration relief applicants²⁸ with a *prima facie* determinations or approval and their children are “qualified immigrants” and may also qualify for health care or state benefits as lawfully present and PRUCOL. The following is a partial list of benefits available for “qualified immigrants”:

Income Maintenance²⁹

- TANF - *limited to qualified immigrants who entered before 8/22/1996*³⁰ and others who have been qualified immigrants for more than 5 years³¹
- SSI for those who were lawful permanent residents and were receiving SSI on August 22, 1996 or if the immigrant, her spouse, or a parent had, individually or collectively, worked for 40 quarters³²

Housing³³

- Housing Choice Voucher Program (Section 8)
- Public Housing
- Heating assistance (LIHEAP)³⁴

Nutrition Assistance³⁵

- SNAP (Food Stamps) - *limited to qualified immigrants who entered before 8/22/1996*³⁶ and others who have been qualified immigrants for more than 5 years

Health³⁷

- SCHIP and Medicaid for lawfully present pregnant women and children³⁸
- Medicaid - *limited to qualified immigrants who entered before 8/22/1996*³⁹ and others who have been qualified immigrants for more than 5 years⁴⁰

²⁸ Includes child and spouse abuse victim VAWA self-petitioners (victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent) INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii); and VAWA cancellation of removal or VAWA suspension of deportation applicants who are victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent or immigrant parents of children abused by the child's other parent who is a citizen or lawful permanent resident. INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) and INA Section 244(a)(3) (as in effect prior to March 31, 1997).

²⁹ See DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³⁰ 8 U.S.C. § 1612 (a)(2)(D) (2011).

³¹ 8 U.S.C. §§ 1612(A)(2)(L), 1613 (2011).

³² 8 U.S.C. § 1612(a)(2)(D)(i) (2011).

³³ 8 U.S.C. § 1641(c) (2011).

³⁴ See DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³⁵ 8 U.S.C. §§ 1612(A)(2)(L), 1613 (2011).

³⁶ 8 U.S.C. § 1612 (a)(2)(D) (2011).

³⁷ For a full list of HHS federal public benefits, see DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998); *HHS Funded Programs Open to all Immigrants*, NIWAP AND LEGAL MOMENTUM (Aug. 4, 2011), available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/unrestricted-benefits/PB_16_APPENDIX_HHSFundedProgsOpenAllImms-MANUAL-ES.pdf/view?searchterm=HHS%20Funded%20Programs%20Open%20to%20all%20Immigrants (last visited Apr. 10, 2013).

³⁸ See CTR. FOR MEDICAID, CHIP, AND SURVEY & CERTIFICATION, *Re: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women* (Jul. 1, 2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/health-care/CMS%20Lawfully%20Residing%20Medicaid%20and%20CHIP%207.1.10.pdf/view?searchterm=Re:%20Medicaid%20and%20CHIP%20Coverage%20of%20E2%80%9CLawfully%20Residing%20Children%20and%20Pregnant%20Women> (last visited Apr. 11, 2013); DEP'T OF HEALTH AND HUMAN SVCS., *State Children's Health Insurance Program; Eligibility for Prenatal Care and Other Health Services for Unborn Children*, 67 Fed. Reg. 61956-01 (October 2, 2002).

Education and Children

- Post-secondary grants and loans and programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965⁴¹
- States are free to offer any postsecondary education benefit on the basis of residence within that state⁴²
- Child Care and Development Fund (CCDF)⁴³
- TANF Funded Child Care – *requires TANF eligibility so affected by TANF 5 year bar*⁴⁴
- Adoption assistance⁴⁵
- Foster care⁴⁶

³⁹ 8 U.S.C. § 1612 (a)(2)(D) (2011).

⁴⁰ 8 U.S.C. §§ 1612(a)(2)(L), 1613 (2011).

⁴¹ 8 U.S.C. § 1613(c)(2)(H) (2011). *See also Student Aid Eligibility - Eligibility for Title IV Aid for “Battered Immigrants-Qualified Aliens” as provided for in the Violence Against Women Act*, DEP’T OF EDUC. (June 4, 2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/6%20IFAP%20-%20Dear%20Colleague%20Letters.pdf/view?searchterm=Student%20Aid%20Eligibility%20-%20Eligibility%20for%20Title%20IV%20Aid%20for%20%20E2%80%9CBattered%20Immigrants-Qualified%20Aliens%20as%20provided%20for%20in%20the%20Violence%20Against%20Women%20Act>, (last visited Apr. 11, 2013).

⁴² 8 U.S.C.A. § 1623 (2011).

⁴³ *See* U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES, *Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees* (May 2, 2008), available at <http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/Verification%20of%20Citizenship%20and%20Immigration%20Status%20by%20Non-Profit%20Organizations%20and%20Head%20Start%20Grantees.pdf/view> (last visited Apr. 11, 2013). Available to qualified immigrant children based on the child’s immigration status.

⁴⁴ Available to qualified immigrants based on TANF eligibility of either the child or parent. For a state by state analysis of state funded access to access to TANF funded child care., see Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access* available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

⁴⁵ *See* DEP’T OF HEALTH AND HUMAN SERVS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

⁴⁶ *See* DEP’T OF HEALTH AND HUMAN SERVS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

State-Funded Benefits

The following list provides an overview of which states offer certain state-funded publicⁱ benefits. For more information about what state funded benefits and health care is available to specific categories of immigrants and immigrant crime victims including program limitations, see:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/state-funded-benefits>

States offering state-funded assistance to qualified immigrants during the 5 year bar and some immigrant crime victims, subject to individual state limitations that may apply; if your state is not listed no state funded benefits are available for immigrants or immigrant crime victims in your state:

- TANF state funded including during 5 year bar for qualified immigrants
 - CA*, IL, IA, ME*, MD, MN*, NV, NJ, NM, NY, OR*, PA*, TN, UT, WA*, WI, WY
- TANF Funded Child Care
 - CA, CT, IL, IA, ME, MD, MN, NE, NJ, NM, NY, OR, PA, TN, UT, WA, WI, WY
- Medical Assistance State-Funded
- For qualified immigrants, VAWA, U and T victims and lawfully present immigrants- adults
 - AK⁺, AR^{**}, CA^{### vii ## +++ i}, CO^{v xi xii}, CT^{vi +++ xi}, DE^{iv +++}, DC⁺⁺⁺, HI^{+++ viii +++}, IL^{## +++ **}, LA^{**}, ME^{vi +++}, MD^{vi +++}, MA^{** xii xi x ### viii +++}, MI^{**}, MN^{** ii +++}, NE^{** vi +++}, NJ^{vi +++ ** xii}, NM^{vi ### +++ ix}, NY^{### viii +++ **}, NC^{** ii +++}, OH^{ix +}, OR^{** #}, PA^{vi ### +++}, RI^{iv +++ ** ix}, TN^{**}, TX^{**}, VT^{vi +++}, VA^{v +++ (vi viii ###)}, WA^{(x ### viii) ** ii +++}, WI^{vi +++ **}
- For qualified immigrants, VAWA, U and T victims and lawfully present immigrants - children
 - AK⁺, AR^{**}, CA^{### vii ## +++ i}, CO^{v xii}, CO^{**}, CT^{vi +++}, DE^{vi +++}, DC⁺⁺⁺, FL^{###}, HI^{+++ viii +++}, IL^{## *** xii ** +++}, IA^{iv +++}, LA^{**}, ME^{vi +++}, MD^{vi +++}, MA^{** *** ++++ viii x xii +++}, MI^{**}, MN^{iv ** ii +++}, MT^{iv +++}, NE^{** vi +++}, NJ^{vi *** xii +++}, NM^{vi ### +++ ix}, NY^{### viii +++ **}, NC^{** ii +++}, OR^{iv +++ (** #)}, PA^{vi ### +++}, RI^{iv +++ **}, TN^{**}, TX^{** (ix +++)}, VT^{vi +++}, VA^{++++ vii +++}, WA^{** *** xii +++}, WI^{vi +++ **}
- SSI State Funded
 - CA^{vii}, HI^x, IL⁺, ME^{vi viii}, NE^{vi}, NH⁺
- Code Key
 - ^{*}also for crime victim applicants as PRUCOL
 - ^{**} prenatal care regardless of status,
 - ^{***} children regardless of immigration status,
 - ⁺ very limited,
 - ⁺⁺ qualified immigrant children and pregnant women,
 - ⁺⁺⁺ Any form of health care for many or all who meet qualifications for health care
 - ⁺⁺⁺⁺ qualified immigrant children
 - [#] varies by county,
 - ^{##} qualified abused immigrants
 - ^{###} qualified immigrants
 - ⁱ prenatal care, long-term care, breast and cervical cancer treatment and certain other medical services open to all without regard to immigration status,
 - ⁱⁱ lawfully present non-citizens
 - ⁱⁱⁱ for lawfully present children and prenatal care only,
 - ^{iv} for lawfully present children only,
 - ^v lawfully residing pregnant women
 - ^{vi} lawfully residing children and pregnant women
 - ^{vii} Trafficking victims and U visa victims only,
 - ^{viii} PRUCOLS,
 - ^{ix} PRUCOLS who entered prior to August 22, 1996
 - ^x seniors and persons with disabilities
 - ^{xi} limited access to long-term care or nursing home care
 - ^{xii} some income restrictions may apply

Appendix II: Visa Chart—Immigration Status & Children’s Benefits*

Immigration Status		Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
Lawful and Conditional Permanent Residency and Humanitarian Relief			
Lawful permanent residents INA § 101(b)(20); 8 U.S.C. § 1101	Are lawful permanent residents. Cannot be outside of the U.S. for more than six months any year without permission; can lose status if they commit certain crimes. Immigrant controls the application. Immigrant files own application	Stay in the U.S.	Lawful permanent residents can file for their children and can include their children in the immigrant's application for lawful permanent residency. 22 C.F.R. § 42.53(a)
Conditional permanent residents INA § 216; 8 U.S.C. § 1186a	Citizen or lawful permanent resident spouse files a family-based visa petition for the immigrant spouse and the parties are married for less than two years when the parties attend their DHS interview. The immigrant spouse receives permanent residency that is conditioned upon filing of a joint application by the applicant and their sponsoring citizen or lawful permanent resident spouse to remove conditions OR a self-petition by the applicant for a waiver of the joint filing requirement based upon divorce, battering or extreme cruelty, extreme hardship, or bigamy of citizen or lawful permanent resident spouse	Stay in the U.S.	Child gets the conditional permanent residency for being the son or daughter of an immigrant with a qualifying marriage to a U.S. citizen. INA § 216(b)(2); 8 U.S.C. § 1186a
Persons paroled into the United States for a period of at least one year—Indefinite, Humanitarian, significant public benefit (DHS granted indefinite or humanitarian parole) INA § 212(d)(5); 8 U.S.C. § 1182(d)(5)	Parolees usually ultimately file for a form of legal immigration status. In this case, a family-based petition filed by their battered immigrant parent who received VAWA cancellation of removal; if they fail to file they could fall out of legal status	Stay in the U.S.	Cannot include children. Children would need to separately qualify for parole.
Children of VAWA cancellation of removal recipients (DHS granted Humanitarian Parole)	Parolees usually ultimately file for a form of legal immigration status; if they fail to file, they could fall out of legal status	Stay in the U.S.	Cannot be included in the victim's application. However, once the victim is granted cancellation of removal, the victim's children automatically eligible for parole into the United States under INA § 240A(b)(4)
Cuban and Haitian entrants (U.S. granted indefinite or humanitarian parole) PL 99-603, 100 Stat. 3359 § 202	Parolees with status that leads to lawful permanent residency so long as no intent to abandon residence in the U.S.	Stay in the U.S.	Cannot include their children

Access to Federal and State Funded Public Benefits						
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	
Lawful and Conditional Permanent Residency and Humanitarian Relief						
Applicants with pending applications for work authorization 8 C.F.R. § 274a.12(c)(9). Upon receipt of status. No need to apply for employment authorization. 8 C.F.R. § 274a.12(e)(1) and § 1274a.12(a)(1)	Upon filing.	When the immigrant is granted lawful permanent residency (Due to status as qualified alien - 8 U.S.C. § 1641(b)(1))	When they are granted lawful permanent resident status	Eligible for Federal and State Public Benefits as Qualified Aliens	5-year bar (unless exempt from 5-year bar**)	
Upon receipt of status. No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(1) and § 1274a.12(a)(1)	Upon filing.	When the immigrant is granted conditional status as qualified alien - 8 U.S.C. § 1641(b)(6)	When they are granted lawful permanent resident status	Eligible for Aid as Qualified Aliens	5-year bar (unless exempt from 5-year bar**)	
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(11)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1641(b)(4))	When granted parole for at least one year	Eligible for Aid as Qualified Aliens	5-year bar	
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(11)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1641(b)(4))	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	5-year bar	
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1641(b)(7))	When status is granted	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar	

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency	
Immigration Status	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
Admission immigrant children (family-based self-petition)	This visa status is provided to children born in Indonesia after 1950, fathered by a U.S. citizen who has provided a legal guarantee of custody and financial responsibility for the child. Applicants can include their own children and natural mother.
VAWA self-petitioners (pending, with deferred action or approved) and their children included in their applications (family based self-petition) INA § 204(a)(1)(A); 8 U.S.C. §§ 1153(a)(1)(A)(ii), (iii), (iv)	VAWA self-petitioners can include their children as derivatives when the petition is filed with USCIS. There is no need for the partner's consent or knowledge when applying. INA § 204(a)(1)(A)(ii)(iv).
VAWA suspension of deportation INA § 244(d)(3); 8 U.S.C. § 1254(a)(3) as in effect on March 31, 1997)	Children of parent who obtains cancellation of removal under VAWA may obtain parole under section 212(d)(5). INA § 240A(b)(4)(A)(i).
VAWA cancellation of removal and VAWA suspension of deportation applicants INA § 240A(b)(2); 8 U.S.C. § 1229b(c)	Children of parent who obtains cancellation of removal under VAWA may obtain parole under section 212(d)(5). INA § 240A(b)(4)(A)(i).
Cancellation of Removal recipients (immigrant files their own application) INA § 240A, 8 U.S.C. § 1229	Once approved are granted lawful permanent residency, cannot be outside of the U.S. for more than 6 months in any year without permission; can lose status if commit certain crimes.
	Once approved are granted lawful permanent residency, cannot be outside of the U.S. for more than 6 months in any year without permission; can lose status if commit certain crimes.
	When cancellation of removal application is granted, the applicant receives lawful permanent residency from the immigration judge. <i>Cannot be outside of the U.S. for more than 6 months in any year without permission; can lose status if commit certain crimes.</i>
	Cannot include their children. Once they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available, which can take 2-3 years.
	Asylees can include their children when applying for asylum with the BCIS center or, if in removal proceedings, before the Immigration Judge. 10.8 C.F.R. §§ 208.3(a), 1208.5(b).
Immigrant Status That Allows Individual to File for Lawful Permanent Residency	
Asylees (file their own application) INA § 208; 8 U.S.C. § 1158	Can file their own application for LPR status after 1 year.

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?*	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
Either after their application for lawful permanent residency is pending, if eligible, or upon receipt of status. 8 C.F.R. § 274a.12(a)(1), respectively.	At the time of admittance into the U.S.	When granted lawful permanent resident status.	When the I-360 petition is granted.	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
Receive employment authorization once their VAWA self-petition has been approved. INA § 201(a)(1)(B); 8 C.F.R. § 274a.12(c)(31)	Upon filing	Connection between battery and need for benefits, and receiving prima facie determination from DHS (8 U.S.C. § 1641(c)(1))	Receiving prima facie determination from DHS	Eligible for Aid as Qualified Aliens	5-year bar (unless exempt from 5-year bar**)
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	Connection between benefits and battery, and receiving prima facie determination from an immigration judge (qualified alien under 8 U.S.C. § 1641(c)(1)(B)(iii))	Receiving prima facie determination from an immigration judge	Eligible for Aid as Qualified Aliens	5-year bar (unless exempt from 5-year bar**)
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	Connection between benefits and battery, and receiving prima facie determination from an immigration judge (8 U.S.C. § 1641(c)(1)(B)(v))	Receiving prima facie determination from an immigration judge	Eligible for Aid as Qualified Aliens	5-year bar (unless exempt from 5-year bar**)
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they receive their lawful permanent residency, although someone applying for cancellation may already be a permanent resident and so may have access to health care already before applying for cancellation	After LPR status granted upon approval of their cancellation of removal application	After LPR status granted	EXEMPT from 5-year bar**
	Upon filing	When applicant has received EAD and Asylum application continues to be pending (qualified alien once received Asylum 8 U.S.C. § 1641(b)(2))	Asylum Granted	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
	Upon filing	Receive employment authorization within 180 days of filing the asylum application. INA § 208(d)(2); 8 C.F.R. § 274a.12(c)(8). Must file and for employment authorization. Once asylum is granted, work authorization from that point on is included in asylee status 8 C.F.R. §§ 274a.12(a)(5)	Immigrant Status That Allows Individual to File for Lawful Permanent Residency		

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		
Immigration Status	Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
Refugees (file their own application) INA § 207; 8 U.S.C. § 1157	Stay in the U.S.	Refugees can include their children in the application. INA § 207(c)(2); 8 U.S.C. § 1157(b)(2)
U-1 Victims of crime (file their own application) INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer or family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity
U-2 spouse of U-1 (included in crime victim spouse's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer or family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity
U-3 children of U-1 (included in crime victim parent's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
U-4 parents of U-1 children victim (included in crime victim sibling's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	See U-5 visa status
U-5 minor siblings of U-1 children victims (included in crime victim sibling's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
T-1 visa or prima facie determination of T-visa (file their own application) INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to showing of hardship in returning to home country	Victims of Trafficking can include their children when applying for a T-Visa. INA § 101(a)(15)(T)(i); 22 C.F.R. § 41.84(a)

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal means-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full/Medicaid, SSI benefits) and meet all program requirements?
Refugees paroled into the United States can apply for work authorization, 8 C.F.R. § 274a.12(a)(4). Upon receipt of status. Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(3)	Upon filing	Entered U.S. under Refugee status (qualified alien under 8 U.S.C. § 1611(b)(2))	Entered U.S. under Refugee status	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
U-visa victims receive work authorization once their U-visa has been granted. INA § 214(p)(3)(B); 8 C.F.R. § 274a.12(a)(19)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Must file and for employment authorization, 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	Alter LPR status granted	Alter LPR status granted	Alter LPR status granted
Includes work authorization & authorization when T status ends, 8 C.F.R. § 274a.12(c)(21)	Upon filing	T-visa granted or a prima facie case determination (qualified alien under 8 U.S.C. § 1611(c)(4))	T-visa is approved	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency			
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
T-2 spouses, children and unmarried siblings under 18 at the age of application of T-1 applicants (included in trafficking victim's application)	Temporary visit; most victims intend at the time of application to stay in the U.S. due to a showing of hardship in returning to home country	Able to apply for lawful permanent residency when principal T-1 visa family member becomes a lawful permanent resident	Cannot include their children. Once they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
T-3 children of T-1 (included in trafficking victim parent's application)	Temporary visit; most victims intend at the time of application to stay in the U.S. due to a showing of hardship in returning to home country	Able to apply for lawful permanent residency when principal T-1 visa family member becomes a lawful permanent resident	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
T-4 parents of T-1 victim children (included in trafficking victim child's application)	Temporary visit; most victims intend at the time of application to stay in the U.S. due to a showing of hardship in returning to home country	Able to apply for lawful permanent residency when principal T-1 visa family member becomes a lawful permanent resident	The T-1 victim must file for unmarried siblings under the age of 18 at the time of filing under T-3
Trafficking victims with continued presence	Temporary status for the duration of the criminal case, often precedes the victim's T-1 visa application. Many, but not all, intend to stay in the U.S.	Must apply for a T-1 visa or U-visa before status ends	Trafficking victims who receive continued presence cannot obtain continued presence for their children. If the trafficking victim applies for a T-1 visa, they can include their children as T-2s
Special Immigrant Juvenile Status (self-petition) INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J)	Stay in the U.S.	Cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if commit certain crimes	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
NACARA Cubans (self-petition) PL 105-100, 111 Stat. 2160, 2193 (Nov. 19, 1997)	Stay in the U.S.	Have direct path to lawful permanent residency	If NACARA recipient seeks lawful permanent residency, as long as the child is physically present in the United States can include the child in the Adjustment of Status Application. 8 C.F.R. § 245.13
HIFA (self-petition) 8 C.F.R. §§ 245-15, 1245-15	Stay in the U.S.	Have direct path to lawful permanent residency	When HIFA recipient seeks to adjust status to permanent residence, they can include a child who is physically present in the United States. 8 C.F.R. §§ 245.15(b)(4), 1245.15(b)(4)

Access to Federal and State Funded Public Benefits

When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)?	When are they eligible for "federal means-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
Includes work authorization 8 C.F.R. § 274a.12(a)(16); Lose work authorization when T status ends. 8 C.F.R. § 274a.12(e)(21)	Upon filing	T-1 visa granted or a prima facie case determination	T-1 visa principle is approved	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
Includes work authorization 8 C.F.R. § 274a.12(a)(16); Lose work authorization when T status ends. 8 C.F.R. § 274a.12(e)(21)	Upon filing	T-1 visa granted or a prima facie case determination	T-1 visa principle is approved	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
Includes work authorization 8 C.F.R. § 274a.12(a)(16); Lose work authorization when T status ends. 8 C.F.R. § 274a.12(e)(21)	Upon filing	T-1 visa granted or a prima facie case determination	T-1 visa principle is approved	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar
When trafficking victims are granted continued presence that status includes work authorization. 8 C.F.R. § 274a.12(a)(16). Work authorization is included if the trafficking victim files for and is awarded a T visa or U visa. 8 CFR § 274.12(a)(19) or (20) for U visas. T and U-visa applicants gain earlier access to work authorization if they are granted continued presence first as T-2s	When victim receives HHS certification	When victim receives HHS certification	When victim receives HHS certification treated as refugees	When victim receives HHS certification treated as refugees	EXEMPT from 5-year bar
When Special Immigrant Juvenile Status is granted, the child is granted lawful permanent residency and receives work authorization under that status.	When child has a pending SIJS	When child has a pending SIJS.	After LPR status granted	After LPR status granted	5-year bar (unless exempt from 5-year bar**)
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they acquire LPR status (LPR is a qualified alien)	After LPR status granted	Eligible for Aid	EXEMPT from 5-year bar
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they acquire LPR status (qualified alien)	After LPR status granted	Eligible for Aid	5-year bar

Immigration Status & Children's Benefits (continued)

Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
IRKIFA family members (Haitian spouse, child or unmarried son or daughter of IRKIFA applicant-self-petitioner) & C.F.R. § 245.15, 1245.12	Stay in the U.S.	Have direct path to lawful permanent residency	Cannot include their children. Once they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
VAWA Cubans (treated as refugees) <i>Cuban Refugee Adjustment Act</i> PL 89-732, 80 Stat 1161 (1966); 1996 U.S.C.A.N. 3792; APM 23.1L	Stay in the U.S.	Have direct path to lawful permanent residency	Refugees can include their children in the applications. INA §207(c)(2), 8 U.S.C. §1157(c)(2)
Immigrant Status that Allows Individual to File for Lawful Permanent Residency			
O-1 Temp worker or trainee in extraordinary ability INA § 101(a)(15)(O); 8 U.S.C. § 1101(a)(15)(O); 8 C.F.R. § 214.2(o)(1)(i)	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	Children of O-1 are entitled to O-3 status subject to the same time requirements as O-1. 8 C.F.R. §214.2(o)(6)(iv)
O-3 Spouses or Children of O-1 INA § 101(a)(15)(O); 8 U.S.C. § 1101(a)(15)(O); 8 C.F.R. § 214.2(o)(6)(v)	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	Cannot include their children. If they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
P-1 Athlete or Entertainer INA § 101(a)(15)(P); 8 U.S.C. § 1101(a)(15)(P); 8 C.F.R. § 214.2(p)	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	If P-1 is granted a visa through sponsor, can apply for a visa for a child through P-1, who is granted the same term of admission as P-1. 8 C.F.R. § 214.2(p)(15).
Immigrant Status that Allows Individual to File for Lawful Permanent Residency			
K-1 Fiancées of U.S.C. INA § 101(a)(15)(K)(i); 8 U.S.C. § 1101(a)(15)(K)(i); 9 FAM 41.81	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	Must marry within 90 days, and sponsoring spouse must file an application for lawful permanent residency within 6 months	If P-1 is granted a visa through sponsor, can apply for a visa for a child through P-1, who is granted the same term of admission as P-1. 8 C.F.R. § 214.2(p)(15).
K-2 Children of K-1	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	Child's parent must marry within 90 days and sponsoring parent must file an application for lawful permanent residency within 6 months	Cannot include their children. If they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
K-3 spouses of U.S.C. INA § 101(a)(15)(K)(ii); 8 U.S.C. § 1101(a)(15)(K)(ii); 22 C.F.R. § 214.2(l)	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	Sponsoring spouse must apply for lawful permanent residency status within 2 years	If the spouse of a U.S. citizen, petitioner U.S. citizen can petition for both parent and child. (K-3 and K-4 respectively)

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal non-cash public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SST benefits) and meet all program requirements?
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they acquire LPR status (qualified alien)	After LPR status granted	Eligible for Aid	5-year bar
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they acquire LPR status (qualified alien)	After LPR status granted	Eligible for Aid	EXEMPT from 5-year bar
Immigrant Status that Allows Individual to File for Lawful Permanent Residency					
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(13)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar**)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(13)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar**)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar**)
Immigrant Status that Allows Individual to File for Lawful Permanent Residency					
Eligible to apply for work authorization 8 C.F.R. § 274a.12(b)(6)	At time of inspection and admission into the U.S. (within their authorized stay)	At time of inspection and admission into the U.S. (within their authorized stay)	After LPR status granted	After LPR status granted	5-year bar (unless exempt from 5-year bar**)
Eligible to apply for work authorization 8 C.F.R. § 274a.12(b)(6)	At time of inspection and admission into the U.S. (within their authorized stay)	At time of inspection and admission into the U.S. (within their authorized stay)	After LPR status granted	After LPR status granted	5-year bar (unless exempt from 5-year bar**)
Includes work authorization 8 C.F.R. § 274a.12(a)(9)	At time of inspection and admission into the U.S. (within their authorized stay)	At time of inspection and admission into the U.S. (within their authorized stay)	After LPR status granted	After LPR status granted	5-year bar (unless exempt from 5-year bar**)

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		
Immigration Status	Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
K-4 Children of K-3	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	Cannot include their children. If they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
S-5 Aliens assisting Law Enforcement INA § 101(a)(15)(S) & U.S.C. § 10101(a)(15)(S); 8 C.F.R. §§ 121.401, 212.1, 214.2, 245.11, 248.30(b), 1212.1, 1212.4(f), 1245.11; 22 C.F.R. § 41.83	Temporary visa up to 3 years	Once granted S-5 status, can apply to bring child as S-7 if DHS or the Department of State consider it appropriate to provide status to the child. INA § 101(a)(15)(S)(i)(IV)
S-6 Aliens assisting Law Enforcement	Temporary visa up to 3 years	Once granted S-6 status, can apply to bring child as S-7 if DHS or the Department of State consider it appropriate to provide status to the child. INA § 101(a)(15)(S)(i)(V)
S-7 Children & Spouses of S-5 & S-6	Temporary visa up to 3 years	Cannot include children.

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRI/COI?	When do they become lawfully present, granting access to health care?	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal means-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
Includes work authorization 8 C.F.R. § 274a.12(c)(9)	At time of inspection and admittance into the U.S. (within their authorized stay)	At time of inspection and admittance into the U.S. (within their authorized stay)	After LPR status granted	After LPR status granted	5-year bar (unless exempt) from 5-year bar**
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	When they are inspected and admitted into U.S.	When they are inspected and admitted into U.S.	Not eligible	Not eligible	Not eligible
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	When they are inspected and admitted into U.S.	When they are inspected and admitted into U.S.	Not eligible	Not eligible	Not eligible
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	When they are inspected and admitted into U.S.	When they are inspected and admitted into U.S.	Not eligible	Not eligible	Not eligible

Immigration Status & Children's Benefits (continued)

Immigration Status	Immigration Intent	Lawful Permanent Residence: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
Immigrant Visas That Allow the Granting of Lawful Permanent Residence Status Through Employment (Sponsor Required)			
E-1 Treaty Investor (INA § 101(a)(15)(E)(i); 8 U.S.C. § 1101(a)(15)(E)(i); 22 C.F.R. § 41.51)	Limited Dual Intent — must keep ties in home country, but may intend to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Can include children subject to the same terms of E-1, can apply for child through H-4, 8 C.F.R. § 214.2(c)(4); 22 C.F.R. §§ 41.51(a)(3) and (b)(3)
E-2 Treaty Trader (INA § 101(a)(15)(E)(ii); 8 U.S.C. § 1101(a)(15)(E)(ii); 22 C.F.R. § 41.51)	Limited Dual Intent — must keep ties in home country, but may intend to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Can include children subject to the same terms of E-2, can apply for child through H-4, 8 C.F.R. § 214.2(c)(4); 22 C.F.R. §§ 41.51(b)(3) and (b)(3)
H-1B Temporary Worker Specialized (C.F.R. § 214.2(b))	Dual Intent (Statorily Recognized) DHS acknowledges and accepts that entering on temporary visa intending to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Once H-1B is granted, H-1B can apply for child as H-4 subject to the same conditions and limitations. 8 C.F.R. § 214.2(b)
H-4 Spouse & Children of H-1B	Dual Intent (Statorily Recognized) DHS acknowledges and accepts that entering on temporary visa intending to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
L-1 Intercountry Transferee Principle (INA § 101(a)(15)(L); 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(d))	Dual Intent (Statorily Recognized) DHS acknowledges and accepts that entering on temporary visa intending to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	If a parent has been granted L-1 visa, child qualifies for L-2 and is subject to certain limits and restrictions. 8 CFR § 214.2(d)(1)(ii); INA § 101(a)(15)(L)
L-2 Spouses & Children of L-1	Dual Intent (Statorily Recognized) DHS acknowledges and accepts that entering on temporary visa intending to stay permanently	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Cannot include their children. If they attain lawful permanent residency, they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.
R-1 Religious workers (INA § 101(a)(15)(R); 8 U.S.C. § 1101(a)(15)(R); 22 C.F.R. § 41.58; 8 C.F.R. § 214.2(f))	Dual Intent (DHS acknowledges and accepts that entering on temporary visa intending to stay permanently)	Need to have family or employment-based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	Can include child under the same conditions as R-1, except R-2 cannot accept employment. C.F.R. § 214.2(f)(10)

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care? ²⁴⁻²⁶	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
Immigrant Visas That Allow the Granting of Lawful Permanent Residence Status Through Employment (Sponsor Required)					
Upon receipt of status. Can only work for a specific employer. 8 C.F.R. § 274a.12(b)(5). No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(5) and § 1274a.12(b)(5) may apply for work authorization. 8 C.F.R. § 274a.12(c)(2)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Upon receipt of status. Can only work for a specific employer. 8 C.F.R. § 274a.12(b)(5). No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(5) and § 1274a.12(b)(5) may apply for work authorization. 8 C.F.R. § 274a.12(c)(2)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(12)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(12)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(16)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar ²⁴⁻²⁶)

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency	
<p>Immigration Status</p> <p>Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently)</p> <p>R-2 Spouses & Children of R-1</p> <p>Immigration Status That Does Not Lead to Lawful Permanent Residency</p> <p>Persons granted withholding of deportation INA § 241(b)(2); 8 U.S.C. § 1231</p>	<p>Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?</p> <p>Cannot include their children: If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.</p>
<p>Immigration Status or Temporary Protection from Deportation at DHS Discretion</p> <p>Temporary Protected Status (TPS) INA § 244; 8 U.S.C. § 1254a</p> <p>Deferred action (Meisner, Comm. Memo, HQOPP 50/4 (Nov. 17, 2000)).</p> <p>Deferred Action for Childhood Arrivals (DACA) immigrants who came to the U.S. as children (June 15, 2012 Memo issued by Janet Napolitano, Secretary of Homeland Security; Exercising Prosecutorial Discretion Not to Remove These Children from the U.S.</p>	<p>Lawful Permanent Residency: Path to Requirements of Maintaining and Who Controls the Application</p> <p>Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency</p> <p>Does not lead to lawful permanent residency or citizenship</p> <p>Does not lead to lawful permanent residency or citizenship</p> <p>Does not lead to lawful permanent residency or citizenship</p> <p>Does not lead to lawful permanent residency or citizenship</p>
<p>Temporary Status or Temporary Protection from Deportation at DHS Discretion</p> <p>Persons may register children for TPS after the parent has completed initial registration. C.F.R. § 244.21(f)(2)(iv)</p> <p>Cannot include children. Except that children included in a VAWA self-petitioner's application will receive deferred action status along with their parent self-petitioner and self-petitioner's child's application will receive deferred action status along with the child self-petitioner.</p>	<p>Parents may register children for TPS after the parent has completed initial registration. C.F.R. § 244.21(f)(2)(iv)</p> <p>Cannot include children. Except that children included in a VAWA self-petitioner's application will receive deferred action status along with their parent self-petitioner and self-petitioner's child's application will receive deferred action status along with the child self-petitioner.</p>
<p>Temporary Status or Temporary Protection from Deportation at DHS Discretion</p> <p>Deferred Action for Childhood Arrivals (DACA) immigrants who came to the U.S. as children (June 15, 2012 Memo issued by Janet Napolitano, Secretary of Homeland Security; Exercising Prosecutorial Discretion Not to Remove These Children from the U.S.</p>	<p>Does not lead to lawful permanent residency or citizenship</p>
<p>Temporary Visas Called "Nonimmigrant" Visas</p> <p>A-1 Foreign Govt (INA § 101(a)(15)(A), 8 U.S.C. § 1101(a)(15)(A))</p>	<p>Does not lead to lawful permanent residency or citizenship</p> <p>A-1 can file for child as A-3 if child lawfully resides with A-1 recipient, or dependent. 8 C.F.R. § 214.2(a)(2)</p>

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care?	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5-year bar***)
Immigration Status That Does Not Lead to Lawful Permanent Residency					
Includes work authorization & C.F.R. § 274a.12(c)(10); applicants can apply for work authorization. 8 C.F.R. § 274a.12(c)(8)	Upon filing	Only after withholding is granted and so long as it remains in effect	Statutorily eligible despite not having path to LPR or citizenship status Date Judge grants Waiving/holding	Eligible for AM as Qualified Aliens	EXEMPT from 5-year bar
Temporary Status or Temporary Protection from Deportation at DHS Discretion					
Applicants with pending applications for work authorization can file for work authorization. 8 C.F.R. § 274a.12(c)(9). Includes work authorization 8 C.F.R. § 274a.12(c)(12)	Upon filing	TPS applicants who have received work authorization	Not eligible	Not eligible	Not eligible
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(14)	Upon filing	When deferred action is granted	Not eligible	Not eligible	Not eligible
Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(14)	Upon filing	Not eligible	Not eligible	Not eligible	Not eligible
Temporary Visas Called "Nonimmigrant" Visas					
Visa requires that the immigrant work is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(1); spouses, unmarried children, sons or daughters of visa holder may apply for work authorization. 8 C.F.R. § 274a.12(c)(1); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible

Immigration Status & Children's Benefits (continued)

Immigration Status	Immigration Intent	Lawful Permanent Residency; Path to, Requirements of Maintaining, and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
A-2 Foreign Govt	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	A-2 can include a child as an A-3 if child habitually resides with A-2 recipient, or dependent. 8 C.F.R. § 214.2(a)(2)
A-3 Family of Foreign Govt	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
B-1 Visitors for Business INA § 101(a)(15)(B); 8 U.S.C. § 1101(a)(15)(B); 22 C.F.R. § 41.31	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Children traveling alone or with their parents will receive their own B2 (tourist) visa
B-2 Visitors for Pleasure INA § 101(a)(15)(B); 8 U.S.C. § 1101(a)(15)(B); 22 C.F.R. § 41.31	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	22 C.F.R. § 41.32. B-2 visa recipient has to apply for children as well.
C-1 Transits and TWOV INA § 101(a)(15)(C); 8 U.S.C. § 1101(a)(15)(C); C.F.R. § 214.1(a)(2)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
C-2 UN Transits INA § 101(a)(15)(C); 8 U.S.C. § 1101(a)(15)(C)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
C-3 Foreign Government INA § 101(a)(15)(D); 8 U.S.C. § 1101(a)(15)(D)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
D Crewmen INA § 101(a)(15)(D); 8 U.S.C. § 1101(a)(15)(D)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
E-3 Treaty; AFTA INA § 101(a)(15)(E); 8 U.S.C. § 1101(a)(15)(E)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include child. 22 C.F.R. § 41.5 (c)(2).
F-1 Academic Studies INA § 101(a)(15)(F); 8 U.S.C. § 1101(a)(15)(F)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Yes. Once parent has F-1 can apply for children through F-2. 8 C.F.R. § 214.2(a)(3)
F-2 Spouses and children of F-1 INA § 101(a)(15)(F)(i); 8 U.S.C. § 1101(a)(15)(F)(i)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children.

Access to Federal and State Funded Public Benefits						
When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present, granting access to health care? **	When are they considered "qualified aliens" for federal/state public benefits purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps/TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	
Visa requires that the immigrant is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(1); spouses, unmarried children, sons or daughters of visa holder may apply for work authorization. 8 C.F.R. § 274a.12(c)(1). Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Visa requires that the immigrant is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(2); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Only a subset of this group can apply for work authorization if they are the personal or domestic servant of a U.C. citizen or a (B), (E), (F), (G), (I), (J), (L) visa holder or a person engaged in international transportation. 8 C.F.R. § 274a.12(c)(17)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Eligible to apply for work authorization § C.F.R. § 274a.12(b)(3)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Eligible to apply for work authorization § C.F.R. § 274a.12(b)(3)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106 see also 8 C.F.R. § 1274a.12(c)(2)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Employment limited to on-campus employment up to 20 hours a week or curricular practical training, or 17 month STEM extension, or following application for H-1B status. 8 C.F.R. § 274a.12(b)(6); 8 C.F.R. § 274a.12(c)(3)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	

Immigration Status Children Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency				
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	
F-3 Academic Studies; Canadian & Mexican commuters INA § 101(a)(15)(F)(ii); 8 U.S.C. § 1101(a)(15)(F)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children	
G-1 Repts. of International orgs. INA § 101(a)(15)(G)(i); 8 U.S.C. § 1101(a)(15)(G)(i); 9 FAM 41.24	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include child. 8 C.F.R. § 214.2(a)(2)(i)(A) § 101(a)(15)(N)	
G-2 Repts. of International orgs. INA § 101(a)(15)(G)(ii); 8 U.S.C. § 1101(a)(15)(G)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children § 214.2(a)(2) and (3); 8 C.F.R. 9 FAM 41.24 N.(12)	
G-3 Repts of International orgs. INA § 101(a)(15)(G)(iii); 8 U.S.C. § 1101(a)(15)(G)(iii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children § 214.2(a)(2)	
G-4 Repts of International orgs. Other employees INA § 101(a)(15)(G)(iv); 8 U.S.C. § 1101(a)(15)(G)(iv)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children § 214.2(a)(2) INA § 101(a)(15)(N)	
G-5 Attendants, servants or Gross holders INA § 101(a)(15)(G)(v); 8 U.S.C. § 1101(a)(15)(G)(v)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children	
H-2A Seasonal Agricultural Workers INA § 101(a)(15)(H)(a); 8 U.S.C. § 1101(a)(15)(H)(a)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Once H-2A is granted, H-2A entitled to petition for child as H-4 subject to the same conditions and limitations. 8 C.F.R. § 214.2(b)(9)(v)	
H-2B Seasonal Workers INA § 101(a)(15)(H)(b); 8 U.S.C. § 1101(a)(15)(H)(b)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Once H-2B is granted, H-2B entitled to petition for child as H-4 subject to the same conditions and limitations. 8 C.F.R. § 214.2(b)(9)(v)	

Access to Federal and State Funded Public Benefits						
When do they receive legal work authorization?	When is the immigrant PRUCOL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" (e.g., TANF, Food Stamps, TANF, Child Care, Food, Medicaid, SSI benefits) and other program requirements?	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(7); spouse or unmarried child, son or daughter may apply for employment authorization 8 C.F.R. § 274a.12 (c)(4); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(7); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(7); spouse or unmarried child, son or daughter may apply for employment authorization 8 C.F.R. § 274a.12 (c)(4); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(7); spouse or unmarried child, son or daughter may apply for employment authorization 8 C.F.R. § 274a.12 (c)(4); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(8); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer 8 C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency			
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
H-3 Trainee INA § 101(a)(15)(H)(i), § 101(a)(15)(H)(ii), § 101(a)(15)(H)(iii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Once H-3 is granted, H-3 entitled to petition for child as H-4 subject to the same conditions and limitations. § C.F.R. § 214.2(b)(9)(iv)
I Visas representatives of media INA § 101(a)(15)(I), § 101(a)(15)(I)(i), § 101(a)(15)(I)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include child INA § 101(a)(15)(I)
J-1 Exchange visitor INA § 101(a)(15)(J), § 101(a)(15)(J)(i), § 101(a)(15)(J)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children as J-2
J-2 Spouses & Children of J-1 INA § 101(a)(15)(J)(ii), § 101(a)(15)(J)(iii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
M-1 Vocational Students INA § 101(a)(15)(M)(i), § 101(a)(15)(M)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children as M-2
M-2 Spouses & Children of M-1 INA § 101(a)(15)(M)(ii), § 101(a)(15)(M)(iii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
M-3 Canadian & Mexican Vocational Students INA § 101(a)(15)(M)(iv), § 101(a)(15)(M)(v)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include children
NATO TN-visa § C.F.R. § 214.2(i); 22 C.F.R. §§ 41.21, 41.25	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children INA § 101(a)(27)(L) in the same manner as described in § 214.2(a)(2)
O-2 Accompanying or Assisting O-1 INA § 101(a)(15)(O)(i), § 101(a)(15)(O)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include their children
P-2 Artist & entertainers in exchange programs INA § 101(a)(15)(P)(i), § 101(a)(15)(P)(ii), § 101(a)(15)(P)(iii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children as P-4 if granted same term of admission § C.F.R. § 214.2(p)(15)
P-3 Artist or entertainers in cultural program INA § 101(a)(15)(P)(iv), § 101(a)(15)(P)(v)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Can include children as P-4 if granted same term of admission § C.F.R. § 214.2(p)(15)
P-4 Spouses & Children of P-1, P-2, P-3 INA § 101(a)(15)(P)(vi), § 101(a)(15)(P)(vii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include their children
Q-1 International cultural exchange program INA § 101(a)(15)(Q)(i), § 101(a)(15)(Q)(ii)	Intend to return to foreign country	Does not lead to lawful permanent residency or citizenship	Cannot include their children

Access to Federal and State Funded Public Benefits						
When do they receive legal work authorization?	When is the immigrant considered PR/CDL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low Income Energy Assistance, Child Care)	When are they eligible for federal means-tested public benefits (e.g., TANF, Food Stamps, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	
Authorized to work only for a specific employer § C.F.R. § 274a.12(b)(9); spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer; Spouse and children can apply for work authorization § C.F.R. § 274a.12(b)(10)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer § C.F.R. § 274a.12(b)(11)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Eligible to apply for work authorization § C.F.R. § 274a.12(c)(5)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Eligible to apply for work authorization for practical training related to field of study endorsed by University official § C.F.R. § 274a.12(c)(6)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work for a only for a specific employer § C.F.R. § 274a.12(b)(7) and (18); Parent or dependent child eligible to apply for work authorization § C.F.R. § 274a.12(a)(7); § C.F.R. § 274a.12(c)(7)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer § C.F.R. § 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer § C.F.R. § 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	
Authorized to work only for a specific employer § C.F.R. § 274a.12(b)(15)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	

Immigration Status & Children's Benefits (continued)

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency	
Immigration Status	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?
Q-2, nonimmigrant from Northern Ireland INA § 101(a)(15)(Q)(i), & U.S.C. § 1101(a)(15)(Q)(i)	Lawful Permanent Residency: Path to Requirements of Maintaining and Who Controls the Application
Undocumented	Does not lead to lawful permanent residency or citizenship
Undocumented	Does not lead to lawful permanent residency or citizenship
Undocumented	Undocumented

Access to Federal and State Funded Public Benefits					
When do they receive legal work authorization?	When is the immigrant considered PR/COL?	When do they become lawfully present, granting access to health care?***	When are they considered "qualified aliens" for federal/state public benefits, eligibility purposes?	Eligible for "federal public benefits" (e.g., Housing, Foster Care, Low-Income Energy Assistance, Child Care)	When are they eligible for "federal means-tested public benefits" (e.g., TAN Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible
Undocumented	Not eligible	Not eligible	Not eligible	Not eligible	Not eligible
No lawful work authorization	Not eligible	Not eligible	Not eligible	Not eligible	Not eligible

* The National Immigrant Women's Advocacy Project, American University, Washington College of Law, Leslye E. Orloff, Andrea Carcamo-Cavazos & Lucia Macias.
 ** Immigrant exempt from 5-year bar: Refugees, Asylees, Persons granted withholding of deportation, Cuban and Haitian entrants, Amerasian entrants, Iraqi/Afghan, and Victims of trafficking.
 *** Department of Health & Human Services, Centers for Medicare & Medicaid Services Report, *Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women* (July 1, 2010).

		Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency					Access to Federal and State Funded Public Benefits					Services Open to All Persons Without Regard to Immigration Status			
Immigration Status	Immigration Intent	Lawful Permanent Residency and Humanitarian Relief	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they granted lawful permanent resident status	When are they granted lawful permanent resident status	When are they granted lawful permanent resident status	When are they granted lawful permanent resident status	Requirements to maintain eligibility
Lawful and Conditional permanent residents. INA § 101(a)(20); 8 U.S.C. § 1101	Stay in the US	Are lawful permanent residents. Cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if they commit certain crimes. Immigrant controls the application. Immigrant files own application	Lawful permanent residents can file for their children and can include their children in the immigrants application for lawful permanent residency. 22 C.F.R. § 274a.12(c)(9) and § 274a.12(a)(1) and § 274a.12(a)(1)	Applicants with pending applications for work authorization. 8 C.F.R. § 274a.12(c)(9). Upon receipt of status. No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(1) and § 274a.12(a)(1)	Upon filing	When the immigrant is granted lawful permanent residency (due to status as qualified alien - 8 U.S.C. § 1614(b)(1))	When they are granted lawful permanent resident status	Eligible for Federal and State Public benefits as Qualified Aliens	5-year bar (unless exempt from 5 year bar**)	Eligible	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	Are lawful permanent residents. Cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if commit certain crimes	
Conditional permanent residents. INA § 216; 8 U.S.C. § 1186a	Stay in the US	Citizen or lawful permanent resident spouse files a family based visa petition for the immigrant spouse and the parties are married for less than 2 years when the parties attend their DHS interview. The immigrant spouse receives permanent residency that is conditioned upon filing of a joint application by the applicant and their sponsoring citizen or lawful permanent resident spouse to remove conditions OR a self-petition by the applicant for a waiver of the joint filing requirement based upon divorce, battering or extreme cruelty, extreme hardship, or bigamy of citizen or lawful permanent resident spouse	Child gets the conditional permanent residency for being the son or daughter of an immigrant with a qualifying marriage to a U.S. citizen. INA § 216(b)(2); 8 U.S.C. 1186a.	Upon receipt of status. No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(1) and § 1274a.12(a)(1)	Upon filing	When the immigrant is granted conditional residency (due to status as qualified alien - 8 U.S.C. § 1614(b)(6))	When they are granted lawful permanent resident status	Eligible for Aid as Qualified Aliens	5-year bar (unless exempt from 5 year bar**)	Eligible	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	The immigrant applicant and the sponsoring spouse, parent or step-parent must jointly file an application to remove conditions and grant full lawful permanent residency to the immigrant spouse (and the immigrant spouse's child, son or daughter). Only under specified conditions can the immigrant spouse seek a discretionary waiver from DHS of this joint filing requirement. 1) extreme hardship if the immigrant spouse were removed from the U.S.; 2) divorce; 3) battered spouse waiver (battering or extreme cruelty of the perpetrator against the immigrant spouse or child); or 4) marriage ceremony was performed and the citizen or lawful permanent resident spouse was a bigamist who perpetrated battering and/or extreme cruelty of the immigrant spouse or child.		
Persons paroled into the United States for a period of at least one year - indefinite, Humanitarian, significant public benefit (DHS granted indefinite or humanitarian parole) INA § 212(d)(5); 8 U.S.C. 1182(d)(5)	Stay in the US	Parolees usually ultimately file for a form of legal immigration status in this case a family based petition filed by their battered immigrant parent who received VAWA cancellation of removal; if they fail to file they could fall out of legal status	Cannot include children. Children would need to separately qualify for parole.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(11)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1614(b)(4))	When granted parole for at least one year	Eligible for Aid as Qualified Aliens	5-year bar	Eligible	When granted parole for at least one year	When granted parole for at least one year	Parolees may be able to file for a form of legal immigration status - i.e. through family based process, VAWA, U visa, etc. Parole is a temporary status in the US granted by the government; it will not lead to any permanent status in and of itself		
Children of VAWA cancellation of removal recipients (DHS granted Humanitarian Parole)	Stay in the US	Parolees usually ultimately file for a form of legal immigration status; if they fail to file they could fall out of legal status	Cannot be included in the victims application. However once the victim is granted cancellation of removal. The victim's children automatically eligible for parole into the United States under INA § 240A(b)(4)	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(11)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1614(b)(4))	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	5-year bar	Eligible	When they are granted lawful permanent resident status	When they are granted lawful permanent resident status	Parolees usually ultimately file for a form of legal immigration status; if they fail to file they could fall out of legal status		
Cuban and Haitian entrants (US granted indefinite or humanitarian parole) PL 99-603, 100 Stat. 3359 §202.	Stay in the US	Parolees with status that leads to lawful permanent residency so long as no intent to abandon residence in the U.S.	Cannot include their children	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	When Paroled into the U.S.	At the time the immigrant was paroled into the United States (due to status as qualified alien - 8 U.S.C. § 1614(b)(7))	When status is granted	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar	Eligible	When status is granted	When status is granted	Parolees with status that leads to lawful permanent residency so long as no intent to abandon residence in the U.S.		

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits					Services Open to All Persons Without Regard to Immigration Status		
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?
American immigrant children (family based self-petition)	Stay in the US	Leads to LPR status; children under 21 enter as first priority -- all other entrants follow the Visa bulletin, includes showing of humanitarian need, public interest or family unity	This visa status is provided to children born in Indonesia after 1950 fathered by a US citizen who has provided a legal guarantee of custody and financial responsibility for the child. Amerasians can include their own children and natural mother.	Either after their application for lawful permanent residency is pending, if eligible, or upon receipt of status. 8 CFR 274a.12(a)(1), respectively.	At the time of admittance into the U.S.	When granted lawful permanent resident status	When the I-360 petition is granted	EXEMPT from 5-year bar	Eligible
VAWA self-petitioners (pending, with deferred action or approved) and their children included in their applications (family based self-petition) INA § 204(a)(1)(A); 8 U.S.C. §§ 1153(a)(1)(A)(ii), (iii), (iv)	Stay in the US	Once approved apply for lawful permanent residency (immediately eligible if perpetrator family member is a citizen) must wait 2-5 years if the perpetrator family member is a lawful permanent resident)	VAWA self-petitioners can include their children as derivatives when the petition is filed with USCIS. There is no need for the partner's consent or knowledge when applying. INA § 204(a)(1)(A)(ii)-(v).	Receive employment authorization once their VAWA self-petition has been approved. INA § 201(a)(1)(6); 8 CFR § 274a.12(c)(31)	Upon filing	connection between battery and need for receiving prima facie determination from DHS (8 U.S.C. § 1641(c)(1))	Receiving prima facie determination from DHS	5-year bar (unless exempt from 5 year bar*)	Eligible
VAWA suspension of deportation INA § 244(a)(3); 8 U.S.C. § 1254(a)(3) as in effect on March 31, 1997	Stay in the US	Once approved are granted lawful permanent residency; cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if commit certain crimes	Children of parent who obtains cancellation of removal under VAWA may obtain parole under 240A(b)(4)(A)(i).	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	connection between benefits and battery, and receiving prima facie determination from an immigration judge (qualified alien under 8 U.S.C. § 1641(c)(1)(B)(iii))	Receiving prima facie determination from an immigration judge	5-year bar (unless exempt from 5 year bar*)	Eligible
VAWA cancellation of removal and VAWA suspension of deportation applicants INA § 240(a)(2); 8 U.S.C. § 1229k(2)	Stay in the US	Once approved are granted lawful permanent residency; cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if commit certain crimes	Children of parent who obtains cancellation of removal under VAWA may obtain parole under section 212(a)(5). INA § 240A(b)(4)(A)(i).	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	Connection between benefits and battery, and receiving prima facie determination from an immigration judge (8 U.S.C. § 1641(c)(1)(B)(v))	Receiving prima facie determination from an immigration judge	5-year bar (unless exempt from 5 year bar*)	Eligible
Cancellation of Removal recipients (immigrant files their own application) INA § 240A; 8 U.S.C. § 1229b	Stay in the US	When cancellation of removal application is granted the applicant receives lawful permanent residency from the immigration judge. <i>Cannot be outside of the U.S. for more than 6 months any year without permission; can lose status if commit certain crimes</i>	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they receive permanent residency, although someone applying for cancellation may already be a permanent resident and so may have access to health care ahead before applying for cancellation.	Alter LPR status granted upon approval of their application	5-year bar (unless exempt from 5 year bar*)	Eligible
Immigrant Status that Allows Individual to file for Lawful Permanent Residency	Stay in the US	Can file their own application for LPR status after 1 year	Asylees can include their children when applying for Asylum with the ECIS center or, if in removal proceedings, before the Immigration Judge, to 8 C.F.R. § 208.3(a), 1208.3(a).	Receive employment authorization within 180 days of filing the asylum application. INA § 208(d)(2); 8 C.F.R. § 274a.12(c)(8) Must file and for employment authorization. Once asylum is granted work authorization from that point on is included in asylee status. 8 C.F.R. §§ 274a.12(a)(5)	Upon filing	When applicant has received EAD and Asylum application continues to be pending (qualified alien once received Asylum 8 U.S.C. § 1641(b)(2))	Asylum Granted	EXEMPT from 5-year bar	Eligible
Asylees (file their own application) INA § 208; 8 U.S.C. 1158	Stay in the US	Can file their own application for LPR status after 1 year	Refugees can include their children in the application. INA § 207(e)(2), 8 U.S.C. § 1157(e)(2)	Refugees can apply for work authorization. 8 C.F.R. § 274a.12(a)(4). Upon receipt of status. Must file and for employment authorization. 8 C.F.R. § 274a.12(a)(3)	Upon filing	Entered U.S. under Refugee status	Entered U.S. under Refugee status	EXEMPT from 5-year bar	Eligible
Refugees (file their own application) INA § 207; 8 U.S.C. § 1157	Stay in the US	Can file their own application for LPR status after 1 year							

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits					Services Open to All Persons Without Regard to Immigration Status				
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Requirements to maintain eligibility	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer of family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity
U-1 Victims of crime (file their own application) INA §101(a)(15)(J); 8 U.S.C. §1101(a)(15)(J)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer of family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity	Victims of crimes applying for a U-Visa can include their children in their application. INA §101(a)(15)(J)(ii); 8 C.F.R. § 214.14(a)(10), (f)	U-Visa victims receive work authorization once their U-Visa has been granted. INA § 214(p)(3)(B); 8 C.F.R. §274a.12(a)(19)	Upon filing	U-1 visa status granted	After LPR status granted	After LPR status granted	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer of family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity	
U-2 spouse of U-1 (included in crime victim spouse's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer of family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity	See U-3 visa status	Must file and for employment authorization. 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	After LPR status granted	After LPR status granted	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence. Have direct path to lawful permanent resident not dependent on an employer of family member; wait three years and the lawful permanent residency status is immediately available to those who meet eligibility criteria (cooperation or not unreasonably refuse to cooperate) and public interest, humanitarian need or family unity	
U-3 Children of U-1 (included in crime victim parent's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Must file and for employment authorization. 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	After LPR status granted	After LPR status granted	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	
U-4 Parent of U-1 Children Victim (included in crime victim child's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	See U-5 visa status	Must file and for employment authorization. 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	After LPR status granted	After LPR status granted	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	
U-5 Minor Siblings of U-1 Children Victim (included in crime victim sibling's application)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to humanitarian need or public interest	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	Cannot include their children. Once they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Must file and for employment authorization. 8 C.F.R. § 274a.12(a)(20)	Upon filing	U-1 visa status granted	After LPR status granted	After LPR status granted	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence must show public interest, humanitarian need or family unity	
T-1 visa or prima facie determination of T-visa (file their own application) INA §101(a)(15)(T); 8 U.S.C. §1101(a)(15)(T)	Temporary visa; most victims intend at the time of application to stay in the U.S. due to showing of hardship in returning to home country	Self-petition for lawful permanent residency status after three years of continuous physical presence and must show proof that they have assisted in the investigation and/or prosecution; exceptions for those under 18 or those that can show extreme hardship upon returning to home country	Victims of Trafficking can include their children when applying for a T-Visa. INA §101(a)(15)(T)(ii); 22 C.F.R. §1.84(a)	Includes work authorization 8 C.F.R. § 274a.12(a)(16); Lose work authorization when T status ends. 8 C.F.R. § 274a.12(c)(21)	Upon filing	U-1 visa status granted	After LPR status granted	EXEMPT from 5-year bar	Eligible	Self-petition for lawful permanent residency status after three years of continuous physical presence and must show proof that they have assisted in the investigation and/or prosecution; exceptions for those under 18 or those that can show extreme hardship upon returning to home country	

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits					Services Open to All Persons Without Regard to Immigration Status					
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Persons Without Regard to Immigration Status	Services Necessary to Protect Life and Safety and Services Open to All Person Including Undocumented Immigrants	Requirements to maintain eligibility
VAWA Citizens (treated as refugees) <i>Cuban Refugee Adjustment Act PL 89-732, 80 Stat 1161 (1966); 1996 U.S.C.C.A.N. 3792; APM 23.1.I.</i>	Stay in the US	Have direct path to lawful permanent residency	Refugees can include their children in the application. INA §207(c)(2); 8 U.S.C.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(10)	Upon filing	When they acquire LPR status (qualified alien)	After LPR status granted	EXEMPT from 5-year bar	Eligible	Eligible	Requirements to maintain eligibility	Have direct path to lawful permanent residency
O-1 Temp worker or trainee in extraordinary ability INA §101(a)(15)(O); 8 U.S.C. §1101(a)(15)(O); 8 C.F.R. §214.2(a)(1)(i)	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	Children of O-1 are entitled to O-3 status subject to the same time requirements as O-1. 8 C.F.R. §214.2(a)(6)(iv)	Authorized to work for a specific employer 8 CFR 274a.12(b)(13)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker
O-3 Spouses or Children of O-1 INA §101(a)(15)(O); 8 U.S.C. §1101(a)(15)(O); 8 C.F.R. §214.2(a)(6)(iv)	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Authorized to work for a specific employer 8 CFR 274a.12(b)(13)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker
P-1 Athlete or Entertainer INA §101(a)(15)(P); 8 U.S.C. §1101(a)(15)(P); 8 C.F.R. §214.2(a)(p)	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	If P-1 is granted a visa through sponsor, can apply for a visa for a child through P-4, who is granted the same terms of admission as P-1. 8 C.F.R. §214.2(a)(15).	Authorized to work for a specific employer 8 CFR 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker	May not need a sponsor but subject to visa bulletin; may also qualify as priority worker
K-1 Finances of U.S.C. INA §101(a)(15)(K)(i); 8 U.S.C. §1101(a)(15)(K)(i); 9 FAM 41.81	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	Spponsor must file an application for lawful permanent residency within 90 days and sponsoring spouse must file an application for lawful permanent residency within 6 months	If U.S. Citizen petitioner files for K-1 fiancé, can also petition for K-1's children in the petition §214.2(k)(6)(ii)	Eligible to apply for work authorization 8 C.F.R. § 274a.12(a)(6)	At time of inspection and admittance into the U.S. (within their authorized stay)	At time of inspection and admittance into the U.S. (within their authorized stay)	After LPR status granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	must marry within 90 days and sponsoring spouse must file an application for lawful permanent residency within 6 months	must marry within 90 days and sponsoring spouse must file an application for lawful permanent residency within 6 months
K-2 Children of K-1	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	child's parent must marry within 90 days and sponsoring parent must file an application for lawful permanent residency within 6 months	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(a)(6)	At time of inspection and admittance into the U.S. (within their authorized stay)	At time of inspection and admittance into the U.S. (within their authorized stay)	After LPR status granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	child's parent must marry within 90 days and sponsoring parent must file an application for lawful permanent residency within 6 months	child's parent must marry within 90 days and sponsoring parent must file an application for lawful permanent residency within 6 months
K-3 Spouses of U.S.C. INA §101(a)(15)(K)(ii); 8 U.S.C. §1101(a)(15)(K)(ii); 22 C.F.R. § 214.2(k)	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	sponsoring spouse must apply for lawful permanent residency status within 2 years	If the spouse of a U.S. Citizen, petitioner U.S. Citizen can petition for both parent and child. (K-3 and K-4 respectively)	Includes work authorization 8 C.F.R. § 274a.12(a)(9)	At time of inspection and admittance into the U.S. (within their authorized stay)	At time of inspection and admittance into the U.S. (within their authorized stay)	After LPR status granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	sponsoring spouse must apply for lawful permanent residency status within 2 years	sponsoring spouse must apply for lawful permanent residency status within 2 years
K-4 Children of K-3	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently	sponsoring parent must apply for lawful permanent residency status within 2 years	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Includes work authorization 8 C.F.R. § 274a.12(a)(9)	At time of inspection and admittance into the U.S. (within their authorized stay)	At time of inspection and admittance into the U.S. (within their authorized stay)	After LPR status granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Eligible	sponsoring parent must apply for lawful permanent residency status within 2 years	sponsoring parent must apply for lawful permanent residency status within 2 years
S-5 Aliens assisting Law Enforcement INA § 101(a)(15)(S); 8 U.S.C. §1101(a)(15)(S); 8 C.F.R. §§121-4(a), 212.1-214.2, 245.11-246.5(b), 1212.1-1212.4(d), 1245.11-22 C.F.R. § 1245.8-8.5(c)(10)(i)	Temporary visa up to 3 years	In limited circumstances, when law enforcement files on the immigrant's behalf the S-5 visa holder may have an avenue to lawful permanent residency	Once granted S-5 status, can apply to bring child as S-7 if DHS or the Department of State consider it appropriate to provide states to the child. INA §101(a)(15)(S)(X)(Y)	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	when they are inspected and admitted into U.S.	when they are inspected and admitted into U.S.	Not eligible	No eligible	Eligible	Eligible	In limited circumstances, when law enforcement files on the immigrant's behalf the S-5 visa holder may have an avenue to lawful permanent residency	In limited circumstances, when law enforcement files on the immigrant's behalf the S-5 visa holder may have an avenue to lawful permanent residency

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits						Services Open to All Persons Without Regard to Immigration Status	
Immigration Status	Immigration Status	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Including Undocumented Immigrants	Requirements to maintain eligibility
S-6 Aliens assisting Law Enforcement	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Once granted S-6 status, can apply to bring child as S-7 if DHS or the Department of State consider it appropriate to provide status to the child. INA §101(a)(15)(S)(i)(IV)	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	when they are inspected and admitted into U.S.	when they are inspected and admitted into U.S.	Not eligible	No eligible	Eligible	In limited circumstances when law enforcement files on the immigrant's behalf the S-visa holder may have an avenue to lawful permanent residency
S-7 Children & Spouses of S-5 & S-6	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Cannot include children.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(21)	when they are inspected and admitted into U.S.	when they are inspected and admitted into U.S.	Not eligible	Not eligible	Eligible	In limited circumstances when law enforcement files on the immigrant's behalf the S-visa holder may have an avenue to lawful permanent residency
E-1 Treaty Investor INA §101(b)(15)(E)(i); 8 U.S.C. § 1101(a)(15)(E)(i)	Lawful Permanent Resident Status through Employment	Can include children subject to the same terms of E-1, can apply for child through H-4. 8 C.F.R. §214.2(e)(4); 22 C.F.R. §§41.51(a)(3) and (b)(3)	Upon receipt of status. Can only work for a specific employer. 8 C.F.R. § 274a.12(b)(5). No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(5) and § 1274a.12(b)(5); may apply for work authorization 8 C.F.R. § 274a.12(c)(2)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
E-2 Treaty Trader INA §101(b)(15)(E)(ii); 8 U.S.C. § 1101(a)(15)(E)(ii); 22 C.F.R. §41.51.	Lawful Permanent Resident Status through Employment	Can include children subject to the same terms of E-2, can apply for child through H-4. 8 C.F.R. §214.2(e)(4); 22 C.F.R. §§41.51(a)(3) and (b)(3)	Upon receipt of status. Can only work for a specific employer. 8 C.F.R. § 274a.12(b)(5). No need to apply for employment authorization. 8 C.F.R. § 274a.12(a)(5) and § 1274a.12(b)(5)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
H-1B Temporary Worker Specialized 8 C.F.R. §214.2(b)	Lawful Permanent Resident Status through Employment	Once H-1B is granted, H-1B can apply for child as H-4 subject to the same conditions and limitations. 8 C.F.R. §214.2(b)	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(9); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
H-4 Spouse & children of H-1B	Lawful Permanent Resident Status through Employment	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(9); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
L-1 Intercountry Transferee Principle INA §101(a)(15)(L); 8 U.S.C. §1101(a)(15)(L); 8 C.F.R. §214.2(i)	Lawful Permanent Resident Status through Employment	If a parent has been granted L-1 visa, child qualifies for L-2 and it's subject to certain limits and restrictions. 8 CFR § 214.2(i)(1)(i). INA § 101(a)(15)(L)	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(12)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
L-2 Spouses & Children of L-1	Lawful Permanent Resident Status through Employment	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Receive work authorization along with their L-2 visa. No application for work authorization required.	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits								
Immigration Status	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. Housing, Foster Care, Low Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Persons Open to All Persons Without Regard to Immigration Status
R-1 Religious Workers INA §101(a)(15)(R); 8 U.S.C. §1101(a)(15)(R); 22 C.F.R. §41.58; 8 C.F.R. §214.2(r).	Dual Intent (DHS) Acknowledges and accepts that temporary visa intending to stay permanently.	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency.	Authorized to work for a specific employer 8 CFR 274a.12(b)(16)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Requirements to maintain eligibility Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
R-2 Spouses & Children of R-1	Dual Intent (DHS) Acknowledges and accepts that entering on temporary visa intending to stay permanently)	Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Only if lawful permanent residency granted	Only if lawful permanent residency granted	5-year bar (unless exempt from 5 year bar**)	Eligible	Requirements to maintain eligibility Need to have family or employment based sponsorship and must wait for a visa to become available before they can apply for lawful permanent residency
Immigration Status that does not lead to lawful permanent residency	Protected from deportation but not path to lawful permanent residency.	Cannot include their children. If they attain lawful permanent residency they can file an application for their children. Children must wait for a visa to become available which can take 2-3 years.	Includes work authorization 8 C.F.R. § 274a.12(a)(10); Applicants can apply for work authorization. 8 C.F.R. § 274a.12(c)(8)	Upon filing	Only after withholding is granted and so long as it remains in effect	Statorily eligible despite not having path to LPR or citizenship status Date Judge grants Withholding	Eligible for Aid as Qualified Aliens	EXEMPT from 5-year bar	Eligible	does not lead to lawful permanent residency or citizenship
Temporary Protected Status (TPS) INA §244; 8 U.S.C §1254a	Protected from deportation but not path to lawful permanent residency	Parents may register children for TPS after the parent has completed their initial registration. C.F.R. §244.2(i)(2)(iv)	Applicants with pending applications for work authorization can file for work authorization. 8 C.F.R. § 274a.12(a)(12)	Upon filing	TPS applicants who have received work authorization	Not eligible	Not eligible	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
Deferred Action Meissner, Comm. Memo, HQOPP 504 (nov. 17, 2009).	Protected from deportation but not path to lawful permanent residency	Cannot include children. Except that children included in a VAWA self-petitioner's application will receive deferred action status along with their parent self-petitioner and parents included in a VAWA self-petitioner's child's application will receive deferred action status along with the child self-petitioner.	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(14)	Upon filing	When Deferred Action is granted	Not eligible	Not eligible	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
Deferred Action for Childhood Arrivals (DACA) immigrants who came to the US as children June 15, 2012 Memo issued by Janet Napolitano Secretary of Homeland Security; Exercising Prosecutorial Discretion Not to Remove These Children from the US.	Protected from deportation but not path to lawful permanent residency	Cannot include children	Eligible to apply for work authorization 8 C.F.R. § 274a.12(c)(14)	Upon filing	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
Temporary, Visas called A-1 Foreign Govt INA §101(a)(15)(A), 8 U.S.C. §1101(a)(15)(A)	Intend to return to foreign country	A-1 can file for child as A-3 if child habitually resides with A-1 recipient, or dependent. 8 C.F.R. §214.2(a)(2)	Visa requires that the immigrant work is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(1); Spouses, unmarried children, sons or daughters of visa holder may apply for work authorization. 8 C.F.R. § 274a.12(c)(1); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits							
Immigration Status	Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps; TANF; Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Persons Without Regard to Immigration Status
A-2 Foreign Govt	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	3 if child habitually resides with A-2 recipient, or dependent. § 274a.12(b)(2)	Visa requires that the immigrant work is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(1); Spouses, unmarried children, sons or daughters of visa holder may apply for work authorization. 8 C.F.R. § 274a.12(c)(1); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	No eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship
A-3 Family of Foreign Govt.	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include children	Visa requires that the immigrant work is authorized to work for a specific employer only. 8 C.F.R. § 274a.12(b)(2); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
B-1 Visitors for Business	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Children traveling alone or with their parents will receive their own B2 (tourist) visa	Only a subset of this group can apply for work authorization if they are the personal or domestic servant of a U.C. citizen or a (B), (E), (F), (H), (I), (J), (L) visa holder or a person engaged in international transportation. 8 C.F.R. § 274a.12(c)(17)	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
B-2 Visitors for Pleasure	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	22 C.F.R. § 41.32; B-2 visa recipient has to apply for children as well.	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
C-1 Transits and TPOV	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
C-2 UN Transits INA § 101(a)(15)(C); 8 U.S.C. § 1101(a)(15)(C)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include children	Eligible to apply for work authorization 8 C.F.R. § 274a.12(b)(3)	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
C-3 Foreign Government	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include children	Eligible to apply for work authorization 8 C.F.R. § 274a.12(b)(3)	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
D Crewmen INA § 101(a)(15)(D); 8 U.S.C. § 1101(a)(15)(D)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
E-3 Treaty; AFTA INA § 101(a)(15)(E); 8 U.S.C. § 1101(a)(15)(E)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Can include child. 22 C.F.R. § 41.5 (c)(2)	Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106 see also 8 C.F.R. 1274a.12(c)(2).	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship
F-1 Academic Studies	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Yes. Once parent has F-1 can apply for children through F-2. 8 C.F.R. § 214.2(f)(3)	Employment limited to on-campus employment up to 20 hours a week or curricular practical training or 17 month STEM extension, or following application for H-1B status § C.F.R. 274a.12(b)(6); 8 C.F.R. § 274a.12 (c)(5)	Date entered the U.S. as long as visa terms have not been violated	U.S. as long as visa terms have not been violated	Not eligible	Eligible	does not lead to lawful permanent residency or citizenship

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits									
Immigration Status	Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered 'qualified aliens' for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. Housing, Foster Care, Low Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Persons Without Regard to Immigration Status	Requirements to maintain eligibility
F-2 Spouses and children of F-1 INA § 101(a)(15)(F)(ii); 8 U.S.C. § 1101(a)(15)(F)(ii)	Intend to return to foreign country	Cannot include children.	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Open to All Persons Without Regard to Immigration Status	Requirements to maintain eligibility
F-3 Academic Studies; Canadian & Mexican commuters INA § 101(a)(15)(F)(iii); 8 U.S.C. § 1101(a)(15)(F)(iii)	Intend to return to foreign country	Cannot include children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
G-1 Reprs. of international orgs. INA § 101(a)(15)(G)(i); 8 U.S.C. § 1101(a)(15)(G)(i); 9 FAM 41.24	Intend to return to foreign country	Can include child. 8 C.F.R. §214.2(a)(2)(i) INA § 101(a)(15)(N)	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(7); Spouse or unmarried child, son or daughter may apply for employment authorization 8 CFR 274a.12 (c)(4); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
G-2 Reprs. of international orgs. INA § 101(a)(15)(G)(ii); 8 U.S.C. § 1101(a)(15)(G)(ii)	Intend to return to foreign country	Can include children	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(7); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
G-3 Reprs. of international orgs. INA § 101(a)(15)(G)(iii); 8 U.S.C. § 1101(a)(15)(G)(iii)	Intend to return to foreign country	Can include children	Authorized to work for a only for a child, son or daughter may apply for employment authorization 8 CFR 274a.12 (c)(4); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
G-4 Reprs. of international orgs. Other employees of Gvisa holders INA § 101(a)(15)(G)(iv); 8 U.S.C. § 1101(a)(15)(G)(iv)	Intend to return to foreign country	Can include children	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(7); Spouse or unmarried child, son or daughter may apply for employment authorization 8 CFR 274a.12 (c)(4); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
G-5 Attendants, servants of Gvisa holders INA § 101(a)(15)(H)(i)(ab); 8 U.S.C. § 1101(a)(15)(H)(i)(ab)	Intend to return to foreign country	Cannot include children	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(6); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
H-2A Seasonal Agriculture Workers INA § 101(a)(15)(H)(ii)(ab); 8 U.S.C. § 1101(a)(15)(H)(ii)(ab)	Intend to return to foreign country	Once H-2A is granted, H-2A entitled to petition for child as H-4 subject to the same conditions and limitations. 8 C.F.R. §214.2(b)(9)(v)	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(9); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility

Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits						Services Open to All Persons Without Regard to Immigration Status		
Immigration Status	Immigration Intent	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered "qualified aliens" for federal/state public benefits eligibility purposes?	Eligible for "federal public benefits" (e.g. TANF, Food Stamps, TANF; Child Care, Housing, Foster Care, Low Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps; TANF; Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Included Undocumented Immigrants	Requirements to maintain eligibility
H-2B Seasonal Workers INA § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b)	Intend to return to foreign country	Once H-2B is granted, H-2B is entitled to petition for child as H-4 subject to the same conditions and limitations. 8 C.F.R. § 214.2(b)(9)(iv)	Authorized to work for only for a specific employer 8 CFR 274a.12(b)(9); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
H-3 Trainee INA § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii)	Intend to return to foreign country	Once H-3 is granted, H-3 is entitled to petition for child as H-4 subject to the same conditions and limitations. 8 C.F.R. § 214.2(b)(9)(iv)	Authorized to work for only for a specific employer 8 CFR 274a.12(b)(9); Spouses who are battered or subjected to extreme cruelty by A-1 visa holders can apply to the VAWA Unit at DHS for work authorization INA § 106	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
I Visas representatives of media INA § 101(a)(15)(D), 8 U.S.C. § 1101(a)(15)(D)	Intend to return to foreign country	Can include child INA § 101(a)(15)(D)	Authorized to work for only for a specific employer, Spouse and children can apply for work authorization 8 CFR 274a.12(b)(10)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
J-1 Exchange visitor INA § 101(a)(15)(J), 8 U.S.C. § 1101(a)(15)(J)	Intend to return to foreign country	Can include children as J-2	Authorized to apply for work authorization 8 CFR 274a.12(b)(11)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
J-2 Spouses & Children of J-1 INA § 101(a)(15)(J), 8 U.S.C. § 1101(a)(15)(J)	Intend to return to foreign country	Cannot include children	Eligible to apply for work authorization 8 CFR 274a.12(b)(5)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
M-1 Vocational Students INA § 101(a)(15)(M)(i), 8 U.S.C. § 1101(a)(15)(M)(i)	Intend to return to foreign country	Can include children as M-2	Eligible to apply for work authorization for practical training related to field of study endorsed by university official. 8 C.F.R. § 274a.12(c)(6)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
M-2 Spouses & Children of M-1 INA § 101(a)(15)(M)(ii), 8 U.S.C. § 1101(a)(15)(M)(ii)	Intend to return to foreign country	Cannot include children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
M-3 Canadian & Mexican Vocational Students INA § 101(a)(15)(M)(iii), 8 U.S.C. § 1101(a)(15)(M)(iii)	Intend to return to foreign country	Cannot include children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
NATO TN visa 8 C.F.R. §§ 214.2(a); 22 C.F.R. §§ 41.21-41.25	Intend to return to foreign country	Can include children INA § 101(a)(27)(L) in the same manner as described in § 214.2(a)(2)	Authorized to work for only for a specific employer 8 CFR 274a.12(b)(7); 8 C.F.R. § 274a.12(c)(7)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
O-2 Accompanying or Assisting O-1 INA § 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i)	Intend to return to foreign country	Cannot include their children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
P-2 Artist & entertainers in exchange programs INA § 101(a)(15)(P)(ii), 8 U.S.C. § 1101(a)(15)(P)(ii)	Intend to return to foreign country	Can include children as P-4 granted same term of admission 8 C.F.R. § 214.2(p)(15)	Authorized to work for only for a specific employer 8 CFR 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	
P-3 Artist or entertainers in cultural program INA § 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii)	Intend to return to foreign country	Can include children as P-4 granted same term of admission 8 C.F.R. § 214.2(p)(15)	Authorized to work for only for a specific employer 8 CFR 274a.12(b)(14)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship	

	Immigration Status: Duration, Ability to Sponsor Children and Path to Permanent Residency		Access to Federal and State Funded Public Benefits						Services Open to All Persons Without Regard to Immigration Status		
Immigration Status	Immigration Intent	Lawful Permanent Residency: Path to, Requirements of Maintaining and Who Controls the Application	Can they include their children in their application, or file an application asking DHS to grant their children legal immigration status?	When do they receive legal work authorization?	When is the immigrant considered PRUCOL?	When do they become lawfully present granting access to health care?*	When are they considered "qualified aliens" for federal/state public benefits purposes?	Eligible for "federal public benefits" (e.g. Housing, Foster Care, Low Income Energy Assistance, Child Care)	When are they eligible for "federal mean-tested public benefits" - (e.g. TANF, Food Stamps, TANF, Child Care, Full Medicaid, SSI benefits) and meet all program requirements?	Services Necessary to Protect Life and Safety and Services Open to All Person Including Undocumented Immigrants	Requirements to maintain eligibility
P-4 Spouses & Children of P-1, P-2, P-3 INA § 101(a)(15)(P)(iv), 8 U.S.C § 1101(a)(15)(P)(iv)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include their children	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship
Q-1 International cultural exchange program INA § 101(a)(15)(Q)(i), 8 U.S.C § 1101(a)(15)(Q)(i)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Cannot include their children	Authorized to work for a only for a specific employer 8 CFR 274a.12(b)(15)	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship
Q-2 Nonimmigrant from Northern Ireland INA § 101(a)(15)(Q)(ii), 8 U.S.C § 1101(a)(15)(Q)(ii)	Intend to return to foreign country	does not lead to lawful permanent residency or citizenship	Can include their children INA § 101(a)(15)(Q)(ii)(D)	No lawful work authorization	Date entered the U.S. as long as visa terms have not been violated	Date entered the U.S. as long as visa terms have not been violated	Not eligible	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship
Undocumented/Undocumented	Not applicable	does not lead to lawful permanent residency or citizenship	Undocumented	No lawful work authorization	Not eligible	Not eligible	Not eligible	Not eligible	Not eligible	Eligible	Requirements to maintain eligibility does not lead to lawful permanent residency or citizenship

** IMMIGANTS EXEMPT FROM 5 YEAR BAR: Refugees, Asylees, Persons granted withholding of
 ** Department of Health & Human Services, Centers for Medicare & Medicaid Services Report, *Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women*

Are or can lead to lawful permanent residency
 Do not lead to lawful permanent residency

QUICK GUIDE FOR STATE COURT JUDGES ON COMMON ISSUES THAT ARISE FROM PARTIES' IMMIGRATION STATUS: ECONOMIC REMEDIES

By: Leslye E. Orloff, Benish Anver, and Krisztina Szabo

October 15, 2013

This bench card provides information for state court judges on issues unique to immigrants, such as: eligibility to work, eligibility to receive benefits and services, the impact of Individual Tax Identification Numbers (ITINs) and use of immigration affidavits of support in family and juvenile court proceedings and mandatory detention. The purpose of this bench card is to provide a quick reference and to help judges identify immigration issues that might affect the range of outcomes available in cases before them. The information contained in this bench card provides accurate information on work authorization, benefits access, assurances made to the Department of Homeland Security (DHS) regarding support of family members, and information about immigrants who will be paying taxes and be able to submit tax returns to the court. The forms of economic relief available to immigrants in protection order, custody, child support and divorce proceedings the immigration information included here can impact include, but are not limited to:

- child support,
- spousal support,
- determining which parent claims the children on tax returns,
- disproportionate share of property division in divorce cases involving domestic violence,
- ordering payment of medical, car and house insurance, rent, mortgage and utility bills in a protection order or divorce case; or
- orders in child abuse and neglect or delinquency proceedings regarding obtaining public benefits for a non-citizen child

IMMIGRANTS ELIGIBLE TO WORK

Eligibility to obtain employment in the United States may be an important factor for a family or juvenile court judge in determining issues of alimony, child support, ability to pay for health insurance, the ability to meet conditions of probation, or the ability to pay for services. In some instances, state courts may have to take into account the lack of employment authorization in setting alimony or child support. For example, if a court awards custody of a child to an battered immigrant parent who does not have or who has not yet attained legal work authorization, ordering the non-custodial parent to pay child and/or spousal support to assure that the custodial parent is able to provide an adequate home for the child would provide important economic stability for the battered immigrant and children.

The following are the most common types of immigrants with legal eligibility to work in the United States who are likely to appear in a family or juvenile case.¹

¹ Leslye E. Orloff, Andrea Cavazos Carcamo, and Lucia Macias, *Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children*, National Immigrant Women Advocacy Project (NIWAP) (Apr. 17, 2013). For the complete list of immigrants who are eligible to apply for discretionary approval to work, see 8 C.F.R. § 274a.12(a) (2011) and 8 C.F.R. § 274a.12(c) (2011). See also, *Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children*, National Immigrant Women's Advocacy Project (NIWAP) (Apr. 17, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/august-20-2013-holistic-representation-wichita-kansas/folder.2013-08-14.7589706430/custody/Visa%20Chart-%20Immigration%20Status%20Children%20Benefits%20Access%20and%20LPR%20Path%207.30.13%20cap%20-1.pdf/view>.

IMMIGRANTS WHO ARE LEGALLY ELIGIBLE TO WORK	IMMIGRANTS WHO REQUIRE DISCRETIONARY APPROVAL FROM USCIS TO WORK
<ul style="list-style-type: none"> • Lawful permanent residents (LPR) and conditional permanent residents; • Refugees and asylees; • Immigrants paroled by DHS into the U.S. as refugees; • U visa grantees; • T visa grantees; • Deferred Action Childhood Arrivals; • Juveniles who have been approved by DHS for Special Immigrant Juvenile (SIJ) status; and • VAWA self-petitioners whose application has been approved. 	<ul style="list-style-type: none"> • Conditional immigrants who fail to file a timely application for LPR status pending request for waiver if removal proceedings have been stayed; • Deferred action granted by DHS based on humanitarian reasons; • Immigrants paroled into the U.S. for humanitarian reasons or for public benefit to pursue an application for admission; • Immigrants who have applied for asylum or withholding of removal may apply for employment authorization 150 days after completing the application for asylum; • Cancellation of removal recipients; and • Immigrants who have applied for LPR status.

Having access to accurate information, by the form of immigration status that the parties before the court have or are pursuing allows family or juvenile court judges more effective orders. *See* Leslye E. Orloff, Andrea Cavazos Carcamo, and Lucia Macias, *Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children* (April 17, 2013).

IMMIGRANTS ELIGIBLE FOR BENEFITS OR SERVICES²

Federal immigration law limits the eligibility of immigrants, depending on their immigration status, for the following categories of benefits: (1) Federal public benefits, (2) Federal Means Tested Public Benefits and (3) State and local public benefits. What benefits an immigrant can receive depends on factors that include:

- When the immigrant first entered the United States
- The type of immigration status the immigrant has or is in the process of applying for
- Whether the immigrant has been a victim of domestic violence, child abuse, elder abuse, human trafficking or other criminal activity listed in the U visa and if the victim has applied for crime victim related immigration benefits and where their case is in the DHS adjudication process

² For further information on benefits eligibility for immigrant crime victims, *see* Jordan Tacher and Leslye E. Orloff, *Family Court Bench Card on Immigrant Crime Victim Access to Public Benefits and Services*, National Immigrant Women’s Advocacy Project (NIWAP) (Apr. 17, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access/PB-Bench-Card.pdf/>; for VAWA benefits eligibility process, *see* Jordan Tacher and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation*, National Immigrant Women’s Advocacy Project (NIWAP) (Apr. 17, 2013), available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/VAWA-Benefits-Eligibility-Process.pdf/>; for U visa benefits eligibility process, *see* Jordan Tacher and Leslye E. Orloff, *U-Visa Victim Benefits Eligibility Process*, National Immigrant Women’s Advocacy Project (NIWAP) (Apr. 17, 2013), available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf/>; for T visa benefits eligibility process, *see* Jordan Tacher and Leslye E. Orloff, *Trafficking Victim Benefits Eligibility Process*, National Immigrant Women’s Advocacy Project (NIWAP) (Apr. 17, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/Trafficking-Victims-Benefits-Eligibility-Process.pdf/>.

- The immigrant’s state of residence;
- Whether the applicant is a child (under 21 years of age) or an adult 21 years of age or older; and
- Whether the can meet the heightened application requirements of specific benefits programs

Federal means-tested public benefits are the most difficult to access for many immigrants who face a 5 year bar on access to TANF and Medicaid and who face this bar and additional program restrictions to benefits that include SSI and food stamps.

With regard to eligibility for benefits, there are two classes of immigrants, “qualified immigrants” and “non-qualified immigrants.” Among some “non-qualified immigrants” who are “lawfully present” or are “persons residing under color of law (PRUCOL)” can receive some state funded benefits. An immigrant must be a qualified immigrant to be eligible for federal public benefits and federal means-tested public benefits, unless the immigrant falls under one of many enumerated exceptions.

A federal public benefit is defined as:

- Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

QUALIFIED IMMIGRANTS	NON-QUALIFIED IMMIGRANT (May still be eligible for some benefits)
<ul style="list-style-type: none"> • Lawful permanent residents (LPR) or conditional permanent residents; • Refugees and asylees; • Persons paroled into the United States for a period of at least one year; • Persons granted withholding of deportation; • Persons granted conditional entry; • Cuban and Haitian entrants; • Victims of human trafficking who have filed for, had prima facie determination or has been awarded a T-visa; • Persons who have been approved or have a petition pending as a VAWA self-petitioner, but only if there is a connection between the battery or cruelty and the need for the benefits to be provided. 	<ul style="list-style-type: none"> • Immigrants who are veterans or on active duty and their spouses and unmarried dependent children; • Certain Amerasians; • American Indians born abroad and their spouses; • Non-immigrants (temporary visa holders); • Immigrants paroled into the U.S. for less than one year; • VAWA applicants prior to receipt of a prima facie determination letter • U visa applicants and recipients • T –visa applicants who did not obtain continued presence and who are awaiting receipt of a bona fide determination • Unauthorized immigrants.

The nexus between immigration law and benefits eligibility can be highly complex. Judges seeking guidance and greater detail on whether and which benefits parties before the court can access can receive technical assistance³ from issue experts at the National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law by calling (202) 274-4457 or e-mailing niwap@wcl.american.edu., NIWAP's web library also has significant information on legal rights to access public benefits and services for immigrant crime victims and children. The web library is available at <http://niwaplibrary.wcl.american.edu/>

Federal programs NOT available to non-citizens who are qualified immigrants (except in very limited circumstances):

- The supplemental security income (SSI) program under title XVI of the Social Security Act; and
- SNAP, the federal food stamp program as defined in section 3(h) of the Food Stamp Act of 1977 (Qualified immigrant children under age 18 are eligible for SNAP).

Federal benefits law give states the authority to expand or limit non-qualified immigrant eligibility for state funded public benefits. Several states have chosen to offer access to the following programs to qualified immigrants during the 5 year bar, to, immigrants who are lawfully present and/or PROCOL immigrants:

- Temporary assistance for needy families
- Medical assistance
- SSI
- Food Stamps.

Programs exempt from the federal public benefits definition that are open to all non-citizen is eligible without limitation:

- Emergency medical assistance;
- Short-term, non-cash, in-kind emergency disaster relief;
- HHS funded public health clinics (e.g. community or migrant health clinic)⁴
- Assistance or benefits under the Richard B. Russell National School Lunch Act;
- Assistance or benefits under the Child Nutrition Act of 1966;
- Public health assistance for immunizations with respect to immunizations for diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- Certain payments for foster care and adoption assistance;
- Certain programs of student assistance;
- Programs under the Elementary and Secondary Education Act of 1965;
- Benefits under the Head Start Act;
- Benefits under the Workforce Investment Act of 1998

³ This technical assistance is available free of charge to judges, courts, police and prosecutors, supported by funding from the Office on Violence Against Women and the State Justice Institute, U.S. Department of Justice and foundation funders.

⁴ For a list by city, state or zip code go to HRSA.gov.

- Programs, services, or assistance necessary to protect life and safety including but not limited to:
 - Crisis counseling and intervention programs
 - Services and assistance relating to child protection
 - Adult protective services
 - Violence and abuse prevention
 - Short-term shelter or housing assistance (emergency shelter and transitional housing for up to two years) for the homeless, victims of domestic violence, runaway, abused or abandoned children
 - Services to victims of domestic violence and other criminal activity
 - Treatment of mental illness or substance abuse necessary to protect life and safety
 - Programs to help individuals during periods of adverse weather conditions
 - Soup kitchens and community food banks
 - Senior nutrition programs and other nutritional programs for persons requiring special assistance
 - Medical and public health services
 - Activities designed to protect the life and safety of workers, children and youths or community residents

CHILD AND SPOUSAL SUPPORT FOR IMMIGRANTS

Child and spousal support cases are frequently brought before family court judges. These cases are particularly important when they involve low-income abused immigrants. Child support is particularly important for battered immigrants who cannot work because their abusive spouse never filed immigration papers to provide the victim and/or her child legal immigration status the victim is eligible to receive. Similarly, in cases in which the victim's immigrant or lawful permanent resident spouse filed an immigration case for the benefit of the immigrant spouse, that case will contain an affidavit of support that can serve as the basis for a spousal support order. "Affidavits of Support" are discussed further below.

Battered immigrants who come before courts in family court proceedings will often qualify for or be in the process of applying for VAWA, U visa or battered spouse waiver relief. I can up to between a year and 18 months for DHS to adjudicate cases filed by immigrant crime victims. During this wait, victims have no access to legal work authorization. Ordering child support and spousal support in these cases provides what can be life-saving assistance that allows an immigrant victim to leave the abusive home, helping the victim economically.⁵ Judges may encounter other issues unique to immigrants when hearing these cases. Courts have ruled when an immigrant parent is working or has income that parent cannot use the excuse of lack of legal work authorization to avoid orders to pay child support for the immigrant parent's children.¹ When immigrant parents are working in the informal economy, proof of earnings can be more complex. However proof of income can be attained in a variety of ways include:

⁵ See generally Leslye E. Orloff, Joyce Noche, Anne Benson, Laura Martinez and Jennifer Rose, *Ensuring Economic Relief for Immigrant Victims Through Family Law Court Proceedings: Child Support and Spousal Support*, in BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS 2-3 (2013), available at http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/economic-relief/6.4_c_FAM_BB_Economic-Relief-for-Victims-Child-Spousal-Support-MANUAL-BB.pdf/view.

- Employer’s statements
- Ordering the completion of court financial statements in which the court can identify expenses that the parent is paying that would not take precedence over child support payments (e.g. luxury items including cars, home entertainment systems)
- Witness testimony
- Tax returns which are often filed by immigrants using Individual Tax Identification Numbers (ITINs) (see discussion of ITINs below);
 - Taxes may be filed by an employed immigrant who is working but not eligible for work authorization. Filing taxes through an ITIN helps immigrants who may in the future have an option to attain lawful permanent residency and citizenship to create the history of paying taxes the immigrant will need to prove good moral character when the immigrant applies for naturalization.

The statutory duty to pay child support imposed on parents in the United States, Puerto Rico, the Virgin Islands, Guam, and the District of Columbia,⁶ applies to all persons without regard to immigration status. When the parties before the court are separated the court should order child support in immigrant and mixed immigration status families in the same manner and applying the same law and child support guidelines that apply in all cases. Child and/or spousal support can be ordered in a range of family court proceedings including divorce, legal separation, custody, and civil protection orders.⁷ An order for child support can be issued even when the child being supported is not in the United States. If the court has personal jurisdiction in a family court case over the custodial and non-custodial parent, courts can award child support for the parties’ children including children who do not reside in the United States. When child support is ordered either for a child who is living abroad or if child support is ordered and the custodial parent either returns or is deported to their home country. Child support payments can continue to be paid through the court. In such cases courts mail the child support received to the custodial parent or the child’s custodian at their address in the country in which the child is resides.⁸

Use of Individual Tax Identification Numbers (ITINs) in Child and Spousal Support Cases

Individual Tax Identification Numbers (ITINs) are issued by the Internal Revenue Service (IRS) to certain nonresident and resident immigrants, their spouses, and dependents for the purpose of filing income tax returns.⁹ Application for an ITIN must be accompanied by a tax return. Immigrants who are working will complete a tax return reporting their current year’s income and will submit the tax return as a required part of the application for the ITIN. The IRS issues ITINs regardless of immigration status because immigrants may have tax filing and payment obligations under U.S. tax

⁶Orloff, *supra* note 3 at 3 (citing Arnold H. Rutkin, 3-33 FAMILY LAW AND PRACTICE § 33.02 (Arnold H. Rutkin ed., Matthew Bender 2004)).

⁷Orloff, *supra* note 2 at 4.

⁸In 1996, section 459A of the Social Security Act (the Act) affirmed that “[t]he Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b) [which include procedures for establishing paternity and enforcing orders].” See Processing Cases with Foreign Reciprocating Countries, Office of Child Support Enforcement, Administration for Children and Families, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (2004), available at <http://www.acf.hhs.gov/programs/css/resource/processing-cases-with-foreign-reciprocating-countries>.

⁹See generally *Individual Taxpayer Identification Numbers (ITIN)*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-%28ITIN%29> (last visited Oct. 3, 2013).

laws.¹⁰ In fact, an eventual naturalization requires showing of good moral character, which includes the obligation to report income to the IRS, or to state and local taxing authorities.¹¹

Immigrants who cannot obtain a social security number use the 9-digit ITIN in place of the social security number on their U.S. tax returns and other tax related documents. Proof of an ITIN can be useful in determining whether a person has filed taxes – and thus, provides evidence of the immigrant’s income. Working immigrants who have a path through which they plan on applying for lawful permanent residency will obtain and use ITIN numbers to pay taxes, because paying taxes provides evidence of economic earning capacity needed to overcome the public charge ground of inadmissibility. In addition, immigrants who plan on applying for citizenship will need to prove a history of having filed tax returns in order to naturalize.

Use of Affidavits of Support in Child and Spousal Support Cases

An affidavit of support is a document that is filed by a U.S. citizen or lawful permanent resident when the family member that he or she has sponsored to attain legal immigration status through a family based immigration applies for lawful permanent residence.¹² The affidavit of support is a sworn statement promising the United States government that the sponsor will financially support the immigrant family member applying for lawful permanent residence. An affidavit of support that has been filed in an immigration case can be used as evidence and can be enforceable in family court cases for child and spousal support purposes.¹³ The affidavit of support can be used as evidence of the sponsor’s income, ability to pay child or spousal support, and the obligation of the sponsor to support his child and/or spouse.

It is important for judges to know that when an affidavit of support has been filed on an immigrant’s behalf, the sponsoring citizen or lawful permanent resident spouse or parent has provided DHS the following information.¹⁴

- A copy of the sponsor’s income tax returns for the prior three years if he or she had a legal obligation to file;¹⁵
- Evidence of the sponsor’s current employment or self-employment (usually includes recent pay stubs and a statement from the sponsor’s current employer on business letterhead);¹⁶ and
- If the sponsor’s income is below 125% of the poverty level for a family of that size,¹⁷ the sponsor can also submit other additional evidence of his or her ability to support the immigrant family member, such as proof of the sponsor’s assets.

¹⁰ See *Understanding Your IRS Individual Taxpayer Number*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/p1915.pdf>.

¹¹ The application for naturalization (N-400) asks whether the individual has ever failed to file a required federal, state, or local tax return. The form also asks whether the applicant owes any overdue federal, state, or local taxes. Responding yes necessitates explaining the situation to the USCIS. See N-400, Application for Naturalization, U.S. Citizenship and Immigration Servs., DEP’T OF HOMELAND SEC., available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=480ccac09aa5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=40a9b2149e7df110VgnVCM1000004718190aRCRD>.

¹² INA § 212(a)(4)(C); 8 U.S.C. § 1182.

¹³ For a more detailed discussion, see Orloff *supra* note 2 at 19; see also *Sinojia v. Sinojia*, No. 113953, 1994 Conn. Super. LEXIS 2485 (Conn. Super. Ct. Sept. 27, 1994) (spousal support); *Stein v. Stein*, 831 S.W.2d 684 (Mo. Ct. App. 1992) (affidavit of support admitted as evidence).

¹⁴ Orloff, *supra* note 2 at 19.

¹⁵ 8 C.F.R. § 213a.2(c)(2)(i) (2011).

¹⁶ 8 C.F.R. § 213a.2(c)(2)(ii) (2011).

¹⁷ See Orloff, *supra* note 2 at 20 for explanation of 8 C.F.R. § 213a.2.1 (“in determining whether the household income is sufficient, household size is calculated to include the sponsor, all persons related to the sponsor by birth, marriage, or adoption living in the sponsor’s residence, the sponsor’s dependents, the sponsored immigrant(s), and any immigrants the sponsor has previously sponsored for immigration status when that support obligation has not terminated”).

NON-CITIZENS SUBJECT TO MANDATORY ICE DETENTION DO NOT RECEIVE WORK RELEASE AND WILL NOT BE ABLE TO WORK

Based on the implications of the above information, one limitation on the ability of a judge to place a non-citizen into an alternative to detention program – either pre-trial or after conviction and sentencing – is the provision for mandatory detention under federal immigration law for non-citizens who are deportable for being convicted of certain state crimes. A non-citizen subject to mandatory detention may be placed into ICE detention when he or she is released from state or local incarceration into probation. This will make it impossible for the defendant to complete the terms of probation. Grounds for mandatory detention:

- Recent aggravated felony as defined by immigration law;
- Most drug-related crimes;
- Firearm offense;
- Prostitution;
- Crime involving moral turpitude with actual sentence of one year or more;
- Two crimes involving moral turpitude;
- Two or more crimes with aggregate sentence of five years or more;
- Human trafficking; and
- Money laundering.¹⁸

There is a general exception to mandatory detention, which is based on ICE discretion in determining who may be subject to mandatory detention to be released. The exception states that the Attorney General may release a non-citizen who is in custody and subject to mandatory detention if release is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness or person cooperating with an investigation. The non-citizen must demonstrate that she will not pose a danger to the safety of other persons or property and that she will appear for any scheduled proceedings. When deciding whether to release someone under this exception, ICE will weigh the severity of the offense committed by the non-citizen against the factors above.

¹⁸ INA § 236(c).

B. Childcare

1. Childcare Access Chart



Immigrant Crime Victim Child Care Accessⁱ

By: Benish Anver and Leslye E. Orloff

March 13, 2013

Child Care Development Fund (CCDF) Funded Child Care

Eligible Immigrants

- “Qualified” immigrant children.
- Victims of trafficking and their derivative beneficiaries.

NOTE: All immigrants, regardless of immigration status, are eligible for CCDF child care when:

- Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private child care provided after school or during school holidays.
- Child care is subject to Head Start performance standards.
- Eligibility for child care services is determined by a nonprofit charitable organization.

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

TANF- Funded Child Care

	Qualified Immigrants ⁱⁱ entered US before Aug. 22, 1996 & are receiving TANF	Qualified Immigrants entered US on or after Aug. 22, 1996 ⁱⁱⁱ	VAWA ^{iv}	Legal Permanent Residents	Veterans ^v	Refugees and Trafficking Victims ^{vi vii}
States						
Alabama	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Alaska	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Arizona	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Arkansas	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes

	Qualified Immigrants entered US before Aug. 22, 1996 & are receiving TANF	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Connecticut	Yes* requires pursuit of citizenship	Yes	Yes	Yes	Yes	Yes
Delaware	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No	Yes
District of Columbia	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No	Yes
Florida	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Georgia	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Hawaii	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes

	Qualified Immigrants entered US before Aug. 22, 1996 & are receiving TANF	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Idaho	Yes	Provides TANF only to abused "qualified" immigrants who have lived in the US for 5 years.	Provides TANF only to abused "qualified" immigrants who have lived in the US for 5 years.	Provides TANF only to LPRs credited with 40 quarters of work that are veterans or refugees	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status
Illinois	Yes* for abused immigrants only	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	No	No	Provides TANF only to LPRs credited with 40 quarters of work that are veterans or refugees	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status
Iowa	Yes* abused immigrants only	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Kentucky	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes



	Qualified Immigrants entered US before Aug. 22, 1996 & are receiving TANF	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Louisiana	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Maine	Yes* must meet hardship criteria, including seniors, disabled & victims of domestic violence	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Michigan	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Minnesota	Yes* LPRs receiving benefits must enroll in literacy and civics classes and pursue citizenship	Yes	Yes	Yes	Yes	Yes

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
 4801 Massachusetts Avenue NW · Washington, D.C. 20016
 (o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

	Qualified Immigrants entered US before Aug. 22, 1996 & are receiving TANF	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Mississippi	Yes	No	No	Provides TANF only to LPRs credited with 40 quarters of work that are veterans or refugees	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status.*
Missouri	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Montana	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Nebraska	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Nevada	Yes* abused immigrants only	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes



	Qualified Immigrants entered US before Aug. 22, 1996	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
New Jersey	Yes* abused immigrants only	No	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes	Yes	Yes
North Carolina	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
North Dakota	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Ohio	Yes	No- including those who have completed the 5 year bar, unless they are persons under an order of supervision of the court	No- including those who have completed the 5 year bar, unless they are persons under an order of supervision of the court	No- including those who have completed the 5 year bar, unless they are persons under an order of supervision of the court	Yes	Yes
Oklahoma	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes



	Qualified Immigrants entered US before Aug. 22, 1996	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Rhode Island	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
South Carolina	Yes	No	No	Provides TANF only to LPRs credited with 40 quarters of work that are veterans or refugees	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status
South Dakota	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Tennessee	Yes* abused immigrants only	Yes	Yes	Yes	Yes	Yes
Texas	Yes	No	No	Provides TANF only to LPRs credited with 40 quarters of work that are veterans or refugees	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status
Utah	Yes	Yes	Yes	Yes	Yes	Yes



	Qualified Immigrants entered US before Aug. 22, 1996	Qualified Immigrants entered US on or after Aug. 22, 1996	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Vermont	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Virginia	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Washington	Yes	Yes	Yes	Yes	Yes	Yes
West Virginia	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Wisconsin	Yes* family eligibility is determined by parents' immigration status	Yes	Yes	Yes	Yes	Yes
Wyoming	Yes	Yes	Yes	Yes	Yes	Yes- those who entered on or after Aug. 22, 1996 are eligible only after 5 years of obtaining this status

	Qualified Immigrants entered US before Aug. 22, 1996	Qualified Immigrants entered US on or after Aug. 22, 1996 ^{viii}	VAWA	Legal Permanent Residents	Veterans	Refugees and Trafficking Victims
States						
Puerto Rico	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes
Guam	Yes	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	No- 5 year bar applies; only eligible once receiving federal TANF	Yes	Yes

ⁱ This project was supported by Grant No. 2011-TA-AX-K002 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

TANF Funded child care is only available to immigrants eligible for TANF and is not available to immigrants who are lawfully present, PRUCOL and victims applying for or receiving U visas. Immigrants who do not qualify for TANF funded child care can qualify for Child Care Development Fund (CCDF) funded child care.

* Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.

ⁱⁱ **Qualified Immigrants**– are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty (parent/child of such battered child/spouse is also “qualified”); and (5) victims of trafficking and their derivative beneficiaries who have obtained a T visa or whose application for a T visa sets forth a *prima facie* case. (A broader group of trafficking victims who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.) See National Immigration Law Center, Medical Assistance Programs for Immigrants in Various States, May 2006,

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

available at: <http://www.nilc.org/guideupdate.html> (full details of programs available in states provided by NILC).

iii In addition to physically entering the United States on or after August 22, 1996, the immigrant must have been a “qualified” immigrant for at least five years.

iv **Violence Against Women Act (VAWA)**- includes: 1. VAWA self-petitioners, as defined by INA § 101(a)(51); 2. VAWA cancellation of removal, INA § 240A; 3. VAWA suspension of deportation, INA § 244(a)(3)(as in effect prior to March 31, 1997); 4. An immigrant who has been subjected to battering or extreme cruelty, whose spouse or parent filed a family based visa petition for them, which is pending and sets out a prima facie case for approval or has been approved. The battery and extreme cruelty could have been perpetrated by the spouse or parent or a member of the spouse or parent’s family residing in the same household as the victim. All immigrants applying for benefits under VAWA must demonstrate a substantial connection between the battering or extreme cruelty and the need for benefits.

v **Veterans**- are: veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are “qualified” immigrants.

vi **Refugees**- are: individuals granted status as a refugee, asylee, person granted withholding of removal/deportation, Amerasian immigrant, or Cuban/Haitian entrant. Eligibility continues even if the “refugee” becomes a lawful permanent resident.

vii **Trafficking Victims** - are: adults with Office of Refugee Resettlement (ORR) certification letter and children with an eligibility letter form from ORR and are federal and state public benefits to the same extent as refugees. Trafficking victims who apply for a T visa and receive a *prima facie* determination in their T visa case also qualify for public benefits to the same extent as other qualified immigrants. For more information, see “Trafficking Victim Benefits Eligibility Process” available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/TraffickingVictimsBenefitsEligibilityProcess%20FINAL-%204-17-13.docx/view>

viii In addition to physically entering the United States on or after August 22, 1996, the immigrant must have been a “qualified” immigrant for at least five years.

C. Health Care

- 1. Medical Assistance Programs for Immigrants and Immigrant Crime Victims: State by State**
- 2. Post-Assault Healthcare And Crime Victim Compensation For Immigrant Victims Of Violence; State by State Chart**
- 3. Coverage for Forensic Costs: State by State Chart**
- 4. Coverage for Emergency Medicaid: State by State Chart**
- 5. Coverage for Prenatal Care: State by state Chart**

Medical Assistance Programs for Immigrants and Immigrant Crime Victims: State by Stateⁱ

Federally funded Medicaid and the Child Health Insurance Program (CHIP) are available to qualified immigrants who entered the United States before August 22, 1996. These programs are also available to immigrants who have had “qualified immigrant” status for five years or longer. Some immigrants are exempt from the five-year bar to Medicaid and CHIP.ⁱⁱ Although access to Medicaid and CHIP can be limited by deeming under state law, there are broad exceptions to deeming for battered immigrants.ⁱⁱⁱ

States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
Alabama	None	None	None	None	None
Alaska	Yes* Can receive chronic and acute medical assistance if they have a terminal illness, cancer, diabetes, seizure disorders, mental illness, hypertension, or certain other medical conditions.	Yes* Can receive chronic and acute medical assistance if they have a terminal illness, cancer, diabetes, seizure disorders, mental illness, hypertension, or certain other medical conditions.	Yes* Can receive chronic and acute medical assistance if they have a terminal illness, cancer, diabetes, seizure disorders, mental illness, hypertension, or certain other medical conditions.	Yes* Can receive chronic and acute medical assistance if they have a terminal illness, cancer, diabetes, seizure disorders, mental illness, hypertension, or certain other medical conditions.	None
Arizona	None	None	None	None	None
Arkansas	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care
California	Yes	Yes	Yes Only for U-visa applications, U-visa holders, and survivors of human trafficking.	Yes	Yes Prenatal care, long-term care, breast and cervical cancer treatment, and certain other long-term medical services are available.
Colorado	Yes* Prenatal care up to 133% FPL***. Benefits for seniors.*	Yes* Prenatal care up to 133% FPL***. Benefits for seniors.*	Yes* Prenatal care up to 133% FPL***. Benefits for seniors.*	Yes* Prenatal care up to 133% FPL***. Benefits for seniors.*	None

NIWAP



States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
Connecticut	Yes Children & pregnant women and residents of nursing homes*	Only once lawfully present	Yes Children & pregnant women and residents of nursing homes*	Yes Children & pregnant women and residents of nursing homes*	None
Delaware	Yes Children & pregnant women.	Yes Children & pregnant women.	Yes Children & pregnant women.	Yes Children & pregnant women.	None
District of Columbia	Yes Adults: eligible for health care through DC Health Care Alliance. Children: eligible for health care through the Immigrant Children's Program.	Yes Adults: eligible for health care through DC Health Care Alliance. Children: eligible for health care through the Immigrant Children's Program.	Yes Adults: eligible for health care through DC Health Care Alliance. Children: eligible for health care through the Immigrant Children's Program.	Yes Adults: eligible for health care through DC Health Care Alliance. Children: eligible for health care through the Immigrant Children's Program.	Yes Adults: eligible for health care through DC Health Care Alliance. Children: eligible for health care through the Immigrant Children's Program.
Florida	Yes* Some counties provide health care for undocumented children. In the remaining counties, undocumented children can purchase health care at full-cost through Health Kids and MediKids	Yes* Some counties provide health care for undocumented children. In the remaining counties, undocumented children can purchase health care at full-cost through Health Kids and MediKids.	Yes* Some counties provide health care for undocumented children. In the remaining counties, undocumented children can purchase health care at full-cost through Health Kids and MediKids	Yes* Some counties provide health care for undocumented children. In the remaining counties, undocumented children can purchase health care at full-cost through Health Kids and MediKids.	Yes Some counties provide health care for undocumented children. In the remaining counties, undocumented children can purchase health care at full-cost through Health Kids and MediKids.
Georgia	None	None	None	None	None
Hawaii**	Yes* Children and pregnant women	Yes* Children and pregnant women	None	Yes* Children and pregnant women	None
Idaho	None	None	None	None	None
Illinois	Yes* Prenatal care; abused adults; "All Kids" open to all children under 300% FPL***.	Yes Prenatal care; "All Kids" open to all children under 300% FPL***.	Yes Prenatal care; "All Kids" open to all children under 300% FPL***. Asylum applicants and torture victims get 24 months of continuous care.	Yes* Prenatal care; abused adults; "All Kids" open to all children under 300% FPL***.	Yes Prenatal care; "All Kids" open to all children under 300% FPL***. Asylum applicants and torture victims get 24 months of continuous care.
Indiana	None	None	None	None	None
Iowa	Yes Children only.	Yes Children only.	Yes Children only.	Yes Children only.	None

National Immigrant Women's Advocacy Project (NIWAP, pronounced new-app)
 American University, Washington College of Law
 4801 Massachusetts Avenue NW · Washington, D.C. 20016
 (o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
Kansas	None None	None None	None None	None None	None None
Kentucky	None None	None None	None None	None None	None None
Louisiana	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care
Maine	Yes Children and pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	None
Maryland	Yes Children and pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	None
Massachusetts	Yes* Pregnant women receive the full scope of services; seniors and persons with disabilities up to 100% FPL*** (excluding long term care); children eligible up to 300% FPL***. All children regardless of immigration status are eligible for primary and preventative care through the Children's Medical Security Plan. Immigrants earning up to 300% are eligible for Commonwealth Care (does not include long term nursing home care). Prenatal care is available regardless of immigration status.	Yes* Pregnant women receive the full scope of services; seniors and persons with disabilities up to 100% FPL*** (excluding long term care); children eligible up to 300% FPL***. All children regardless of immigration status are eligible for primary and preventative care through the Children's Medical Security Plan. Immigrants earning up to 300% are eligible for Commonwealth Care (does not include long term nursing home care). Prenatal care is available regardless of immigration status.	Yes* Pregnant women receive the full scope of services; seniors and persons with disabilities up to 100% FPL*** (excluding long term care); children eligible up to 300% FPL***. All children regardless of immigration status are eligible for primary and preventative care through the Children's Medical Security Plan. Immigrants earning up to 300% are eligible for Commonwealth Care (does not include long term nursing home care). Prenatal care is available regardless of immigration status.	Yes* Pregnant women receive the full scope of services; seniors and persons with disabilities up to 100% FPL*** (excluding long term care); children eligible up to 300% FPL***. All children regardless of immigration status are eligible for primary and preventative care through the Children's Medical Security Plan. Immigrants earning up to 300% are eligible for Commonwealth Care (does not include long term nursing home care). Prenatal care is available regardless of immigration status.	Yes Prenatal care; all children eligible for primary and preventative care through Children's Medical Security Plan.
Michigan	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care

NIWAP

States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
Minnesota	Yes* Children and prenatal care available, regardless of immigration status; eligible for MinnesotaCare except for home-based services,	Yes* Children and prenatal care available, regardless of immigration status; eligible for MinnesotaCare except for home-based services,	Yes* Children and prenatal care available, regardless of immigration status; eligible for MinnesotaCare except for home-based services,	Yes* Children and prenatal care available, regardless of immigration status; eligible for MinnesotaCare except for home-based services,	Yes* Prenatal care; services from the Center for Victims of Torture
Mississippi	None	None	None	None	None
Missouri	None	None	None	None	None
Montana	Yes* Children only.	Yes* Children only.	Yes* Children only.	Yes* Children only.	None
Nebraska	Yes Children; pregnant women; prenatal care	Yes Children; pregnant women; prenatal care	Yes Children; pregnant women; prenatal care	Yes Children; pregnant women; prenatal care	Yes Prenatal care
Nevada	None	None	None	None	None
New Hampshire	None	None	None	None	None
New Jersey	Yes* Children and women	Yes* Children and women	Yes* Children and women	Yes* Children and women	Yes* NJ Family Care Advantage available to children with family income over 350% FPL*** with premium contribution "buy-in"; limited funds for prenatal care up to 200% FPL***
New Mexico	Yes Children; pregnant women; qualified battered immigrants	Yes Entered before 08/22/96	Yes Children; pregnant women; qualified battered immigrants	Yes Children; pregnant women; qualified battered immigrants	None
New York	Yes	Yes	Yes Prenatal care; all children have access to "Child Health Plus"	Yes	Yes Prenatal care; all children have access to "Child Health Plus"
North Carolina	Yes* Children and pregnant women	Yes* Children and pregnant women	Yes* Children and pregnant women	Yes* Children and pregnant women	None

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States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
North Dakota	None	None	None	None	None
Ohio	Yes* Persons who were lawfully present in the US on Aug. 22, 1996, and some individuals under an order of supervision.	Yes* Persons who were lawfully present in the US on Aug. 22, 1996, and some individuals under an order of supervision.	Yes* Persons who were lawfully present in the US on Aug. 22, 1996, and some individuals under an order of supervision.	Yes* Persons who were lawfully present in the US on Aug. 22, 1996, and some individuals under an order of supervision.	None
Oklahoma	None	None	None	None	
Oregon	Yes Children and prenatal care for all in 14 counties.	Yes Children and prenatal care for all in 14 counties.	Yes* Children only.	Yes Children and prenatal care for all in 14 counties.	Yes Prenatal care (14 counties only)
Pennsylvania	Yes TANF and GA-related medical assistance; children; pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	Yes TANF and GA-related medical assistance; children; pregnant women	None
Rhode Island	Yes* Prenatal care; children; those who entered before 08/22/96 and were residents of RI before 07/01/97	Yes* Prenatal care; children; those who entered before 08/22/96 and were residents of RI before 07/01/97.	Yes* Prenatal care; children; those who entered before 08/22/96 and were residents of RI before 07/01/97.	Yes* Prenatal care; children; those who entered before 08/22/96 and were residents of RI before 07/01/97.	Yes Prenatal care
South Carolina	None	None	None	None	None
South Dakota	None	None	None	None	None
Tennessee	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care	Yes Prenatal care
Texas	Yes Prenatal care; children can access CHIP without any five-year bar; adults who entered the country after 08/22/96 are barred even after they have completed the five-year bar	Yes Prenatal care; children can access CHIP	Yes* Prenatal care; children can access CHIP	Yes Prenatal care; children can access CHIP without any five-year bar; adults who entered the country after 08/22/96 are barred even after they have completed the five-year bar	Yes Prenatal care

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American University, Washington College of Law
 4801 Massachusetts Avenue NW · Washington, D.C. 20016
 (o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

States	Qualified Immigrants ^{iv}	PRUCOL ^v	Lawfully Present ^{vi}	VAWA ^{vii}	Available to Undocumented Immigrants
Utah	None	None	None	None	None
Vermont	Yes Children and pregnant women	Yes Children and pregnant women	Yes Children and pregnant women	Yes children and pregnant women	None
Virginia	Yes* Children and pregnant women only; those who were receiving long term care on 06/30/97.	Yes* Children and pregnant women only; those who were receiving long term care on 06/30/97.	Yes* Pregnant women only.	Yes* Children and pregnant women only; those who were receiving long term care on 06/30/97.	None
Washington	Yes* Prenatal care; seniors and persons who are disabled may be eligible for a limited medical care services program; health care for children in households with income below 200% FPL***; if children live in households with income between 200 – 300% FPL***, they must pay premiums.	Yes* Prenatal care; seniors and persons who are disabled may be eligible for a limited medical care services program; health care for children in households with income below 200% FPL***; if children live in households with income between 200 – 300% FPL***, they must pay premiums.	Yes* Prenatal care; health care for children in households with income below 200% FPL***; if children live in households with income between 200 – 300% FPL***, they must pay premiums.	Yes* Prenatal care; seniors and persons who are disabled may be eligible for a limited medical care services program; health care for children in households with income below 200% FPL***; if children live in households with income between 200 – 300% FPL***, they must pay premiums.	Yes Prenatal care; health care for children in households with income below 200% FPL***; if children live in households with income between 200 – 300% FPL***, they must pay premiums.
West Virginia	None	None	None	None	None
Wisconsin	Yes Prenatal care	Yes Prenatal care	Yes* Children and pregnant women; prenatal care	Yes* Children and pregnant women; prenatal care	Yes Prenatal care
Wyoming	None	None	None	None	None
Puerto Rico	None	None	None	None	None
Guam	None	None	None	None	None

* See exceptions and bars to eligibility - National Immigration Law Center, Medical Assistance Programs for Immigrants in Various States, July 2012, available at: <http://www.nilc.org/guideupdate.html>

** Children and pregnant women receive health care if they are residents of the Freely Associated States (Marshall Islands, Micronesia, and Palau).

*** **FPL** – “federal poverty level,” as determined by the U.S. Department of Health and Human Services’ poverty guidelines (the guidelines for 2012 are available at <http://aspe.hhs.gov/poverty/12poverty.shtml>).

i This chart was developed by Leslye Orloff and Benish Anver on March 12, 2013.

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ii **Immigrants exempt from the five-year bar:** qualified immigrants who first entered the United States before August 22, 1996; refugees; asylees; victims of trafficking; Amerasians; Cuban / Haitians entrance; veterans and immigrants on active military duty and their spouses, their surviving spouses (provided they do not remarry) and unmarried children under the age of 21 years old; and immigrants granted withholding of deportation.

iii **Deeming**– in some cases, a sponsor’s income and/or resources may be added to the immigrant’s in determining eligibility. Exceptions from deeming may apply.

When an immigrant’s family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant’s sponsor. When an immigrant with a sponsor affidavit filed on her behalf applies for public benefits, deeming rules require that the benefits granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse’s income. Some battered immigrants can now be excused from “deeming” requirements for 12 months if there is a connection between the abuse and the need for the benefit. Extensions of the 12-month time period are available.

Immigrants excused from deeming include:

- VAWA self-petitioners
- VAWA cancellation of removal or suspension of deportation applicants
- Battered immigrants whose spouses or parents filed family based visas for them
- Immigrants who obtained their green card through a family based visa petition and who were battered before and/or obtaining lawful permanent resident status
- Immigrants who filed new affidavits of support (I-864) after 12/5/1999

In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:

- Persons who have become U.S. citizens

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American University, Washington College of Law

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- Persons with 40 quarters work history (This is equivalent to about 10 years of work.)
- Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history
- To meet the 40 quarter requirement, immigrant children can count the quarters of their parents and immigrants can count the quarters of their spouses, unless they divorce.
- Immigrants facing hunger or homelessness
- Immigrants whose sponsor is dead
- Refugees
- Persons granted asylum (i.e. – asylees)

^{iv} **Qualified Immigrants**– are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty (parent/child of such battered child/spouse is also “qualified”); and (5) victims of trafficking and their derivative beneficiaries who have obtained a T visa or whose application for a T visa sets forth a *prima facie* case. (A broader group of trafficking victims who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.) See National Immigration Law Center (NILC), Medical Assistance Programs for Immigrants in Various States, July 2012, *available at*: <http://www.nilc.org/guideupdate.html> (full details of programs available in states provided by NILC).

^v **PRUCOL or Permanently Residing in the U.S. Under the Color of Law**– is not an immigration status, but a benefit eligibility category. The term, which generally means that U.S. Citizenship and Immigration Services is aware of a person’s presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

^{vi} **Lawfully present** – means the person is lawfully present in the U.S. and meets the Medicaid state residency requirement. Lawfully present immigrants include “qualified” immigrants and individuals: paroled into the U.S. for less than a year; with a valid nonimmigrant status (e.g., citizens of Micronesia, Marshall Islands, and Palau, and survivors of serious crimes cooperating with law enforcement in prosecuting the perpetrators); granted withholding of removal under the Convention Against Torture, temporary protected status (TPS), deferred enforced departure (DED), deferred action; family unity, or temporary resident status; with approved visa petition who have filed an application to adjust to lawful permanent residence; granted employment authorization based on application for asylum or withholding of removal (or, if under 14, application pending for over 180 days), TPS, registry, legalization under IRCA (1986 law), adjustment under LIFE Act, suspension of deportation/cancellation of removal, or based on an order of supervision; and children who have applied for Special Immigrant Juvenile Status.

^{vii} **Violence Against Women Act (VAWA)** – includes: 1. VAWA self-petitioners, as defined by INA § 101(a)(51); 2. VAWA cancellation of removal, INA § 240A; 3. VAWA suspension of deportation, INA § 244(a)(3)(as in effect prior to March 31, 1997); 4. An immigrant who has been subjected to

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battering or extreme cruelty, whose spouse or parent filed a family based visa petition for them, which is pending and sets out a prima facie case for approval or has been approved. The battery and extreme cruelty could have been perpetrated by the spouse or parent or a member of the spouse or parent's family residing in the same household as the victim. All immigrants applying for benefits under VAWA must demonstrate a substantial connection between the battering or extreme cruelty and the need for benefits.

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-awp*)
American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

17.3

Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence

By Legal Momentum and Morgan Lewis, LLP

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This information is current as of September 17, 2007. It is intended to provide an overview regarding health benefits and victim compensation for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence

INTRODUCTION

The Federal Victims of Crime Act established a Crime Victims Fund that provides grants to states for eligible crime victim compensation programs. If states meet certain requirements, this federal funding can be obtained to compensate victims of crimes through programs administered by the states and U.S. territories. See 42 U.S.C. §10602, and discussion of relevant federal law below.

In general a “compensable crime” includes motor vehicle accidents resulting from driving while intoxicated, domestic violence, and any crime where the victim suffers death or personal injury, including assault, battery, child abuse, reckless driving, murder, robbery, sexual assault, kidnapping, or other violent crimes.

Each state and territory has a victims compensation program. Most of these programs provide compensation to victims of crimes that occur in that state. Generally a victim must suffer physical (bodily) injury, emotional injury, economic loss, or some combination of these.

Many of the programs extend certain types of compensation to relatives of the victim, such as counseling, or, where the crime results in a death, coverage of funeral and burial expenses. Often, relatives or even non-relatives that paid for medical care of a victim can be compensated for those costs. Some states also extend benefits to those who prevent or attempt to prevent a crime.

Most states provide compensation to:

- state residents, or nonresidents, if the crime occurred in the state; and
- state residents if the crime occurred in another state, and there is no comparable compensation available from that other state.

Several states also provide compensation to:

- state residents for crimes committed outside of the country, in an act of international terrorism, or mass violence.

Most states do not deny compensation based upon immigration status. Accordingly, in most states, both qualified and non-qualified immigrants can receive compensation if they are victims of a crime. However, several states either do not provide coverage for non-qualified immigrants or seek information that a non-qualified immigrant may not have. For example, several states ask for a social security number as part of the process of applying for compensation. Generally speaking, however, these states will process an application and provide compensation, even if the social security number is not available. Among the very few states where compensation is not provided to non-qualified immigrants, one will permit compensation if the crime victim is also a victim of human trafficking.

Jurisdictionally Sound Civil Protection Orders

It is generally required that the crime be reported to law enforcement officials within a certain time period--often 72 hours. However, most states permit a crime to be reported later if for good cause, or if the victim was a juvenile. It is not necessary that the crime at issue be solved or that the accused is convicted. However, it is generally required that the victim cooperate with law enforcement officials in investigating the crime, and that the victim be innocent, *e.g.*, not involved in the crime, and not incarcerated at the time of the crime.

Compensation is available for a wide variety of financial costs. Most often this includes medical costs, such as physician services, hospital care, dental services, prescription drugs, and mental health treatment. For victims of sexual assault, compensated medical care can include STD and HIV/AIDS screening/treatment, pregnancy testing, hepatitis screening, and pre-natal care.

Most states provide compensation for loss of income and funeral/burial costs. Many states also provide compensation for travel for court appearances or for medical treatment, rehabilitation, crime scene clean-up, necessary moving/relocation costs, necessary home security or modifications, limited attorney's fees, and replacement costs for the work victim is no longer able to perform, *e.g.*, housekeeping or child care. A few states compensate for lost, stolen, or damaged property. Very few states compensate for pain and suffering.

Most states have limits on how much will be reimbursed in each category, as well as a limit on total compensation. Most also consider this compensation of last resort, *i.e.* compensation will not be provided if the costs are reimbursable by insurance or other benefits.

Emergency benefits can often be provided if the victim would suffer substantial hardship without immediate compensation. Emergency awards can range, in general, from \$500 to \$1500.

To obtain compensation, victims must generally file an application in the particular state with the agency that administers the program. Time limits for filing vary, but are generally one to three years from the time of the crime. There are usually allowances for good cause that enable an application to be submitted at a later time. Applications are then reviewed and a decision is reached. Most states have an appeal process that may be used if the victim's request is denied.

RELEVANT FEDERAL LAW

The Victims of Crime Act established a Crime Victims Fund from which grants are provided to states for eligible crime victim compensation programs. Under 42 U.S.C. §10602, a compensation program qualifies as an eligible crime victim compensation program if:

- the program is operated by the state and offers compensation to victims and the survivors of victims of criminal violence (including drunk driving and domestic

Jurisdictionally Sound Civil Protection Orders

violence) for (i) medical expenses attributed to a physical injury related to compensable crime, including expenses for mental health counseling, (ii) lost wages attributable to a physical injury resulting from a compensable crime, and (iii) funeral expenses attributable to a death resulting from a compensable crime;

- the program promotes victim cooperation with reasonable requests from law enforcement;
- the grants will not supplant state funds otherwise available for victim compensation;
- the program makes compensation awards to victims who are nonresidents of the state on the basis of the same criteria used to make awards to victims who are residents of the state;
- the program provides compensation to victims of federal crimes occurring within the state on the same basis as compensation to victims of state crimes;
- the program provides compensation to residents of the state who are victims of crimes occurring outside the state if (i) the crimes would be compensable crimes had they occurred inside that state, and (ii) the places the crimes occurred in are states not having eligible crime victim compensation programs;
- the program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and
- the program does not provide compensation to any person who has been convicted of an offense under federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense.

In addition, it is important to note that under federal law, immigrants have access to emergency medical services, which cover those services that are necessary to protect life or safety. Immigrants can seek medical care at federally funded Community Health Centers and Migrant Health Centers, which provide services to underserved populations.

Jurisdictionally Sound Civil Protection Orders

STATE LAW PROVISIONS

Below is a mini-chart briefly summarizing the provisions available to victims of sexual assault and other violent crimes. This mini-chart is followed by a detailed chart for each U.S. state and territory setting forth the relevant provisions for eligibility, compensation, and the application process for crime victim compensation (CVC).

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
Alabama	Yes	No	AL's CVC compensates victims for the following expenses: medical, including testing and preventative treatment for STDS, funeral, psychiatric, loss wages, and rehabilitation.
Alaska	Yes	Yes	AK's Violent Crime Compensation will compensate victims for all expenses actually and reasonable incurred as a result of the crime, including medical costs, attorney's fees, counseling, funeral expenses, and loss of wages.
Arizona	Yes	Yes	AZ's CVC will compensate victims for the following expenses: medical costs including STD testing, work loss, counseling, and funeral.
Arkansas	Yes	Yes	AR's Crime Victims Reparations Program compensates victims for the following expenses: 75% of medical costs (although medical providers may accept this as payment in full), work loss, funeral, crime scene cleanup, and miscellaneous expenses (i.e., travel and lodging to and from judicial proceeding relating to crime).
California	Yes	Yes	CA's CVC compensates victims for the following expenses: medical including STD and AIDS screening or treatment, counseling, remedial care, loss of wages, job retraining, funeral, crime scene cleanup, and miscellaneous (i.e., relocation, installing residential security system).
Colorado	Yes	Yes	CO's CVC compensates victims for the following expenses: medical, loss of wages, outpatient care, burial, and counseling.
Connecticut	Yes	Yes	CT's Office of Victim Services compensates victims for the following expenses: medical, counseling, loss of wages, and funeral. For victims of sexual assault, testing for pregnancy and STDs, and prophylactic treatment for STDs is offered as part of the forensic program.
Delaware	Yes	Yes	DE's Violent Crime Compensation Board will compensate victims for the following expenses: medical, counseling, remedial, loss of wages, crime scene cleanup, and miscellaneous (i.e., changing residential locks, temporary housing, and moving expenses). For victims of

¹Qualified immigrants include: (1) LPRs, including Amerasian immigrants; (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry, or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also qualified.

²Non-qualified immigrants include (1) undocumented immigrants; (2) U-visa holders; (3) other immigrants formerly considered "permanently residing under color of law" (PRUCOL); and (4) immigrants with temporary status such as tourists and students.

Jurisdictionally Sound Civil Protection Orders

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			sexual assault, a forensic program includes testing for pregnancy and STDs.
District of Columbia	Yes	Yes	DC's CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, funeral, crime scene cleanup, attorney's fees, and miscellaneous (i.e., temporary food and shelter, moving, transportation, replacement of doors, windows, locks).
Florida	Yes	Yes	FL's Victim Services compensates victims for the following expenses: medical, loss of wages, counseling, funeral, property loss reimbursement, and miscellaneous (i.e., relocation, prescriptions and prosthetics).
Georgia	Yes	Yes	GA's CVC compensates victims for the following expenses: medical including STD, AIDS and post-coital screening/treatment if not paid for through forensic exam coverage or other coverage, counseling, funeral, lost wages, and crime scene cleanup.
Hawaii	Yes	Yes	HI's CVC compensates victims for the following expenses: any reasonable and proper costs resulting from the injury or death of the victim, including medical (including STD and HIV examinations and treatment), loss of wages, pain and suffering.
Idaho	Yes	Yes	ID's Industrial Commission will compensate victims for the following expenses: medical, counseling, loss of wages, funeral, and miscellaneous (i.e., travel expenses incurred in connection with obtaining benefits).
Illinois	Yes	Yes	IL's Crime Victim Services compensates victims for the following expenses: medical including STD testing and HIV treatment, crime scene cleanup, loss of wages, funeral, and miscellaneous (i.e., temporary lodging, replacement locks or windows).
Indiana	Yes	Yes	IN's Division of Violent Crime compensates victims for the following expenses: medical (including pregnancy and STD testing, and HIV testing), counseling, loss of wages, childcare, funeral, and miscellaneous (i.e., emergency shelter).
Iowa	Yes	Yes	IA's Crime Victims Assistance compensates victims for the following expenses: medical (including prenatal care and delivery), counseling, loss of wages, funeral, and crime scene cleanup. For victims of sexual assault, expenses relating to STD, HIV/AIDS, hepatitis, pregnancy testing, and post-coital are covered by the forensic program.
Kansas	Yes	Yes	KS' CVC compensates victims for the following expenses: loss of wages, medical (including testing and preventative treatment for STDs, and pregnancy testing), funeral, attorney's fees, and miscellaneous (i.e., moving for safety reasons and mileage for medically necessary travel).
Kentucky	Yes	Yes	KY's CVC compensates victims for the following expenses: medical, funeral, counseling, attorney's fees, and miscellaneous (i.e., replacement of glasses, stolen, lost, or damaged property). For victims of sexual assault,

Jurisdictionally Sound Civil Protection Orders

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			CVC compensates for preventative and follow-up treatment of hepatitis B and certain STDs.
Louisiana	Yes	Yes	LA's Crime Victims Reparations compensates victims for the following expenses: medical, attorney's fees, funeral, loss of wages, counseling, child care, crime scene cleanup, and miscellaneous (i.e., travel expenses when medical care is needed, catastrophic property loss).
Maine	Yes	Yes	ME's CVC compensates victims for the following expenses: medical limited to 75% of charges, counseling, funeral, loss of wages, crime scene costs, and miscellaneous (replacement costs for eyeglasses and prosthetics). For victims of sexual assault, the forensic program includes coverage for testing and treatment for STDs and testing for pregnancy.
Maryland	Yes	Yes	MD's Criminal Injuries Compensation Board compensates victims for the following expenses: medical, counseling, funeral, loss of wages, miscellaneous (i.e., replacement for eyeglasses, repairing, replacing, and cleaning property).
Massachusetts	Yes	Yes	MA's Victim Compensation and Assistance Division compensates victims for the following expenses: medical (including pregnancy testing, STD/AIDS screening or treating and prenatal care), funeral, counseling, loss of wages, childcare, and attorney's fees.
Michigan	Yes	Yes	MI's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, childcare, rehabilitation, attorney's fees, and miscellaneous (including, travel costs).
Minnesota	Yes	Yes	MN's Crime Victims Reparations compensates victims for the following expenses: medical, counseling, loss of wages, funeral, childcare, crime scene cleanup. For victims of sexual assault, the forensic program provides testing for pregnancy and STDs.
Mississippi	Yes	Yes	MS' CVC compensates victims for the following expenses: medical, rehabilitation, funeral, counseling, loss of wages, and miscellaneous (i.e., transportation costs to obtain medical and counseling that are at least 45 miles from victim's residence).
Missouri	Yes	Yes	MO's CVC compensates victims for the following expenses: medical, counseling, loss of wages, and funeral.
Montana	Yes	Yes	MT's CVC compensates victims for the following expenses: medical, counseling, loss of wages, and funeral. For victims of sexual assault, the forensic program covers preventative treatment for STDs.
Nebraska	Yes	Yes	NE's Crime Victim's Reparations will compensate victims for the following expenses: medical, loss of wages, funeral, and counseling.
Nevada	Yes	No	NV's Compensation Board will compensate victims for the following expenses: medical, counseling, funeral, loss of wages, replacement of eyeglasses, prosthetics.
New	Yes	Yes	NH's CVC compensates victims for the following

Jurisdictionally Sound Civil Protection Orders

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
Hampshire			expenses: medical, funeral, counseling, loss of wages. For victims of sexual assault, the forensic program covers STD testing and pregnancy testing.
New Jersey	Yes	Yes	NJ's Victims of Crime Compensation Board compensates victims for the following expenses: medical, loss of wages, counseling, funeral, loss of eyeglasses, crime scene cleanup, relocations expenses and miscellaneous (including limited transportation costs). For victims of sexual assault, the CVC program covers pregnancy testing and preventative treatment for some STDs.
New Mexico	Yes	Yes	NM's Crime Victims Reparations Commission compensates victims for the following expenses: medical, funeral, counseling, replacement of eyeglasses or medically necessary devices, loss of wages, rehabilitation and miscellaneous (i.e., cost of making home or auto accessible, job training).
New York	Yes	Yes	NY's Crime Victim's Board compensates victims for the following expenses: medical, loss of wages, funeral, rehabilitation, replacement of essential personal property, counseling, crime scene cleanup, attorney's fees, miscellaneous (including transportation expenses, cost of temporary lodging). For victims of sexual assault, the forensic program covers testing and preventative treatment for some STDs.
North Carolina	Yes	Yes	NC's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, replacement, crime scene cleanup, and miscellaneous (including travel costs necessary to obtain medical services). For victims of sexual assault, CVC covers STD screening and treatment and pregnancy testing.
North Dakota	Yes	Yes	ND's CVC compensates victims for the following expenses: medical (including STD, HIV/AIDS, post-coital treatment), counseling, loss of wages, replacement services loss, and funeral.
Ohio	Yes	Yes	OH's CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, replacement, crime scene cleanup, and funeral. The forensic program informs victims of sexual assault of available services for STDs.
Oklahoma	Yes	Yes	OK's CVC compensates victims for the following expenses: medical, loss of wages, replacement, counseling, funeral, and crime scene cleanup.
Oregon	Yes	Yes	OR's CVC compensates victims for the following expenses: medical, counseling, replacement of eyeglasses and other medically necessary devices, funeral, loss of wages, rehabilitation, and miscellaneous (i.e., mileage expenses). The Sexual Assault Victims Emergency Medical Response Fund (SAVE) provides funding to pay for sexual assault medical exams, forensic exams, and preventive treatment for STDs.
Pennsylvania	Yes	Yes	PA's Office of Victims compensates victims for the following expenses: medical (including pregnancy and

Jurisdictionally Sound Civil Protection Orders

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
			STD testing), counseling, medically necessary devices, and miscellaneous (i.e., temporary or permanent relocation).
Rhode Island	Yes	Yes	RI's CVC compensates victims for the following expenses: medical, counseling, funeral, attorney's fees.
South Carolina	Yes	Yes	SC's CVC compensates victims for the following expenses: medical, counseling, loss of wages, rehabilitation, and funeral. For victims of sexual assault, the forensic program provides treatment for certain STDs.
South Dakota	Yes	Yes	SD's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funerals, replacement, crime scene cleanup, rehabilitation, and miscellaneous (i.e., travel to attend treatment).
Tennessee	Yes	Yes	TN's CVC compensates victims for the following expenses: medical, funeral, counseling, crime scene cleanup, replacement costs, attorney's fees, and miscellaneous (traveling to and from the trial, relocation).
Texas	Yes	Yes	TX' CVC compensates victims for the following expenses: medical, counseling, rehabilitation, loss of wages, funeral, replacement, crime scene cleanup, and miscellaneous (i.e., relocation, travel to assist with investigation, prosecution or judicial process).
Utah	Yes	Yes	UT's Crime Victims Reparations compensates victims for the following expenses: funeral, counseling, attorney's fees, loss of wages, replacement, and medical. For victims of sexual assault, the forensic program provides testing and initial treatment for STDs.
Vermont	Yes	Yes	VT's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, replacement, crime scene cleanup, rehabilitation, and miscellaneous (i.e., moving expenses, travel for medical or counseling and food and lodging to attend court hearings and funerals). For victims of sexual assault, the forensic program provides HIV testing and counseling.
Virginia	Yes	Yes	VA's CVC compensates victims for the following expenses: medical (including prenatal care resulting from rape), loss of wages, counseling, funeral, crime scene cleanup, replacement, and miscellaneous (i.e., moving expenses).
Washington	Yes	Yes	WA's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, rehabilitation, and miscellaneous (i.e., modification home and vehicle to accommodate permanent injuries). For victims of sexual assault, the forensic program offers post-coital treatment.
West Virginia	Yes	Yes	WV's CVC compensates victims for the following expenses: medical, counseling, loss of wages, funeral, rehabilitation, replacement, and miscellaneous (i.e., mileage to the medical treatment facility). For victims of sexual assault, STD and HIV testing and treatment are covered, and post-coital treatment is offered under the forensic program.

Jurisdictionally Sound Civil Protection Orders

State	Qualified Immigrants ¹	Non-Qualified Immigrants ²	Types/Mean of Coverage
Wisconsin	Yes	Yes	WI's CVC compensates victims for the following expenses: medical, counseling, loss of wages, replacement, funeral, attorney's fees, and crimes scene cleanup.
Wyoming	Yes	Yes	WY's Division of Victim Services compensates victims for the following expenses: medical (including STD and pregnancy testing), counseling, funeral, loss of wages, replacement, relocation, and miscellaneous.
Territories			
Guam	Yes	Yes	GU's Criminal Injuries Compensation Commission compensates victims for the following expenses: actually and reasonably incurred as a result of the injury or death of the victim, loss of wages, pain and suffering, medical expenses (including STD and AIDS screening and treatment, prenatal care, and post coital treatment).
Puerto Rico	Yes	Yes	PR's CVC compensates victims for the following expenses: medical, counseling, funeral, and replacement.
Virgin Islands	Yes	Yes	VI's CVC compensates victims for the following expenses: loss of wages, medical (including exams for sexual assault and STDs), counseling, replacement, pain and suffering, attorney's fees, funeral, and miscellaneous (i.e., travel in extraordinary circumstances). For victims of sexual assault, the forensic program provides treatment for STDs.

Jurisdictionally Sound Civil Protection Orders

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State	Victim Compensation Laws	Process to Receive Compensation
Alabama	<p>BACKGROUND</p> <p>The Crime Victims Compensation Fund is funded by the Crime Victims Compensation Commission through various sources including grants, appropriations, gifts, donations, and other sources. Al. Code § 15-23-16.</p> <p>Alabama provides compensation to victims of any act resulting in personal injury or death for which punishment by fine, imprisonment, or death may be imposed. Al. Code § 15-23-3(2).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> To qualify for reimbursement, the victim’s presence in the U.S. must be lawful. Every claimant must provide a valid government-issued photo identification to be eligible. Therefore, qualified immigrants are eligible, but non-qualified immigrants are not. However, claimants/victims who are certified by federal authorities as victims of human trafficking are eligible for compensation benefits regardless of immigration status. Al. Adm. Code 262-X-4-.02(13) and (14). http://www.acvcc.state.al.us/downloads/application.pdf. The crime which caused the injury or death must be reported to a law enforcement officer within 72 hours after its occurrence, unless the commission finds there was good cause for the failure to report within that time. Al. Code § 15-23-12(a)(4). <p>The victim or the surviving spouse, child,</p>	<p>TO APPLY</p> <p>For an application form, a claimant can contact the following agencies or go online:</p> <ol style="list-style-type: none"> Alabama Crime Victims Compensation Commission P.O. Box 1548 Montgomery, Alabama 36102-1548 Phone (334)290-4420 Fax (334) 290-4455 Victims' Service Officer in claimant’s local District Attorney's Office Online at http://www.acvcc.state.al.us/downloads/application.pdf <p>The claimant must file an application within 1 year of the incident, unless there is a good reason for the delay. Applications should be filed with the Alabama Crime Victims Compensation Commission. Al. Code § 15-23-12(a)(1).</p> <p>The executive director of the Commission shall notify the claimant within 10 days of the Commission's action.</p> <p>TO APPEAL</p> <p>The claimant may notify the executive director in writing (certified mail) of the intent to appeal within 30 days of the date of the notification letter.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>or representative of the victim of a violent crime may apply for compensation. Al. Code § 15-23-3(5).</p> <p>The claimant must not be the offender, or an accomplice of the offender, or the one who encouraged or in any way participated in the criminally injurious conduct. Al. Code § 15-23-12(a)(2).</p> <p>The award must not unjustly benefit the offender or accomplice of the offender. Al. Code § 15-23-12(a)(3).</p> <p>COMPENSATION</p> <p>An award may be reduced or denied if the applicant fails to cooperate with law enforcement, including appearing as a witness for the prosecution. Al. Code § 15-23-12(c); Al. Adm. Code, § 262-X-5-.01.</p> <p>Victims may be able to receive the following compensation benefits (up to a maximum of \$15,000):</p> <ul style="list-style-type: none"> • Medical; • Psychiatric; • Work loss due to the crime (\$400/week); • Funeral expenses (not to exceed \$5,000) Alabama Code § 15-23-3(6); and • Rehabilitation of the victim. Al. Code § 15-23-15. <p>Testing and preventative treatment for sexually transmitted diseases, and testing for pregnancy are covered under the compensation program. Al. Adm. Code § 262-X-11.01(1)(c).</p> <p>Alabama Crime Victims Compensation Commission (“ACVCC”) Annual Report contains both the statutory provisions and the administrative code. http://www.acvcc.state.al.us/downloads/annualreport05.pdf</p>	<p>The claimant is entitled to a formal hearing before the Commission, which shall be held within 60 days of the receipt of the intent-to-appeal notice from the claimant. The Commission may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.</p> <p>The Commission will make its decision within 10 days of the formal hearings and the applicant will be notified by mail. Adm. Code § 262-X-9-.01</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
Alaska	<p>BACKGROUND</p> <p>Alaska provides compensation to innocent victims of a violent crime that occurred in Alaska.</p> <p>http://www.state.ak.us/admin/vccb/</p> <p>A victim of a crime may be compensated if the victim suffered injury or was killed by:</p> <ul style="list-style-type: none"> • attempting to prevent a crime, apprehend a criminal, or aiding a victim of a crime; • murder; • manslaughter; • criminally negligent homicide; • assault; • kidnapping; • sexual assault; • robbery; • threats to do bodily harm; • driving while under the influence of alcohol, inhalant or a controlled substance or another crime while operating a vehicle, boat, or airplane; and • arson in the first degree . <p>Dependents or representatives of a victim are also covered.</p> <p>AS 18.67.101.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • Alaska provides assistance to crime victims regardless of residency or citizenship. 2 AAC 80.050(b)(1). Note that the application requests the applicant’s social security number, and states that the claim “cannot be processed without this information.” However, the Administrator of the Victim Compensation Group indicated that Alaska provides compensation to anyone who is a victim regardless if person is a U.S. citizen or not. • The incident must have been reported to the police within 5 days of its 	<p>TO APPLY</p> <p>A person may obtain an application form by writing to the Violent Crimes Compensation Board at P.O. Box 111200, Juneau, AK, 99811-1200, by calling the board at (800) 764-3040, or by visiting the board's web site at http://www.state.ak.us/admin/vccb/. The forms are also available at all law enforcement agencies in the state. 2 AAC 80.010.</p> <p>Applications must be completed and submitted to the Violent Crime Compensation Board. http://www.state.ak.us/admin/vccb/pdf/Application.pdf</p> <p>A request for compensation must be made within 2 years of the incident. AS 18.67.130.</p> <p>Upon receipt of the application, the Board administrator will investigate the claim.</p> <p>Upon completion of investigation, the administrator will present the claim to the board at its next meeting. The board will grant an award, deny the claim, order a hearing, or request further investigation or information, and will notify the claimant or the claimant's attorney of its decision.</p> <p>2 AAC 80.015.</p> <p>The Board may order that compensation be paid directly to the service provider. AS 18.67.110.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>occurrence (if that is not reasonable, the incident must be reported within 5 days of the time when a report could have been reasonably made). The applicant must cooperate with law enforcement and prosecution officials of the offender. AS 18.67.130.</p> <p>An application for compensation can be made by the victim, or in the case of death, by the victim’s dependents or a representative of the victim. 2 AAC 80.110.</p> <p>COMPENSATION</p> <p>Total compensation is not to exceed \$40,000 per victim per incident.</p> <ul style="list-style-type: none"> • Total compensation awarded as a result of the death may not exceed \$80,000 in the case of a victim with more than one dependent eligible to receive compensation. • Total compensation awarded as a result of the deaths may not exceed \$80,000 in the case of two or more victims in the same incident who jointly have a dependent eligible for compensation. AS 18.67.130(c). • Expenses actually and reasonably incurred as a result of the crime. • Loss of earning power as a result of total or partial incapacity of the victim and employment related rehabilitation costs. • Financial loss to the dependents of a deceased victim. • Any other reasonable loss resulting from personal injury or death. • Funeral and burial (up to \$7,000). • Reasonable attorney’s fees (up to 25% of the first \$1,000 compensation, 15% of the next \$9,000, and 7.5% of the amount awarded over \$10,000). • Emergency compensation (up to \$1,500). • Mental health counseling sessions (\$2,600 or 26 sessions for primary victims, or \$600 or 6 sessions for secondary victims). 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>AS 18.67.050, 18.67.110, 18.67.120; http://www.state.ak.us/admin/vccb/pdf/Application.pdf; http://www.state.ak.us/admin/vccb/2002/policy.htm</p>	
<p>Arizona</p>	<p>BACKGROUND</p> <p>Arizona maintains a Victim Compensation and Assistance Fund, which is administered by the Arizona Criminal Justice Commission. A. R. S. § 41-2407. The Commission has issued regulations and procedures, and awards are made by local CVC Boards in each county, which meet every 60 days. Ariz. Admin. Code § R10-4-105 & -106.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to law enforcement within 72 hours after it occurred or the applicant will be required to show good cause why the crime was not reported. <p>Application for compensation may be made by a victim or a “derivative victim,” who may be a relative, a household member in a substantially similar relationship as a relative, a non-family member who witnessed a violent crime, or person whose presence is required for the successful treatment of the victim.</p> <p>The Board may deny claims for a variety of reasons, including recoupment of economic losses from other sources, the victim’s own negligence, lack of victim cooperation or failure to assist prosecution or otherwise provide information about the crime, or</p>	<p>TO APPLY</p> <p>The person seeking compensation must complete an application and submit it to the CVC Board in the county where the crime occurred within 2 years of discovery of the crime unless good cause is shown. A standard application provided by the Commission is used by each board. A board is required to render a decision within 60 days of receipt of the application unless good cause exists. Ariz. Admin. Code § R10-4-106.</p> <p>A board may conduct hearings on any application in its discretion.</p> <p>TO APPEAL</p> <p>If the board denies a claim, the applicant may request a hearing, and a hearing or review of the decision may be granted on specific grounds, including irregularity in the administrative proceedings, newly discovered evidence that could not with reasonable diligence have been discovered and produced at the board meeting, lack of justification for the decision, errors in the rejection or admission of evidence, or other errors of law. Ariz. Admin. Code § R10-4-106.</p> <p>See the following link for more information (including application forms):</p> <p>http://azcjc.gov/victim/VictComp.asp</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>insufficient funds. Ariz. Admin. Code § R10-4-106.</p> <p>A claimant may not be an offender or anyone who encouraged or participated in criminally injurious conduct. A claimant may not be a person serving or who has escaped from any sentence of imprisonment, or a person who has been convicted of a federal crime and is delinquent in paying any fine or other monetary penalty. A person engaged in unlawful activity at the time of the crime or who contributed to their own injury is not eligible. Absent special circumstances, individuals in custody, or who have been adjudicated a habitual felony or violent offender or are found guilty of a forcible felony offense are not eligible. Records are confidential and not subject to public disclosure. Ariz. Admin. Code § R10-4-106.</p> <p>COMPENSATION</p> <p>Compensation may pay for:</p> <ul style="list-style-type: none"> • medical expenses; • mental health counseling; • work loss; and • funeral expenses (up to \$5,000) <p>Total award is up to \$20,000.</p> <p>Payments for work loss of victims (and parents of victims who are minors) include compensatory payments for attending court proceedings, up to 40 hours per month at the federal minimum wage rate.</p> <p>Emergency compensation awards of up to \$500 may be made if an award is likely and serious hardship would result if the payment is not provided. Ariz. Admin. Code § R10-4-106 & -108.</p> <p>A “medical expense” must be related to physical injury resulting from the crime to be compensated. Compensation may be</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>paid for direct injury suffered, but not subsequent costs associated with a “medical condition” (e.g., compensation is available for emergency treatment after a stabbing but not subsequent treatment for internal adhesions; similarly, STD testing as part of an emergency room admission following a sexual assault may be covered, but not subsequent tests after discharge). Medical costs may also include expenses resulting from damage to a dental or prosthetic device.</p>	
Arkansas	<p>BACKGROUND</p> <p>The Arkansas Legislature created the "Arkansas Crime Victims Reparations Act" in 1987. The legislation provides a method of compensating and assisting victims that have suffered personal injury or death as the result of a violent crime, including DWI and hit and run incidents.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The incident must be reported to the proper authorities within 72 hours (minors excluded) and documentation of the report must be maintained. <p>Claimants include the victim, a dependent of a homicide victim, or an authorized person acting on behalf of the victim.</p> <p>The following qualify as a “victim in Arkansas:”</p> <ul style="list-style-type: none"> • An Arkansas resident suffering personal injury or death as the result of a criminal act occurring in Arkansas; • An Arkansas resident suffering personal injury or death as an act of 	<p>TO APPLY</p> <p>A claim form for crime victim compensation may be obtained from the prosecuting attorney's office, law enforcement agency or the Arkansas Crime Victims Reparations Program, or from:</p> <p>http://www.ag.state.ar.us/outreach/cvictims/app.pdf.</p> <p>The claim form must be filed within 1 year of incident (minors excluded and may be waived for good cause) and must be completed in its entirety and accompanied by the following:</p> <ul style="list-style-type: none"> • at least one itemized statement of expenses related to the crime (for example, itemized medical bills including hospital charges, counseling fees, ambulance fees, and prescription costs). • documentation of the crime was reported on time. <p>http://www.ag.state.ar.us/citerv/cv/CVRB_Application.pdf</p> <p>Arkansas Crime Victims Reparations Program Office of the Attorney General 323 Center Street, Suite 1100 Little Rock, Arkansas 72201</p> <p>By phone: 501-682-1020 or 1-800-448-3014</p> <p>For more information, go to:</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>terrorism committed outside of the United States;</p> <ul style="list-style-type: none"> • a child of an eligible victim; • an immediate family member of a deceased victim, a sexual assault victim, or a child victim; • a person who resided in the same permanent household as a deceased victim; or • a person who discovers the body of a homicide victim. <p>Arkansas Code 16-90-703(11)(A).</p> <p>In order to be eligible for compensation, the following requirements must be met:</p> <ul style="list-style-type: none"> • Victimization must have occurred in Arkansas; • The crime must be reported to the proper authorities within 72 hours (may be waived for good cause); • Victim must have suffered personal injury or death due to criminal act of another person; • Victim/claimant must cooperate with the investigation and/or prosecution; • Victim must not have been covered by a collateral source (e.g. insurance or other payment of costs); • Victim/claimant must not have been convicted of a criminally injurious felony; • Victim's conduct must not have contributed to the victimization; • Victim must not have been involved in illegal activity at the time of the incident; • Victim must not have been incarcerated at the time of the incident; • If a motor vehicle was involved, compensation is available if the incident involved one of the following: <ul style="list-style-type: none"> ○ Alcohol or drugs (violation of Omnibus DWI) ○ Intent; or ○ Hit and Run (Leaving the scene of an accident involving serious injury or death) <p>State officials will review all eligibility criteria and a decision will be made accordingly. It is important to note that the Application for CVC requires that a social</p>	<p>http://www.ag.state.ar.us/outreach/cvictims/outreach4.htm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>security number be provided. State officials will attempt to obtain a social security number, but the screening process will continue even if it is determined that the victim does not have one.</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • Medical expenses, including rehabilitation and dental, are paid at 75% of balance submitted; but providers may accept this as payment in full; • Repair and/or replacement, such as eyeglasses, dentures or hearing aids; • Mental health expenses are paid up to \$3,500 for out-patient treatment and \$3,500 for in-patient; • Work loss; • Loss of support for dependents of a homicide victim; • Funeral expenses are paid up to \$5,000; • Crime scene clean-up expenses are paid up to \$3,000; • Miscellaneous expenses, including purchase and installation of locks and windows following sexual assault or domestic violence in victim’s primary residence, travel and lodging expenses resulting from a criminal justice proceeding related to the victimization, and an application for guardianship of minors following the death of a victim. http://www.ag.state.ar.us/citserv/cv/CV_RB_Application.pdf <p>Overall maximum is \$10,000 per victim, but this can be raised to \$25,000 if the victim suffered catastrophic injury that resulted in total and permanent disability. Arkansas Code 16-90-716.</p> <p>http://www.arlegalservices.org/Data/DocumentLibrary/Documents/1088519571.55/doc_FSCrimeReparations.pdf</p> <p>Expenses that are not covered by the Program include:</p> <ul style="list-style-type: none"> • Pain and Suffering; • Property damage or loss; and • Attorney’s fees. 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>http://www.arlegalservices.org/Data/DocumentLibrary/Documents/1088519571.55/document_FSCrimeReparations.pdf</p> <p>A.C.A. §5-65-101 et. seq.; A.C.A. §27-53-101.</p>	
California	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific reporting requirement, but state officials indicate that the crime must be reported within a reasonable period of time. <p>Victims of certain types of crimes may receive compensation from the state if: (i) the crime occurred in California, whether the victim is a resident of California or not, or (ii) whether or not the crime occurred in California, if the victim is a resident of California. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>Compensation may be received by the victim of the crime, a derivative victim (which is an individual who sustains pecuniary loss as a result of the injury or death to the victim) or a survivor if the crime results in a death. A derivative victim may receive compensation whether or not the derivative victim is a resident of California if the derivative victim meets any of the following: (i) at the time of the crime was the parent, grandparent, sibling, spouse, child or grandchild of the victim; (ii) at the time of the crime was living in the household of the victim; (iii) at the time of the crime was a person who previously lived in the household of the victim for a period of not less than 2 years in a relationship substantially similar to that under (i); (iv) is another family member of the victim, including the victim’s fiancé or fiancée and who witnessed the crime; or (v) is the primary caretaker of a minor victim</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the California Victim Compensation & Government Claims Board. A local Victim Witness Assistance Center may help with the application process. Unless the Board grants an extension, the application must be filed within 1 year from the date of the crime; the date the victim turned eighteen (18); or the date the victim knew that the crime caused an injury or death. Cal. Gov’t Code §13953.</p> <p>An application will be denied if the Board finds that the victim knowingly and willfully participated in the commission of the crime that resulted in the pecuniary loss.</p> <p>An application will also be denied if the Board finds that the victim fails to reasonably cooperate with law enforcement in the apprehension and conviction of the criminal. The Board will consider the victim’s age, physical condition, psychological state, cultural or linguistic barriers, health and safety concerns (including a reasonable fear of retaliation) when determining the degree of cooperation of which a victim is capable.</p> <p>The applicant must verify the content of the application under penalty of perjury and the Board may require the submission of additional information. The applicant has 30 days from the date of receipt of a request for additional information to supply the information or appeal the request. The Board will independently verify the information contained in the application by contacting hospitals, physicians and law enforcement. The victim must cooperate with the Board as it seeks to verify the information or risk the</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>but was not the primary caretaker at the time of the crime.</p> <p>To be compensated, the injury or death must be the direct result of a crime. Injury can include physical injury, emotional injury coupled with a threat of physical injury, or other forms of emotional injury resulting from specified crimes. The injury or death must have resulted or may result in financial loss within the scope of compensation. See Cal. Gov't Code §13955.</p> <p>COMPENSATION</p> <p>Compensation is provided for: (i) medical and medical-related expenses; (ii) mental health counseling; (iii) expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law; (iv) loss of income or loss of support; (v) job retraining; (vi) expenses for installing or increasing residential security; (vii) expenses for retrofitting or renovating a victim's residence or vehicle, or both, to make them accessible by a victim who is permanently disabled as a direct result of the crime; (viii) relocation expenses; and (viii) funeral/burial expenses and crime scene cleanup expenses.</p> <p>An attorney may receive compensation from the Board in the amount of 10% of the amount of the award, or \$500, whichever is less, for each victim, and may not otherwise charge for providing services in connection with obtaining compensation for a victim.</p> <p>The total award on behalf of each victim may not exceed \$35,000 although this amount may be increased to \$70,000 if federal funds are available.</p> <p>Medical expenses to be reimbursed may include STD, AIDS, and post coital screening/treatment. Pre-natal care can be</p>	<p>application being rejected.</p> <p>A representative of the victim may complete the application. A representative may include an attorney, a legal guardian, immediate family member, parent, or relative caregiver who is not the perpetrator of the crime if the victim is a minor or incompetent adult, a victim assistance advocate, or an immediate family member who is not the perpetrator of the crime with written authorization from the victim.</p> <p>An applicant may request and receive an emergency award if the Board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until the application can be completely processed. Emergency awards must be dispersed within 30 days of the application. Denial of an emergency award is not appealable.</p> <p>TO APPEAL</p> <p>An applicant can appeal if a claim is recommended for denial, or if any part of the claim is recommended for denial. An appeal must be filed within 45 days of the date the Board mailed the notice to deny the claim and/or expense. In some cases, if new information is provided, the denial may be reconsidered immediately. Otherwise, most appeals are scheduled for a hearing before a Hearing Officer. This hearing will give the applicant the opportunity to present information supporting the claim. Hearings are not held to contest the denial of an emergency award.</p> <p>If the applicant does not agree with the outcome of the Board's final decision, a Petition for a Writ of Mandate may be filed in the Superior Court.</p> <p>For more information, contact Victim Compensation & Government Claims Board</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>reimbursed if the expenses are related to the crime and there is no other source of reimbursement.</p>	<p>PO Box 3036 Sacramento, CA 95812-3036</p> <p>Or see the following link: http://www.boc.ca.gov/default.htm</p>
<p>Colorado</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The law enforcement agency must have been notified within 72 hours after the crime occurred. <p>The following persons may be eligible to receive compensation:</p> <ul style="list-style-type: none"> • any person who suffers property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado; • any person who attempts to assist a victim who suffered property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado; or • any person who is a relative of a victim who suffered property damage, economic loss, injury or death as a result of an intentional or criminally negligent act committed in Colorado. <p>If the crime occurred outside the state of Colorado, compensation is available if: (1) the person is a resident of Colorado and the state in which the crime occurred does not have a CVC program for which the person would be eligible, or (2) the person is a resident of the state of Colorado and is injured or killed by an act of international terrorism committed outside of the United States.</p>	<p>The CVC Board in the judicial district in which the crime took place. The three board members are appointed by the district attorney.</p> <p>TO APPLY</p> <p>The victim (or applicant) must file a claim for compensation for injury or death within 1 year from the date of the crime. The victim must file a claim for compensation for property damage within 6 months of the crime.</p> <p>Victims are required to apply for Victim Compensation in the district in which the crime occurred by completing an application and submitting receipts or bills directly related to the crime. The Board may require additional information of the applicant.</p> <p>The processing time is different for each district. It generally takes 30-45 days to be notified of the Board’s decision. The Board reviews the claims from victims for compensation and makes compensation awards from the victims' assistance fund.</p> <p>If the applicant makes any important, false statements to the Board, then she will be ineligible to receive compensation under this program.</p> <p>TO APPEAL</p> <p>If the Board denies the victim’s claim for</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>The victim must cooperate with law enforcement officials.</p> <p>Colorado Statute 24-4.1-101.</p> <p>COMPENSATION</p> <p>A victim may recover the following for injury or death:</p> <ul style="list-style-type: none"> • reasonable medical and hospital expenses and expenses incurred from dentures, eyeglasses, hearing aids, or other prosthetic or medically necessary devices; • loss of earnings; • outpatient care; • homemaker and home health services; • burial expenses; • loss of support to dependents; and • mental health counseling. <p>A victim may recover the following for property damage:</p> <ul style="list-style-type: none"> • repair or replacement of property damaged as a result of the crime or payment of the deductible amount on a residential insurance policy; and • any modification to the victim’s residence that is necessary to ensure victim safety. <p>A relative of a victim, even though not a dependent of the victim, is eligible for compensation for reasonable medical or burial expenses if: (1) the relative files a claim with the CVC Board and (2) the relative paid for the medical and/or burial expenses.</p> <p>The Board can order an emergency award for compensation even if the final decision has not been made, if the victim shows that immediate payment is necessary. The amount of the emergency award will not exceed \$1,000.</p>	<p>compensation, the victim may ask the Board to reconsider its decision. The victim should contact the Victim Compensation program within 30 days from the date of receiving notice of the denial. Colorado Statute 24-4.1.</p> <p>For more information, contact:</p> <p>Office for Victims Programs 700 Kipling Street, Suite 1000 Denver, CO 80215-5865 303-239-5719 888-282-1080</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>The following will not be compensated:</p> <ul style="list-style-type: none"> • pain and suffering or property damage other than residential property damage; • damage to the victim (or the dependents of a victim) exceeding \$20,000; or • damages of less than \$25. 	
Connecticut	<p>BACKGROUND</p> <p>The Connecticut Office of Victim Services manages a fund to help crime victims recover lost wages and some out-of-pocket expenses associated with a violent crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to the police within 5 days of its occurrence. If the crime could not have been reasonably reported in such period, then it should be reported within 5 days of the time when a report could have reasonably been made. <p>Any individual who suffers bodily injury or death resulting from a crime which occurs:</p> <ul style="list-style-type: none"> • within Connecticut, regardless of the residency of the applicant; • outside of Connecticut but within the United States, if the victim at the time of the injury or death, was a resident of Connecticut and the state in which the crime occurred does not have a program for compensation for which the victim is eligible; or • outside of the US, if the applicant is a victim of international terrorism and was a resident of the Connecticut at the 	<p>The Office of Victim Services reviews the applications and may order the payment of compensation.</p> <p>TO APPLY</p> <p>The applicant should file a claim for compensation within 2 years after the date of the personal injury or death.</p> <p>If an applicant fails to make a claim within 2 years of the crime, a waiver of the time limit can be requested if:</p> <ul style="list-style-type: none"> • the victim failed to make the application because of physical, emotional, or psychological injuries caused by the personal injury or death (in which case they may file the application within 6 years of the crime); or • the applicant is a minor (in which case they may file the application within 2 years of attaining the age of majority (18)). <p>The applicant should file an Application for Compensation with the Office of Victim Services (OVS). An OVS examiner will work with the applicant to collect the necessary information. For an applicant to file a claim, go to: www.jud.ct.gov/crimevictim or call the Office of Victim Services.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>time of injury or death.</p> <p>COMPENSATION</p> <p>A victim may recover damages for the following:</p> <ul style="list-style-type: none"> • expenses incurred as a result of the personal injury or death of the victim, including medical and dental costs related to the crime; • counseling for victims of sexual assault and child abuse; • counseling for relatives of victims of sexual assault and child abuse; • medical costs for injuries to a guide or assistance dog of a blind or disabled crime victim; • loss of earning power -- including overtime and self-employment income, to cover the salary lost due to the crime related absence; • financial loss to the spouse or dependents of a deceased victim; • funeral costs up to \$4,000; and • financial loss to the relatives or dependents of a deceased victim for attendance at court proceedings with respect to the criminal case of the person charged with committing the crime that resulted in the death of the victim. <p>No compensation will be awarded for losses sustained for crimes against property or for noneconomic losses such as pain and suffering.</p> <p>No compensation will be awarded for the first \$100 of injury sustained by the victim.</p> <p>A maximum of \$15,000 will be awarded except that the dependents of a homicide victim can receive a maximum of \$25,000.</p> <p>The Division of Criminal Justice is responsible for paying for the examination costs of a victim of sexual</p>	<p>For more information, contact:</p> <p>Connecticut Judicial Branch 31 Cooke Street, Plainville, Ct 06062 Office Of Victim Services Telephone (860) 747-4501 Or Toll Free 1-888-286-7347</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>assault, when the examination is performed to gather evidence. This includes the costs of testing for pregnancy and sexually transmitted diseases and prophylactic treatment for sexually transmitted diseases.</p> <p>The Division of Scientific Services within the Department of Public Safety is responsible for paying for a toxicology screening of a victim of sexual assault.</p> <p>The spouse or dependants of a deceased victim are also eligible to receive a 0-1% loan of up to \$100,000, if the family qualifies for compensation as a result of murder or manslaughter of the victim. The loan funds may be used to pay for essential living expenses directly resulting from the loss of income provided by the deceased victim or to cover preexisting financial obligations. Repayment begins five years from the date of the loan.</p> <p>http://www.jud.state.ct.us/crimevictim/#Program</p>	
Delaware	<p>BACKGROUND</p> <p>The Violent Crime Compensation Board provides compensation for innocent victims (or their survivors) who have been physically or emotionally injured as a result of a crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement within 72 hours. <p>A person who was injured or killed by the act of another person during the</p>	<p>The Delaware Violent Crimes Compensation Board has the authority to award compensation for crime victims. The Board consists of 5 members who are appointed by the Governor. The Board is responsible for reviewing and investigating the applications for compensation.</p> <p>TO APPLY</p> <p>An application for compensation must be filed with the Board within 1 year of the crime.</p> <p>The applicants shall submit an application to the Board. All claims filed with the Board must be written and should accurately describe the crime and circumstances which brought about the injury, damage or death. It should</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>commission of a violent crime such as murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms, stalking, or endangering the welfare of a child.</p> <p>The victim must agree to cooperate with law enforcement agencies in the apprehension and conviction of the criminal.</p> <p>The crime must have taken place within the state of Delaware or the victim must have been a resident of Delaware at the time of the crime (if the state in which the crime took place does not have a compensation program).</p> <p>COMPENSATION</p> <p>The victim may recover the following financial losses:</p> <ul style="list-style-type: none"> • medical expenses, including psychiatric care, dental care and mental health counseling; • nonmedical remedial care and treatment associated with a religious method of healing; • hospital expenses; • loss of past or future earnings, including reimbursement for vacation, sick and compensatory time; • income loss to the custodian of a child victim while providing care to the victim; • change of locks; • replacement of items seized as evidence; • crime scene clean-up expenses not to exceed \$1,000; • temporary housing not to exceed \$1,500; • moving expenses not to exceed \$1,000; and • essential personal safety property not to exceed \$1,500. 	<p>also state the time and place the injury occurred, state the names of the people involved, and contain the amount claimed by the applicant.</p> <p>The Board will initiate an investigation of the claim within 30 days of the filing of the claim. After the investigation, the Board will make a decision on whether or not to issue compensation and will specify the amount of the award.</p> <p>TO APPEAL</p> <p>If the applicant is dissatisfied with the Board’s decision, they must request a hearing before the Board within 15 days of the Board’s original decision.</p> <p>The Board may require the injured person filing a claim to submit to a physical or mental examination.</p> <p>For more information, contact: Violent Crimes Compensation Program 240 N. James Street, Suite 203 Newport, DE 19804 302-995-8383</p> <p>Delaware Helpline 1-800-464-4357 (in state) 1-800-273-9500 (out of state)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>The relatives of a deceased victim may recover the following losses:</p> <ul style="list-style-type: none"> • funeral and burial expenses; • loss of support to the dependents of the victim; and • mental health counseling. <p>No compensation will be made for a claim of less than \$25.</p> <p>No compensation will be made for property damage.</p> <p>Awards may be paid in a lump sum or in periodic payments.</p> <p>Total amount of compensation awarded to a victim (or in the case of the death of the victim to the relatives) will not exceed \$25,000 unless the victim is permanently and totally disabled in which they may receive up to \$50,000.</p> <p>A victim can be compensated for reasonable actual expenses due to the injury.</p> <p>Any amounts received through an insurance policy will be deducted.</p> <p>Reimbursement will be made regardless of whether the alleged perpetrator of the criminal act is prosecuted.</p> <p>If the victim dies due to the violent crime, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses will also be eligible to file a claim with the Board.</p> <p>Title 11, Section 90 of the Delaware Code § 9001-9020.</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
District of Columbia	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A police report must have been filed within 7 days of the crime. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. <p>Victims of crime, and secondary victims (such as people related to the victim and others) may receive compensation from the Crime Victim’s Compensation Program (CVCP) if the crime occurred in DC, the victim is a resident of DC, or if a DC resident suffered personal injury as a result of a terrorist act or act of mass violence committed outside the U.S.</p> <p>The types of crimes include arson, assault, negligent homicide, sexual abuse, kidnapping, murder, robbery, carjacking, cruelty to children, stalking, burglary, unauthorized use of explosives, reckless driving, driving under the influence of alcohol or drugs, and terrorist acts. (D.C. Code §§ 4-501-4-508)</p> <p>People eligible for compensation include victims of violent crime, their family or household members, guardians, dependents or survivors, and people who legally assume the obligation or voluntarily pay for a victim’s expenses.</p> <p>Persons injured while attempting to assist a crime victim, prevent the commission of a crime, or apprehend a person suspected of committing a crime are also eligible.</p> <p>Eligibility requirements include:</p> <ul style="list-style-type: none"> • A claim for compensation must be filed within 1 year after the crime or one year after learning of the 	<p>TO APPLY</p> <p>Applications for compensation are available at:</p> <ul style="list-style-type: none"> • The Crime Victim’s Compensation Office located in Suite 203 of DC Superior Court Building A, at 515 5th Street, NW (between E and F Streets). • http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/serv/victims/pdf/victimscomp.pdf&group=1523 • DC Metropolitan Police Department and Capitol/Park Police Stations • DC Area Hospital Emergency Rooms • The Victim/Witness Assistance unit of the US Attorney’s Office <p>This form must be completed and mailed to, and further information may be sought from:</p> <p>Crime Victim’s Compensation Office Superior Court Building A 515 5th Street, NW, Suite 203 Washington, DC 20001 (202) 879-4216 http://mpdc.dc.gov/mpdc/cwp/view,a,1241,q,539157,mpdcNav_GID,1523,mpdcNav,l.asp</p> <p>The form does ask for a Social Security number, but it will not be asked for if it is not filled in. The Crime Victim’s Compensation Office does not review immigration status.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>CVCP;</p> <ul style="list-style-type: none"> • The victim must have been injured in the District of Columbia or as a result of a terrorist act committed outside of the United States; • The claimant must have reasonably provided information to and cooperated with requesting law enforcement agencies; • The claimant cannot have participated in, consented to, or provoked the crime; and • The award cannot unjustly enrich the offender. <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Medical expenses, including ambulance, hospital, surgical, medical, nursing, dental, optometric, ophthalmologic, chiropractic, podiatric, in-patient mental health and pregnancy-related care. As per the Crime Victim’s Compensation Office, testing and treatment for STDs is not covered; • Mental health counseling: up to \$3,000 for adults, \$6,000 for children (also for secondary victims); • Physical or occupational therapy, or rehabilitation; • Lost wages: not to exceed 52 weeks or \$10,000; • Loss of support to dependents (where victim is deceased and social security is denied): up to \$2,500 per dependent, not to exceed \$7,500 per victimization; • Funerals: up to \$6,000; • Crime scene cleanup: not to exceed \$1,000; • Replacement of clothing held as evidence by law enforcement: not to exceed \$100 (does not apply where victim is deceased); • Temporary emergency food and housing (made necessary as a result of the crime): not to exceed 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>120 days or \$400 for food costs and \$3,000 for housing costs;</p> <ul style="list-style-type: none"> • Moving expenses: (necessary as a result of the crime, where the health and safety of the victim are jeopardized) up to \$1,500, not to exceed 120 days; • Transportation costs: to participate in the investigation or prosecution of the case, or to receive medical treatment or some other service necessary as a result of the crime \$100 for local; and \$500 for necessary out of state travel to receive services; • Replacement of doors, windows, locks or other items to secure the victim’s home: up to \$1000; • Reimbursement for rental of an automobile while the victim’s car is being held as evidence by law enforcement: up to \$2000; • Attorney’s fees: to assist in the appeal of a determination only; not to exceed \$500 or 10 percent of award, whichever is less; and • Emergency award: not to exceed \$1,000. <p>Only the services described above are compensable. Pain and suffering and property damaged or stolen as a result of the crime are not compensable under the CVCP. Also, other benefits available to the victim, such as health, life, auto, or property insurance, Medicaid, Medicare, annual and sick leave programs offered by employers are deducted from the amounts payable by the CVCP. For more information on Medicaid and other programs, <i>See Pre-Natal Care for Qualified and Non-Qualified Aliens Chart.</i></p>	
Florida	<p>BACKGROUND</p> <p>The Florida Crimes Compensation Act provides compensation to victims of crime as well as people who attempt to prevent a crime (intervenors).</p>	<p>TO APPLY</p> <p>The person seeking compensation must complete an application and submit it to the Division of Victim Services within 1 year of the crime date or, upon good cause shown, within 2 years. Minors must submit within 1 year after reaching majority, or 2 years upon</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to law enforcement within 72 hours after it occurred or the applicant will be required to show good cause as to why the crime was not reported. <p>Compensation is available to those who suffer personal physical injury, death, or, where force is used, psychiatric or psychological injury. Application for benefits may be made by victims, guardians, surviving relatives, and any other person who is dependent for principal support upon a deceased victim or intervisor. The victim must cooperate fully with law enforcement, and a criminal background check will be conducted on all victims and all claimants. (F. S. A. § 960.01- 960.28)</p> <p>COMPENSATION</p> <p>Benefits include:</p> <ul style="list-style-type: none"> • wage loss; • medical expenses; • disability allowance; • mental health counseling; • funeral/burial expenses (up to \$5000); • property loss reimbursement (up to \$500 for elderly and disabled adults); • necessary prescriptions and prosthetic devices; • relocation assistance for victims of domestic violence (up to \$1,500 for one claim and a lifetime maximum of \$3,000); and • minor travel expenses for medical treatment. <p>Benefits are limited to \$10,000 for treatment and \$25,000 for compensable costs, but if there is catastrophic injury, costs may be covered up to \$50,000. For an injury to be covered, it should be discussed</p>	<p>good cause shown. The application must include a law enforcement report documenting proof of crime, documentation of crime-related expenses, and as necessary, third-party payments (e.g., insurance), lost work time, and doctor’s statements certifying disability. There is no application fee, and assistance is available for completing the application.</p> <p>TO APPEAL</p> <p>If the Crime Victim Services Office denies a claim, an applicant may request a hearing within 60 days after notice of the denial. The claim is then referred to a hearing officer designated by Florida’s Attorney General.</p> <p>See the following link for more information:</p> <p>http://myfloridalegal.com/victims</p> <p>Office of the Attorney General Division of Victim Services The Capitol, PL-01 Tallahassee, FL 32399 (850)414-3300 1-800-226-6667 (Toll-free victim information and referral line)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>in the law enforcement report of the crime. Additional medical documentation of crime-related injury and expenses will also be considered. Covered medical expenses include testing for sexually transmitted diseases after sexual assault.</p> <p>Wage loss and disability claims are calculated using state worker compensation schedules.</p> <p>Emergency funding up to \$1,000 may also be available if an award is likely to be made and the claimant receives Social Security or undue hardship will result.</p> <p>Benefits are awarded subject to actual need and are a “last resort” after all other sources; payments will be reduced by other payments received by the victim or claimant as a result of the injury or death.</p> <p>Anyone who aided the crime, engaged in unlawful activity at the time of the crime or contributed to their own injury is not eligible for compensation. Absent special circumstances, an individual in custody, a habitual felon, a violent offender or one found guilty of a forcible felony offense is not eligible. Records are confidential and not subject to public disclosure.</p>	
Georgia	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • According to the staff at the Georgia Crime Victims Compensation Board, there are no restrictions based on immigration status. • The crime must be reported to proper government authorities (<i>i.e.</i> law enforcement, child protective services, the courts, etc.) within 72 hours. The 72 hours may be waived for good cause shown. <p>Innocent victims who have been physically</p>	<p>TO APPLY</p> <p>Georgia Crime Victims Compensation Board decides on compensation.</p> <p>Applications are available online at http://www.ganet.org/cjcc/victimscomp.html</p> <p>The claim shall be verified and contain:</p> <ul style="list-style-type: none"> • a description of the date, nature and circumstances of the crime; • a complete financial statement of the

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>injured in a violent crime in Georgia are eligible for victim compensation. This includes:</p> <ul style="list-style-type: none"> • a victim; • a dependent spouse or child of a victim; • any person who goes to the aid of another and suffers physical injury or death as a direct result of reasonably acting (i) to prevent the commission of a crime, (ii) to lawfully apprehend a person reasonably suspected of having committed a crime, or (iii) to aid the victim of a crime or any person who is injured or killed while aiding or attempting to aid a law enforcement officer in the prevention of a crime or apprehension of a criminal at the officer’s request; • any person who is a victim of family violence; and • any person (other than a direct service provider) who assumes the cost of an eligible expense of a victim, regardless of such person’s relationship to the victim or whether such person is a dependent of the victim. <p>A victim will not be denied compensation based the victim’s familial relationship with the person who is criminally responsible for the crime.</p> <p>Victims may be legal residents or nonresidents of Georgia. A surviving spouse, parent, or child who is legally dependent for his or her principal support upon a deceased victim is entitled to file a claim if the deceased victim would have been so entitled, regardless of the residence or nationality of the surviving spouse, parent, or child.</p> <p>Ga. Code § 17-15-7</p> <p>To obtain compensation:</p> <ul style="list-style-type: none"> • The claim must be filed within 1 year of the crime; and • applications received 2 years after the 	<p>amounts requested for compensation;</p> <ul style="list-style-type: none"> • a statement indicating the extent of any disability resulting from the injury incurred (if appropriate); • an authorization permitting the board to verify the contents of the application; and • such other information as requested by the board. <p>Ga. Code § 17-15-5</p> <p>Each claim will be assigned to an investigator who will investigate the application. The examination will include, but will not be limited to, an examination of law enforcement, court, and official records and reports concerning the crime and an examination of medical, financial and hospital reports relating to the injury or losses claimed in the application. All claims arising from the death of an individual as a result of a crime will be considered together by a single investigator.</p> <p>All claims will be investigated, even if the alleged criminal has been taken into custody, prosecuted or convicted of any crime based upon the same incident or whether the alleged criminal has been acquitted or found not guilty of the crime in question.</p> <p>A claim must show that:</p> <ul style="list-style-type: none"> • a crime was committed • the crime directly resulted in the victim’s physical injury, financial hardship as a result of the victim’s physical injury, or the victims death • police records must show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>crime cannot be considered for compensation.</p> <p>Those not eligible include:</p> <ul style="list-style-type: none"> • victims of property crime; • victims who consent, provoke, or incite the crime committed against them or is an accomplice of the person who committed the crime; • victims who were participating in a criminal act; • victims injured while confined in any federal, state, county, or municipal jail, prison, or other correctional facility; and • victim of a crime which occurred prior to July 1, 1989 <p>COMPENSATION</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • Assault/Battery; • Homicide; • Child Abuse; • Sexual Assault; • Domestic/Family Violence; • DUI Crash Victims; • Vehicular Homicide; • Hit and Run; and • Serious Injury by Vehicle. <p>Total award amount can not exceed \$25,000 and the categorical caps are as follows:</p> <ul style="list-style-type: none"> • Medical Expenses: \$15,000 (crimes occurring on or after 07/01/02); • Medical Expenses: \$10,000 (crimes occurring between 05/13/02 - 06/30/02); • Medical Expenses: \$5,000.00 (crimes occurring prior to 05/13/02); • Counseling Bills: \$3,000 (crimes occurring on or after 05/13/02); • Counseling Bills: \$2,500 (crimes occurring prior to 05/13/02); • Funeral Expenses: \$3,000; • Lost Wages/Support: \$10,000 (crimes occurring on or after 05/13/02); 	<ul style="list-style-type: none"> • the applicant has pursued restitution rights against any person who committed the crime unless the board or director determines that such action would not be feasible. <p>The board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award. Ga. Code § 17-15-8.</p> <p>The investigator will file a written report with the director with a recommendation and the investigator’s reasons for the recommendation. The director will render a decision on the application and will provide the applicant with a copy of the report if requested. Ga. Code § 17-15-6.</p> <p>TO APPEAL</p> <p>To appeal, an applicant may make an application in writing to the director for review of the decision within 30 days after receipt of the report of the decision.</p> <p>Upon receipt of an application for review the director forwards all relevant documents and information to the board. The board reviews the records and will either uphold or reverse the decision of the director. The board may order a hearing prior to a decision. At the hearing, any relevant evidence not legally privileged is admissible. The board will render a decision within 90 days after completion of the investigation. If the director receives no application for review within 30 days of rendering a decision, the director’s decision becomes final.</p> <p>Ga. Code § 17-15-6</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • Lost Wages/Support: \$5,000 (crimes occurring prior to 05/13/02); • Crime Scene Clean-up: \$1,500 (crimes occurring on or after 05/13/02); • victims of domestic violence may also be eligible for loss of support; • a parent of a child victim may be eligible for lost wages, to compensate for medical time spent away from work with the child; and • A criminal history will be provided and analyzed on all victims 18 years and older. <p>According to the staff at the Georgia Crime Victims Compensation Board, medical expenses to be reimbursed include STD, AIDS, and post-coital screening/treatment, if the expenses are related to the crime, if they are not otherwise paid for through the state’s forensic exam coverage and there is no other source of reimbursement.</p> <p>Victims/applicants are required to exhaust funds from other sources such as health insurance, car insurance, social security, annual/sick leave pay, disability insurance, worker’s compensation, unemployment compensation or funds from other government agencies.</p>	
Hawaii	<p>BACKGROUND</p> <p>The Hawaiian victim compensation statute addresses a wide range of crimes, including murder, manslaughter, negligent homicide, negligent injury, assault, kidnapping, sexual assault, abuse of family or household member, and terrorism. Hi. Rev. Stat. § 351-32.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. The statute does not discuss immigration status, nor do any of 	<p>County administrative units generally handle reimbursement to hospitals for forensic examinations and related services. Most of the time, the victim will not receive a bill. If the medical provider has difficulty obtaining reimbursement, the CVCC frequently does provide payment. The CVCC witness agreed that the statute is not clear on this point.</p> <p>TO APPLY</p> <p>If a claimant requires reimbursement, s/he must fill out an application form, which may be obtained directly from the CVCC or from its website. Following review of that application, compensation may be awarded for all expenses incurred in connection with the crime. An application must be filed within 18</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>the applicable definitions address this issue. “Resident” is defined broadly to include “every” individual who “intends to permanently reside in this State” or who “has a permanent abode in State.” Hi. Rev. Stat. § 351-2. A CVCC representative confirmed that immigration status is not a consideration.</p> <ul style="list-style-type: none"> • The crime must be reported within 72 hours and an application must be filed within 18 months of the incident unless there is good cause for delay. Hi. Rev. Stat. § 351-62(a). See Hi. A.D.C. § 23-605-2. <p>Hawaii provides compensation for any “private citizen” who is the victim of a violent crime, including sexual assault, that occurs in Hawaii or for “state residents” who are crime victims elsewhere. Compensation is also provided for other individuals who are dependents or who expend money as a result of the crime. Hi. Rev. Stat. § 351-31.</p> <p>COMPENSATION</p> <p>Compensation may be ordered for any reasonable expenses incurred during the period of injury or death of the victim; medical expenses related to the crime; loss of earning power because of the crime; monetary loss to a deceased victim's dependents; pain and suffering of the victim; and "any other pecuniary loss directly resulting from the injury or death of the victim that the commission determines to be reasonable and proper." Hi. Rev. Stat. § 351-33.</p> <p>The Crime Victims’ Compensation Commission (CVCC) may require a treatment plan. Hi. A.C. § 23-605-8. But, in general, coverage is very extensive. See id. § 23-605-9 (noting coverage for prescription glasses, nontraditional medical treatments, modifications to homes or vehicles, ambulance services and plastic</p>	<p>months of the incident unless there is good cause for delay. Hi. Rev. Stat. § 351-62(a). See Hi. A.D.C. § 23-605-2. “Good cause” usually requires “mental, physical, or legal impairment”—that is, an actual inability to file a report and application. Failure to understand the law, negligence, and incarceration do not qualify as good cause. Hi. A.D.C. § 23-605-2.</p> <p>Information on the CVCC process (including application forms) is available at 1-800-587-1143 or www.hawaii.gov/cvcc. The CVCC can also provide information on different crisis and treatment facilities and county medical providers. The Oahu Sex Assault Treatment Center, 1-808-524-7273, also provides information.</p> <p>For more information, contact</p> <p>1136 Union Mall Room 600 Honolulu HI 96813 Ph: 808 587-1143 Fax: 808 587-1146 cvcc@hawaii.rr.com</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>surgery).</p> <p>According to the CVCC, many medical procedures and services related to sexual assault are covered directly (such that the victim will never receive a bill), but neither the statute nor the Administrative Code provide detail on this issue, as, in many cases, individual counties and localities handle these services.</p> <p>The Administrative Code relating to the CVCC provides for such items as prescription drugs, emergency room treatment, and “other appropriate medical care.” Hi. A.D.C. § 23-605-9. The CVCC confirmed that pregnancy testing, HIV prophylactic treatment, and STD examinations are included. The CVCC also stressed that Hawaii takes a very broad view of what is covered depending on the needs of the individuals in question.</p>	
Idaho	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime resulting in the injury or death of the victim must be reported to a law enforcement officer within 72 hours after its occurrence, unless the Idaho Industrial Commission (IIC) finds there was good cause for not reporting the crime within that time period. <p>Compensation is available to:</p> <ul style="list-style-type: none"> • A “victim,” meaning a person who is injured or dies as a result of (a) a crime committed against him or her; (b) trying, in good faith, to prevent a crime; or (c) trying, in good faith, to apprehend a person that he or she reasonably believes to have committed a crime; or • A spouse or dependent child of a deceased victim; or • A parent, guardian or sibling of a victim who is a minor. Idaho Code § 	<p>TO APPLY</p> <p>Claims are received by the Idaho Industrial Commission (IIC).</p> <p>Complete a Crime Victim’s Application for Compensation Form, which is available at:</p> <ul style="list-style-type: none"> • The IIC offices; • Law enforcement agencies; • Prosecuting attorney offices; • Hospitals; • Victim advocate groups; and • On the website for the IIC at www.IIC.idaho.gov/cv/crimevictims.htm. <p>Together with the application for benefits, the claimant should provide copies of the police investigative report and any other information requested by the IIC. If the claimant does not provide all required information, benefits could be denied or reduced.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p style="text-align: center;">72-1003.</p> <p>A person does not have to be a resident of Idaho, a U.S. citizen or a qualified immigrant to receive benefits under the Crime Victims Compensation Act.</p> <p>**This chart refers to victims and others entitled to benefits under the Idaho Crime Victims Compensation Program as “claimants.”</p> <p>To be eligible for compensation:</p> <ul style="list-style-type: none"> • The claimant must file a claim for compensation with the IIC within 1 year after the crime occurred. Idaho Code § 72-1016. • Note that, although the offender does not have to be convicted in order for the claimant to receive benefits, there must be “sufficient evidence” to show that a crime was committed. Idaho Code § 72-1018. • The claimant must fully cooperate with all law enforcement authorities and the prosecutors in their efforts to investigate the crime and apprehend and prosecute the person who committed the crime. If not, benefits will be reduced or denied, as determined by the IIC. Idaho Code § 72-1016(4). • The crime must occur in Idaho, unless the victim is a resident of Idaho and the crime occurred in a state that does not have a CVC program. Idaho Code § 72-1003(4). • The IIC may require victims to submit additional information or be examined (without cost to the victim) by a doctor in order to receive benefits. If requested information is not submitted, benefits may be denied. Idaho Code § 72-1014. <p>Victims are not eligible to receive compensation if:</p> <ul style="list-style-type: none"> • A victim who is in jail or in any other institution that provides for the “maintenance” of the victim. Idaho Code § 72-1016(6). • A victim of a car accident, unless the car was used to cause the injury or death of the victim. Idaho Code § 72- 	<p>The IIC will process the claims as follows:</p> <ul style="list-style-type: none"> • When the IIC receives the complaint and all requested information, it makes a determination of the claimant’s eligibility and sends notice to the claimant of the determination. The claimant is required to help the IIC make eligibility determinations. Idaho Administrative Code 17.05.01.011.02 • The IIC will appoint an employee – the Crime Victims Supervisor (CVS) – to review the claim. The CVS may enter awards granting benefits in full or in part or denying benefits. Idaho Administrative Code 17.05.01.011.04. • Claimants have 20 days to petition the IIC for reconsideration or any award or order or 45 days to request a hearing with the IIC. Idaho Administrative Code 17.05.01.011.05. • To receive benefits, a claimant needs to send bills to the IIC. Bills will be paid directly to the service provider or to the claimant if the claimant has already paid the bill. Idaho Administrative Code 17.05.01.011.06 <p>A claimant may request the IIC to reconsider and review its benefit determinations. The IIC may decide on its own to review and reconsider benefit determinations. (Idaho Code § 72-1021)</p> <p>There is no appeal from a final determination of the IIC. (Idaho Code § 72-1022)</p> <p>A claimant has the right to inspect the records of the IIC. (Idaho Code § 72-1007)</p> <p>For more information, contact Crime Victims Compensation Program Industrial Commission P.O. Box 83720 Boise Id 83720-0041 (208) 334-6080 Or (800) 950-2110</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>1003(4)(d).</p> <p>Claims may be denied or benefits reduced if:</p> <ul style="list-style-type: none"> • A victim contributed to his or her own injury or death, • A victim who was engaged in a crime (including drunk driving). Idaho Code § 72-1016(7). • Any claimant who is an offender or accomplice of an offender if they would “unjustly benefit” the offender or accomplice. Idaho Code § 72-1016(2). <p>COMPENSATION</p> <p>Funds for treatment expenses to the victim will only be provided after all other sources of payment have been exhausted. Compensation may be paid up to a maximum of \$25,000 for the victim and dependents of a deceased victim, with no more than \$20,000 (of the \$25,000 maximum payable) payable for lost wages. Idaho Code § 72-1019 and Idaho Administrative Code 17.05.011.10. Benefits may include the following:</p> <ul style="list-style-type: none"> • Reasonable medical expenses, including doctor and hospital visits, medicine and other approved treatment; • Pre-natal care and delivery of the child is covered if a victim of a sexual assault becomes pregnant as a result of that assault. (Per IIC); • Counseling and mental health services, up to a maximum of \$2,500 for the victim and – for the spouse, parent, grandparent, child, grandchild or sibling of a victim who is killed or sexually assaulted – up to \$500 per person or \$1,500 per family; • Wage losses resulting from the victim’s (or dependent’s) inability to work for more than one week as a result of injuries – up to a maximum of \$150 per week for a victim who survives a crime and was employable but not employed at the time of the crime and up to \$150 per week for dependents of a deceased victim – beginning after the first full week or 	<p>http://www2.state.id.us/iic/forms/cv/cvcppp.pdf</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>missed work and until the victim or dependent has a “reasonable prospect” of being regularly employed again. These lost wage benefits are limited to \$20,000, and the amount paid for lost wages, together with medical and other expenses paid under § 72-1019(2) and funeral, burial or cremation expenses paid under § 72-1019(4), may not exceed \$25,000;</p> <ul style="list-style-type: none"> • Funeral, burial or cremation expenses, up to a maximum of \$5,000; • Compensation will not be paid for pain and suffering or property damage; and • Claimants may be compensated for necessary travel expenses incurred in connection with obtaining benefits. <p>Idaho Code § 72-1019.</p> <p>Any claimant may receive reduced benefits if government funds are insufficient to fully pay all claims. Idaho Code § 72-1008.</p> <p>Claimant’s benefits will be denied or reduced where the benefits are covered by other sources, including: (a) from the offender; (b) the U.S. government or any of its agencies; (c) any other state; (d) social security, Medicare or Medicaid; (e) worker’s compensation; (f) employer wage continuation programs; or (f) insurance proceeds. Idaho Code §§ 72-1003(2) and 72-1016(5).</p> <p>If a claimant receives compensation from the offender or any other source, benefits paid by IIC are to be repaid from such compensation. Idaho Code § 72-1023.</p> <p>A claimant’s attorney’s fees may be paid in addition to the maximum benefits payable as described above. Attorney’s fees compensation will be limited to 5% of the total amount paid to claimant. Idaho Code § 72-1006.</p>	
Illinois	<p>BACKGROUND</p> <p>Illinois' CVC act covers virtually all violent crimes, including, homicide, kidnapping, battery, and sexual assault. It does not cover crimes related to operation of motor vehicles, unless the perpetrator was</p>	<p>TO APPLY</p> <p>Under the law, crime victims must file an application under oath within 2 years of the crime.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>intoxicated. 740 Ill. Stat. § 45/2.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. An Illinois court has ruled that proof of citizenship or legal alien status is not required. However, it is possible that, if an Illinois resident makes a claim for injuries occurring elsewhere, citizenship could be relevant. The Illinois courts have ruled on <u>Hernandez v. Fahner</u>. • In most cases, the crime must have been reported within 72 hours of the crime, and the victim must cooperate with law enforcement personnel. However, sex crimes have a 7-day reporting period. In addition, the statute specifically provides that an applicant will be considered to have complied with the law if s/he has obtained an order of protection, obtained a no contact order, or “presented himself or herself to a hospital for sexual assault evidence collection and medical care.” 740 Ill. Stat. 45/6.1. <p>Any Illinois resident injured or killed elsewhere may also seek compensation. Certain dependents, family members, and others who assisted the victim may also seek compensation. 740 Ill. Stat. § 45/2(d).</p> <p>COMPENSATION</p> <p>Compensation may be awarded for a variety of health care expenditures including counseling and all "appropriate medical expenses" and hospital expenses, including prosthetics and eyeglasses damaged as a result of the crime.</p> <p>In addition, compensation may be awarded for a wide range of expenditures and lost</p>	<p>For services provided under SASETA, if the victim is not eligible to receive the services under the Illinois Public Aid Code or through insurance, the provider must furnish services without charge. The provider will be reimbursed by the state of Illinois. 410 Ill. Stat. § 70/7. Note, however, that some victims can receive bills when reimbursement has not been received promptly by the medical provider.</p> <p>Information, including application forms for the crime victims’ compensation program, is available at www.ag.state.il.us. In addition, Illinois Coalition Against Sexual Assault (ICASA) can provide information on a variety of related issues. Information may be obtained from ICASA at 1-217-753-4117 or at their website, http://www.icasa.org. The website includes a list of crisis centers.</p> <p>For additional information, contact:</p> <p>Crime Victim Services Division Office of the Attorney General 100 West Randolph Street, 13th Floor Chicago, IL 60601 312-814-2581 312-814-4231 (fax) 1-800-228-3368 (voice/TTY)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>income. These include replacement costs for clothing and bedding used as evidence, costs for temporary lodging (including first month's rent and security deposit), replacements for locks or windows necessary or damaged as a result of the crime, crime scene clean-up, loss of earnings, loss of future earnings, funeral and burial expenses, and expenses incurred in obtaining services to replace those the injured or deceased person would have performed but for the crime. 740 Ill. Stat. § 45/2.</p> <p>In addition to the crime victims' compensation program, the Sexual Assault Survivors Emergency Treatment Act (SASETA) specifically addresses the need for medical care following sexual assault. Under SASETA, victims can obtain medical examinations and tests; information on STDs; tests for STDs; "appropriate medication," including HIV prophylaxis, and counseling. 410 Ill. Stat. § 70.</p>	
Indiana	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official confirmed that immigrants may receive compensation for crimes committed against them. • The crime must have been reported to the police within 48 hours unless there was a good reason why the crime could not be reported in that time. The victim or survivors must be cooperative in the investigation and prosecution of the crime. http://www.in.gov/attorneygeneral/legal/victim/victim_advocacy.html <p>Residents of Indiana may be compensated for violent crimes that occur anywhere (unless the jurisdiction where the crime occurred has a similar statute), and a nonresident of Indiana may be compensated for violent crimes that occur in Indiana.</p>	<p>TO APPEAL</p> <p>The procedures for coverage vary considerably depending on the particular services sought.</p> <p>For example, "suturing and care of wounds" directly related to sex crimes are covered without charge to the victim and without specific reporting and cooperation requirements. Ind. Code § 5-2-6.1-39(b), § 16-21-8-5.</p> <p>In contrast, so called "additional forensic services," which include pregnancy testing, STD testing, etc., requires the victim to report the crime within 96 hours and to cooperate with law enforcement unless there are compelling reasons that would excuse these requirements. Ind. Code § 16-21-8-5. The law specifically provides that a hospital may bill directly an alleged victim who does not fulfill these requirements. Ind. Code § 5-2-6.1-39. If these conditions are met, however, the</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Certain dependents, family members, and others who rendered aid may also seek compensation. Ind. Code § 5-2-6.1-12.</p> <p>Victims may be able to receive compensation resulting from criminal acts of felonies and certain misdemeanors resulting in bodily injury or death except for various crimes related to the operation of a motor vehicle in which the perpetrator was not intoxicated. Ind. Code § 5-2-6.1-8.</p> <p>With the exception of forensic evidence collection from sex crime victims, there must be minimum of \$100 in out-of-pocket expenses.</p> <p>http://www.in.gov/attorneygeneral/legal/victim/victim_advocacy.html</p> <p>COMPENSATION</p> <p>Compensation may be awarded for "out of pocket" losses related to the crime as well as for:</p> <ul style="list-style-type: none"> • reasonable expenses for necessary medical, chiropractic, hospital, dental, psychological, optometric, psychiatric, and ambulance services and prescription drugs and prosthetic devices; • loss of income; • reasonable emergency shelter care expenses; • childcare expenses (up to \$1,000) to replace childcare the victim would have supplied; • loss of financial support to dependents; • funeral or burial expenses; and • mental health care (up to \$2,000) for the immediate family of a crime victim. <p>Ind. Code § 5-2-6.1-21.</p> <p>In most cases, claimant must spend \$100 before compensation may be awarded. Ind. Code § 5-2-6.1-21.</p>	<p>victim should never receive a bill for such services.</p> <p>If a victim does receive a bill for services for which a provider is not directly reimbursed or if a victim wishes to apply for compensation for other expenditures, claimants must file an application for assistance with the Indiana Criminal Justice Institute's Division of Violent Crime within 180 days of the crime. While an extension may be granted for good cause, there is a firm two-year limit on such extensions. Ind. Code § 5-2-6.1-16. In addition, compensation may not be awarded unless the law enforcement records regarding the crime are available and any investigation is substantially complete. Ind Code. § 5-2-6.1-17.</p> <p>Information on the application process is available at www.in.gov.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>In addition, victims of sexual crimes may be able to receive direct coverage for:</p> <ul style="list-style-type: none"> • counseling; • pregnancy and STD testing immediately after the crime; • drug and alcohol testing; • pregnancy testing up to 30 days after the crime; and • syphilis testing up to 90 days after the crime. <p>Inpatient treatment and HIV prophylactic medication are not covered, and reimbursement for such services must be sought through the crime victims' compensation process.</p> <p>Ind. A.C. § 1-2-3, Ind. Stat. § 16-18-2-1.8.</p>	
Iowa	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the victim must report the crime to local law enforcement within 72 hours, unless there is an explanation as to why that was not possible. This reporting requirement is not applicable to minors or dependent adults who are subject to unlawful sexual conduct or a forcible felony if the crime is committed by an individual responsible for the victim's care and the crime is reported to an employee of the department of human services. The victim is expected to cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation and prosecution of the crime. <p>Victims of violent crime may receive compensation from the State of Iowa. Under Iowa's program, the following victims may be eligible for assistance:</p> <ul style="list-style-type: none"> • victims who have been physically or emotionally injured in a violent crime in Iowa; 	<p>TO APPLY</p> <p>A victim must file an application with the Iowa Department of Justice within 2 years of the date of the crime or show good cause for why it took longer than 2 years to file.</p> <p>TO APPEAL</p> <p>The original claims determinations are made by the crime victim program investigator at the Iowa Department of Justice. If a claim is denied, the alleged victim is provided written notice of the denial and has the opportunity to appeal. The first level appeal is determined by the director of the crime victim program, and the final appeal is decided by the Crime Victim Assistance Board. A victim aggrieved by the denial or disposition of his/her claim may appeal to the district court within 30 days of receipt of the Board's decision.</p> <p>Iowa Attorney General Crime Victim Assistance Division Lucas Building, Ground Floor Des Moines, Iowa 50319</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • victims of a drunk driving, hit and run, reckless driving, vehicular homicide or injury when a car is used as a weapon; • survivors of a homicide victim; • a victim’s spouse, children, parents, siblings and persons residing in the victim’s household at the time of the crime; • Iowans injured by violent crime in a state without a compensation program; or • Iowans injured by an act of terrorism in a foreign country. <p>The Iowa Code, Title XVI, subtitle 3, § 915.80 et seq.</p> <p>COMPENSATION</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • medical care related to the victim’s injuries (up to \$15,000); • medical expenses for crime-related care for survivors of a homicide victim (up to \$3,000 per survivor); • crime-related mental health counseling to the victim (up to \$3,000) and to the victim’s family members and those residing in the victim’s home (up to \$1,000 per secondary victim); • grief counseling for survivors of homicide victims (up to \$3,000); • wages lost by the victim due to crime injuries (up to \$6,000); • lost wages for homicide survivors (up to \$6,000); • loss of support of dependents of deceased victims or victims who cannot work for more than 60 days (up to \$2,000 per person); • funeral and burial costs for homicide victims (up to \$7,500); • residential crime scene clean-up (up to \$1,000); and • replacing clothing and bedding held as evidence by law enforcement (up to \$100). <p>The compensation described above will be reduced by any amount received (or to be received) as the result of an injury or death:</p>	<p>Phone: (515)281-5044</p> <p>Toll Free: (800) 373-5044</p> <p>Fax: (515) 281-8199</p> <p>http://www.state.ia.us/government/ag/CVAD/index.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>(1) from or on behalf of the person who committed the crime or who was otherwise responsible for damages resulting from the crime; (2) from an insurance payment or program, including but not limited to workers compensation or unemployment compensation; and (3) from public funds.</p> <p>Emergency compensation, up to \$500, is available if the victim would otherwise suffer undue hardship.</p> <p>Compensation is not available when the bodily injury or death was caused by: (1) the consent, provocation or incitement by the victim; or (2) the victim assisting, attempting or committing a criminal act.</p> <p>Prenatal care, including delivery, may be included as medical expenses paid for by the victim crime program as long as they otherwise meet the program's criteria.</p> <p>Medical expenses related to STD, HIV/AIDS and hepatitis screening and treatment, pregnancy testing, and post coital treatment are paid for through the forensic program.</p>	
Kansas	<p>BACKGROUND</p> <p>Victims of violent crimes including drunk driving, hit and run, and intentionally inflicted injuries from motor vehicles may receive compensation from the state if the crime occurred in Kansas and the victim suffered bodily injury, death, or resulted in mental health treatment due to trauma. (Kan. Stat. Ann. §74-7305)</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. 	<p>TO APPLY</p> <p>The claim must be filed with Crime Victims Compensation Board within 2 years of the incident, and the victim/claimant must show economic hardship without the award. The Board may consider various factors for deciding undue financial hardship. (Kan. Stat. Ann. §74-7305(d).)</p> <p>Crime Victims Compensation Board 120 SW 10th Avenue, 2nd Floor Topeka, KS 66612 (785) 296-2359</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> The victim must report the incident to the law enforcement agency where the crime occurred within 72 hours of the incident unless the victim can show good cause for failing to report the incident within this time. The victim/claimant cannot be an accomplice and/or committed crime in connection with the incident and must cooperate with law enforcement agency. <p>As listed on the application form, some of the crimes include domestic violence, assault, arson, kidnapping, murder/homicide, sexual assault/rape, stalking, DUI, child physical abuse. However, victims of other criminal injurious conduct may be eligible.</p> <p>To be compensated, economic loss must exceed \$100, except in sexual assault cases. Victims of sexual assault do not need to show economic loss to be eligible for Victims Compensation. Loss of personal property is not included, except for clothing/bedding seized as evidence.</p> <p>COMPENSATION</p> <p>Compensation is provided for loss of earnings/wages, out-of-pocket medical expenses incurred as a direct result of the incident, and funeral, burial, and cremation expenses if death was the result. The maximum amount of coverage is \$25,000. Funeral expenses are limited to \$5,000.</p> <p>Other allowable expenses include moving expenses if a law enforcement officer recommends move for safety reasons, and mileage expenses for medically necessary travel. (Kan. Admin. Regs. §20-2-9)</p> <p>If the victim dies, dependent or legal representative may apply on behalf of the victim.</p>	<p>See the following link for more information:</p> <p>http://www.accesskansas.org/ksag/Crime/victims_comp_program.htm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>A tentative award (i.e., emergency award) may be given when it appears the claimant will suffer economic hardship without the award. Any tentative award is deducted from final award. (Kan. Stat. Ann. §74-7314)</p> <p>If the victim/claimant is represented by an attorney, reasonable attorney's fees determined by the Compensation Board may be paid. Attorney's fees are in addition to the award, and may be paid whether or not compensation is awarded. (Kan. Stat. Ann. §74-7311)</p> <p>For victims of sexual assault, medical treatments, such as testing and preventive treatment (prophylaxis) for sexually transmitted diseases, and testing for pregnancy are available and costs for these treatments may be paid by the Crime Victims Compensation Board. For victims of sexual assault, you do not have to show economic loss to be eligible for victims compensation.</p>	
Kentucky	<p>BACKGROUND</p> <p>Victims who suffer bodily or psychological injury or death from a crime, including drunk driving, may receive compensation from the state if the crime occurred in Kentucky. Kentucky does not enumerate specific crimes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must have reported the crime within 48 hours or show good cause as to the delay. The victim must cooperate with law enforcement agencies. 	<p>TO APPLY</p> <p>The victim must apply with the Crime Victims' Compensation Board for compensation. The claim must be filed within 5 years of the crime.</p> <p>The claimant must show financial hardship to be eligible for compensation. In determining financial hardship, the Compensation Board will not include:</p> <ul style="list-style-type: none"> • a home and whatever real estate it is located on; • personal property consisting of clothing and strictly personal effects, except jewelry; • tools and equipment necessary for claimant's trade, occupation or business; • household furniture, appliances and equipment, except antiques;

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Anyone who is a victim of a criminally injurious conduct is eligible for compensation if other eligibility requirements are met. Victims of hate crimes are also eligible. (Ky. Rev. Stat. Ann. §346.055) However, victims who were in a correctional facility or in an institution run by the Cabinet for Health and Family Services of Kentucky at the time of the crime are not eligible.</p> <p>In addition, the victim does not have to be a resident of Kentucky to be eligible for compensation as long as the victim suffered losses as a direct result of the crime in Kentucky. (Ky. Rev. Stat. Ann. §346.025)</p> <p>If a victim dies, a surviving spouse, parent, or child of the victim is also eligible for compensation. (Ky. Rev. Stat. Ann. §346.050)</p> <p>COMPENSATION</p> <p>Compensation is available up to \$25,000. Funeral expenses are limited to \$5,000. Compensation is provided for reasonable medical and hospital expenses, loss of earnings/wages up to \$150 per week if employed at the time of the crime, funeral expenses, benefits for dependents of the deceased victim, and psychological counseling for a maximum of 2 years.</p> <p>Compensation does not cover stolen, lost, or damaged property, although replacement costs for eye glasses or corrective lens damaged during the crime are covered. (Ky. Rev. Stat. Ann. §346.130(3))</p> <p>Emergency awards (not to exceed \$500) are allowed when it appears the award will probably be made and undue hardship will result if not awarded. This amount is to be later deducted from final award (Ky. Rev. Stat. Ann. §346.120)</p>	<ul style="list-style-type: none"> • family automobiles; and • savings or valuables or additional property in an amount equal to the claimant's annual income. (107 Ky. Admin. Regs. 1:010) <p>Crime Victims Compensation Board 130 Brighton Park Blvd. Frankfort, KY 40601 Phone: (502) 573-7986 ext 228 Fax: (502) 573-4817</p> <p>See the following link for more information: http://www.cvcb.ky.gov/faq/</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>If the victim/claimant is represented by an attorney, attorney's fees may be paid. Attorney's fees cannot be larger than 15% of award and is part of the award, not in addition to the award. (107 Ky. Admin. Regs. 1:025)</p> <p>In Kentucky, basic treatment, laboratory testing, and evidence gathering services for victims of sexual assault are paid by the Crime Victims' Compensation Board. In addition to evidence gathering, post-assault treatment available to the victim includes preventive treatment (prophylaxis) for potential infections, such as hepatitis B and certain types of sexually transmitted infections (e.g., chlamydia, gonorrhea, trichomonas, and BV). Follow up treatment and testing are also available.</p> <p>Hospital/Community Facility Procedural Guidelines for the Forensic & Medical Examination of Adult Sexual Assault Victims in Kentucky.</p>	
Louisiana	<p>BACKGROUND</p> <p>An innocent victim of a violent crime in Louisiana may be entitled to compensation if the crime: involves the use of force or the threat of the use of force; results in personal injury, including physical and/or emotional harm, death or catastrophic property loss.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the crime must be reported to a law enforcement agency within 72 hours after the incident unless there is a good reason why the crime was not reported within this time period. The victim and/or claimant must cooperate fully with law enforcement officials in the investigation and prosecution of the case. 	<p>TO APPLY</p> <p>The application must be filed within 1 year of the crime unless there is a good reason why the application was not submitted within this time period.</p> <p>Applications are available from all Louisiana sheriffs' offices. The victim reparations coordinators provide assistance to victims who ask for help in filling out application forms. Victims may also get an application directly from the Crime Victim's Reparations Office by calling 1-888-6VICTIM (in-state only).</p> <p>Each type of claim form used by the board should identify the documents that must be submitted by the victim/claimant to support and verify a claimed expense. When applications lack documentation necessary for a decision or award in total or in part, and adequate effort has been made to acquire that information, the application will be placed on an agenda and the decision and award will be based on the information available. Should the formerly</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Victims, dependents, representatives of victims, and those who seek to prevent crimes can be compensated.</p> <p>A victim is:</p> <ul style="list-style-type: none"> • any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in Louisiana; • a resident of Louisiana who is a victim of an act of terrorism occurring outside the U.S.; • a Louisiana resident who suffers personal injury or death as a result of a crime occurred outside of Louisiana; or • if the crime occurs outside of Louisiana, the victim needs to be “Louisiana resident” and show that 1) the state where the crime occurred does not have an eligible crime victims reparations program; and 2) the crime would have been compensable had it occurred in Louisiana, in order to be compensated by the state of Louisiana. <p>Louisiana Admi. Code § 22:XIII.103</p> <p>Other claimants include a dependent of a deceased victim; a legal representative of a victim; or a person who helps another and is killed or injured in the good faith effort to prevent a crime, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a peace officer.</p> <p>In the event of death, a person who assumes the obligation or voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime can also be compensated. Louisiana Admi. Code § 22:XIII.103</p> <p>A Louisiana resident is a person who maintained a permanent place to live in this state at the time the crime was committed. Louisiana Admi. Code § 22:XIII.103</p>	<p>sought information become available, a supplemental application can be filed. Awards to eligible victims or claimants for expenses incurred but not yet paid may be made payable directly to the providers.</p> <p>Crime Victims Reparations Program Louisiana Admi. Code § 22:XIII.303 http://www.state.la.us/osr/lac/22v01/22v01.pdf#nameddest=cvrboard</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Not eligible if:</p> <ul style="list-style-type: none"> • the victim was convicted of a felony within 5 years before the incident that leads to the claim; • there is good cause to believe that the victim engaged in an ongoing criminal activity within 5 years of the incident that leads to the claim; or • the victim was engaging in an illegal activity at the time of the incident that leads to the claim. <p>Louisiana Admi. Code § 22:XIII. 301.A.1.a</p> <p>Award will be reduced if:</p> <ul style="list-style-type: none"> • the victim was not wearing a seat belt and injured or killed by a person driving while intoxicated (DWI). The total maximum award allowed under current policy may be reduced by 50 percent. <p>Louisiana Admi. Code § 22:XIII. 301.A.1.b</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • There is a \$10,000 cap for awards for all victims except those who suffered total and permanent injuries; for those applications the award can be up to \$25,000. • Attorney’s fees: a maximum of \$50/hour for a total of 5 hours of \$250. • Funeral expenses: up to \$3,500. • Lost wages/earnings: up to \$10,000 (up to \$320/week take home pay, or 80% of the gross income up to \$400/week). • Loss of support: up to \$10,000. • Ambulance: up to \$300 for regular ambulance transport; up to 500 for air medical transport. • Medical expenses: treatment must be “usual and customary,” and up to \$10,000. • Travel expenses: only when required medical care is not locally available. • Mental health counseling: limited to 6 months from the date of the first visit or after the first 26 qualified 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>sessions/groups (whichever comes first).</p> <ul style="list-style-type: none"> • Catastrophic property loss: up to \$10,000. • Vehicular incidents: eligible expenses include those resulting from death or personal injury if they are incurred as a result of DWI or hit and run offenses, fleeing felon incidents, or injuries intentionally inflicted with a motor vehicle, boat or aircraft. • Child care expense: up to \$1,500 for each eligible child care claim. • Crime scene evidence: reasonable replacement costs for clothing; bedding; or property seized as evidence or become unusable as a result of criminal investigation or lab test. <p>Louisiana Admi. Code § 22:XIII.503 http://www.state.la.us/osr/lac/22v01/22v01.pdf#nameddest=cvrboard Louisiana R.S. 15:535</p>	
<p>Maine</p>	<p>BACKGROUND</p> <p>The following victims of a violent crime are eligible for financial assistance:</p> <ul style="list-style-type: none"> • victims of violent crimes (including Operating Under the Influence) occurring in Maine • dependents and family members of homicide victims • any person responsible for the funeral expenses of a homicide victim <p>Maine statute, Title 5, Chapter 316-A, § 3360-B.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must have been reported to the police within 5 days unless the victim is a minor or there is good cause for delay. <p>To qualify for benefits, applicants must satisfy the following requirements:</p> <p>The crime must be one of the following types:</p>	<p>TO APPLY</p> <p>Applications are available from the Victims Compensation Board, Office of the Attorney General, 6 State House Station, Augusta, Maine 04330-0006 (207) 624-7882 or 1 (800) 903-7882.</p> <p>A victim’s compensation application can also be obtained by contacting the Victim Witness Program in the office of your local District Attorney or one of a number of statewide victim services programs.</p> <p>When all information and documentation necessary to support a victim's claims have been submitted, the case is reviewed by the Board at its next monthly meeting. Most claims can be verified by staff and are approved by the Board.</p> <p>TO APPEAL</p> <p>If the Board issues a denial, a claimant can request a hearing before the Board. If the case is denied after hearing, the claimant may appeal to Superior Court.</p> <p>http://www.maine.gov/ag/faq.php?pods=138 Maine statute, Title 5, Chapter 316-A, §§ 3360-F, 3360-G.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • an offense against the person; • a sexual assault; • a kidnapping and/or criminal restraint; • a robbery; • a drunk driving incident; or • sexual exploitation of a minor. <ul style="list-style-type: none"> • The claimant must cooperate with the reasonable requests of law enforcement officials in the investigation and prosecution of the crime. • Unless the crime is a sexual assault, the victim must have suffered some bodily injury or a psychological injury resulting from a threat of bodily injury from the crime. • Compensation may only be paid to innocent victims; it may not be paid to any person who violated a criminal law that contributed to or caused the injury. • The crime need not result in a successful prosecution. However, to make an award, the Board must find by a preponderance of the evidence that a compensable crime in fact did occur. • An application must be filed by the victim with the Compensation Board within 3 years of the crime or 60 days of the discovery of the injury or compensable loss, whichever is later, unless there is good cause for failing to file. <p>Maine statute, Title 5, Chapter 316-A, §§ 3360.3, 3360-B.</p> <p>COMPENSATION</p> <p>The Board may award up to \$15,000 for actual medical and medically-related expenses or losses incurred as a direct result of crime-related injuries. To the extent insurance or other funds do not cover crime related expenses, the claimant may be reimbursed for:</p> <ul style="list-style-type: none"> • Medical and dental charges (including equipment, supplies and medications) limited to 75% of actual charges. • Counseling expenses (for victims, for family and household members of 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>homicide victims and child sexual assault victims, and for family and household members of the victim who witness the crime).</p> <ul style="list-style-type: none"> • Funeral/burial costs up to \$4,500, costs of a marker up to \$500. • Lost wages (for victims only). • Loss of financial support (for dependents of homicide victims). • Crime scene cleaning costs (bio-matter). • Costs to repair or replace locks or other security devices. • Replacement costs of eyeglasses, dentures and other prosthetic devices. <p>Maine statute, Title 5, Chapter 316-A, §§ 3360.3, 3360-E.</p> <p>Property losses, compensation for pain and suffering, and other losses (not medically related) are not covered.</p> <p>http://www.maine.gov/ag/faq.php?pods=138</p>	
Maryland	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Maryland; or (2) the victim is a Maryland resident and the criminal act occurred in a state that does not have a CVC program. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime within 48 hours of the occurrence and reasonably cooperate with law enforcement. Md. Code Ann., Criminal Procedure § 11-810. 	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Criminal Injuries Compensation Board. The victim must report the crime within 48 hours of the occurrence and reasonably cooperate with law enforcement. Md. Code Ann., Criminal Procedure § 11-810.</p> <p>The application must (absent good cause) be filed within 180 days from: the date of the crime or the death of the victim. Md. Code Ann., Criminal Procedure § 11-809. As of October 1, 2006, the time limit to file an application will be extended to 3 years.</p> <p>Although an application must generally be filed within 180 days (or 3 years as of October 1, 2006), there is no time limit on how long benefits can be received.</p> <p>See the following link for more information:</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>A claimant may be the direct victim of the crime, or a survivor if the crime results in a death. Md. Code Ann., Criminal Procedure § 11-808.</p> <p>COMPENSATION</p> <p>Compensation is provided for medical care; expenses for eyeglasses and other corrective lenses; mental health counseling; funeral expenses; repairing, replacing, or cleaning property; disability; and loss of income. Md. Code Ann., Criminal Procedure § 11-810.</p> <p>Medical Assistance benefits will also be available if the assault results in a need for emergency medical care, and if income and residency requirements are met.</p>	<p>http://www.boc.ca.gov/default.htm</p>
Massachusetts	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime within 5 days of the occurrence and reasonably cooperate with law enforcement. Mass. Gen. Laws ch. 258C, § 2; 940 Mass. Code Regs. 14.05. <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Massachusetts; or (2) the victim is a Massachusetts resident and the crime occurred in a state that does not have a CVC program. The types of crimes include drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault.</p> <p>A claimant may be the direct victim of the crime, a survivor if the crime results in a death, a person who assumes homemaker responsibilities in certain circumstances,</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Victim Compensation and Assistance Division of the Office of the Attorney General.</p> <p>The application must (absent good cause) be filed within 3 years from the date of the crime. Mass. Gen. Laws ch. 258C, § 5; 940 Mass. Code Regs. 14.05.</p> <p>There is no time limit on how long benefits can be received.</p> <p>See the following link for more information: http://www.ago.state.ma.us/sp.cfm?pageid=1037</p> <p>or contact</p> <p>Office of Attorney General Tom Reilly</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>and persons who actually incur burial expenses directly related to the victim. 940 Mass. Code Regs. 14.04.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • funeral and burial expenses; • medical expenses (including limited transportation expenses, pregnancy testing, STD/AIDS screening and/or treatment, and prenatal care); • mental health counseling; • lost wages; • homemaker services (including childcare); • loss of financial support; and • attorney's fees. <p>940 Mass. Code Regs. 14.06.</p> <p>Compensation is limited to \$25,000 per crime. Mass. Gen. Laws ch. 258C, § 3.</p>	<p>Victim Compensation and Assistance Division</p> <p>One Ashburton Place</p> <p>Boston, MA 02108</p> <p>(617) 727-2200</p> <p>TTY: (617) 727-4765</p> <p>http://www.ago.state.ma.us</p>
Michigan	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Mich. Comp. Laws § 18.351, Sec. 1(c). • A police report of the crime must generally be made within 48 hours. The victim must reasonably cooperate with law enforcement. Mich. Comp. Laws § 18.360. <p>The types of crimes include: any felony or serious misdemeanor involving assault and battery (including domestic violence), breaking and entering, child abuse, indecent exposure, stalking, aiming or discharging a firearm, leaving the scene of an accident resulting in personal injury, drunk driving, and any crime that results in death or personal injury.</p> <p>Victims of certain types of crimes may</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victim Services Commission. Mich. Comp. Laws § 18.353, Sec. 3(j).</p> <p>Absent good cause, the application must be filed within 1 year from: the date of the crime; the date the victim turned eighteen (18); or the date after discovery by a law enforcement agency that injuries previously determined to be accidental, of unknown origin, or resulting from natural causes, were incurred as a result of a crime. Mich. Comp. Laws §18.355.</p> <p>See the following link for more information:</p> <p>http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>receive compensation from the state if: (1) the crime occurred or was attempted in Michigan; (2) the crime occurred to a Michigan resident outside of Michigan and that jurisdiction does not have a crime victim reparations law covering the resident’s injury or death; or (3) a Michigan resident was injured in another country by a crime involving an act of international terrorism. Mich. Comp. Laws § 18.351, Sec. 1(c).</p> <p>A victim is a person who suffers direct or threatened physical, financial, or emotional harm as a result of the crime, or a survivor if the crime results in death. 1985 Mich. Pub. Act 87; Mich. Comp. Laws § 18.354, Sec. 4.</p> <p>COMPENSATION</p> <p>Compensation is provided for un-reimbursable medical and medical-related expenses, mental health counseling costs, lost earnings or support, funeral costs, expense of replacement services for childcare or housekeeping, rehabilitation, travel costs for non-local travel, and a portion of attorney’s fees. Mich. Comp. Laws §18.361.</p> <p>Medical expenses to be reimbursed include hospital bills, doctor bills, laboratory fees, ambulance charges and other related costs.</p> <p>If a claim for compensation appears likely and undue hardship will result if immediate payment is not made, an emergency award up to \$500 may be provided. Mich. Comp. Laws §18.359.</p>	<p>For more information, contact</p> <p>Crime Victim Services Commission 320 South Walnut Lansing, Michigan 48913 (517) 373-7373</p> <p>http://michigan.gov/documents/Crimevictimcompensation_9679_7.pdf</p>
Minnesota	<p>BACKGROUND</p> <p>Victims of certain types of crimes may</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victims Reparations</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>receive compensation from the state if: (1) the crime occurred or was attempted in Minnesota; (2) if the crime occurred to a Minnesota resident outside of Minnesota and that jurisdiction does not have a crime victim reparations law covering the resident’s injury or death; or (3) if the person is a Minnesota resident who is injured in another country by a crime involving an act of international terrorism. Minn. Stat. § 611A.52, Subd. 6(a); Minn. Stat. § 611A.53, Subd. 1b.</p> <p>The types of crimes include: homicide, assault, child abuse, sexual assault, robbery, kidnapping, domestic abuse, stalking, criminal vehicular operation and drunk driving, and any crime that results in death or bodily harm.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Minn. Stat. § 611A.53, Subd. 1b. • A police report of the crime must generally be made within 30 days. The victim must reasonably cooperate with law enforcement. <p>A victim is a person who suffers personal injury or death as a direct result of a crime, a good faith effort to prevent a crime, or a good faith effort to apprehend a person suspected of engaging in a crime. Minn. Stat. 611A.52, Subd. 10. Persons entitled to compensation include the victim, his or her dependents, the victim’s estate, persons paying certain of the victim’s expenses, and the guardian, guardian <i>ad litem</i>, conservator or authorized agent of any of these persons. Minn. Stat. § 611A.53, Subd. 1.</p> <p>COMPENSATION</p> <p>Compensation is provided for un-reimbursable medical and medical-related</p>	<p>Board. Minn. Stat. §§ 611A.51 to 611A.67.</p> <p>An application for compensation filed within 3 years of the occurrence of the crime. Minn. Stat. § 611A.53, Subd. 2(e).</p> <p>Absent good cause, the application must be filed: (1) within 3 years from the victim’s injury or death; or (2) if the claimant was unable to file the claim, within 3 years from the time when the victim’s injury or death was reasonably discoverable.</p> <p>The following do not render a claimant unable to file a claim: (1) lack of knowledge of the existence of the Minnesota Crime Victims Reparations Act; (2) the failure of law enforcement to provide information to a potential claimant; (3) incompetency of the claimant if the claimant’s affairs were handled by a guardian, guardian <i>ad litem</i>, conservator, authorized agent, or parent; or (4) the fact that the claimant is not the age of majority. Minn. Stat. § 611A.53, Subd. 2(e).</p> <p>For help completing a form or to request an application call: 651-201-7300 or 1-888-622-8799</p> <p>Mail, fax or email completed forms to: Minnesota Crime Victims Reparations Board 445 Minnesota Street, Suite 2300 St. Paul, MN 55101-1515 Fax: 651-296-5787 email: dps.justiceprograms@state.mn.us</p> <p>See the following link for more information: http://www.ojp.state.mn.us/MCCVS/FinancialHelp/Reparations.htm#Apply</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>expenses, mental health counseling costs, lost earnings or support, funeral costs, expense of replacement services for childcare, rehabilitation, crime-scene cleanup costs, travel costs for immediate family to attend funerals, costs related to the return of an abducted child. Minn. Stat. § 611A.52, Subd. 8(a).</p> <p>Medical expenses to be reimbursed include necessary medical, chiropractic, hospital, rehabilitative, and dental products, services or accommodations, including ambulance services, drugs, appliances, and prosthetic devices and other related costs. Minn. Stat. § 611A.52, Subd. 8(a).</p> <p>Emergency grant money is available to victims through local programs for expenses such as transportation to medical and court facilities, home security devices, essential personal property and crime scene cleanup. Minn. Stat. § 611A.675, Subd. 1.</p>	
Mississippi	<p>BACKGROUND</p> <p>The Division of Victim Compensation provides financial assistance to victims of violent crime and their family members. The Program reduces the financial burden of crime by reimbursing victims for their crime related expenses not covered by any other source of benefits (insurance, Medicaid, Medicare, disability benefits, Workers' Compensation, etc.). Compensation may be awarded to the victim, the dependents of a deceased victim or a person authorized to act on behalf of the victim and/or surviving dependent. Benefits are awarded for medical care, rehabilitation, counseling services, work loss, loss of support for dependents of homicide victims and funeral expenses.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>ELIGIBILITY</p>	<p>TO APPLY</p> <ul style="list-style-type: none"> • Fill out a compensation application form, have it notarized and return the form, along with bills and receipts. • Compensation Application Forms are available at http://www.ago.state.ms.us/divisions/crime_victim/CompensationApplication.pdf • Applications are also available from the district attorney's office, domestic violence shelters, rape crisis centers, survivor of homicide agencies and MADD. <p>Completed application form along with all bills and receipts are to be returned to</p> <p>Office of the Attorney General Crime Prevention & Victim Services Crime Victim Compensation Division Post Office Box 220 Jackson, MS 39205-0220</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the crime to law enforcement officials within 72 hours after the crime or show good cause for not reporting. • The victim or claimant must fully cooperate with law enforcement investigation and prosecution. • Application must be filed within 24 months after the date of the crime. • In cases of child sexual abuse, the application must be filed within 24 months after the crime was reported. • The victim must not have contributed, provoked or in any way caused the injury or death; in such cases, benefits may be denied or reduced. • All other available sources of payment such as insurance, Medicaid, Medicare, disability benefits and Workers' Compensation must pay first. http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php • Individual must be the victim of a violent crime who has suffered personal injury, death or extreme psychological trauma as a result of the crime. Types of crimes include: assault, homicide, sexual assault, child sexual abuse, child physical abuse, domestic violence and DUI crashes. • Dependents of a deceased victim. • Persons authorized to act on behalf of the victim or dependents of a deceased victim. • Family members of the victim who incur mental health expenses. • Persons who have assumed responsibility for funeral expenses. • A Mississippi resident who is a victim of a violent crime in a foreign country which does not provide crime victim compensation. http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php <p>Who is not eligible: By law, certain persons may not meet</p>	<p>1-800-829-6766 or 601-359-6766 601-576-4445 (Fax) http://www.ago.state.ms.us/contact/</p> <p>After receiving an application and related documentation, including a complete offense report, the Division of Victim Compensation reviews the information to see if the crime, the victim and/or claimant are eligible for compensation. This process involves verifying all the information presented in the application. Law enforcement officers, prosecutors, physicians, counselors, hospitals, and employers may be contacted for additional information. A decision about whether the victim or claimant is eligible is usually made within 90 days. A staff member is then assigned to the case to review expenses incurred as a result of the crime and determine eligibility of reimbursement or payment. Payment of awards may be made directly to the service providers or to the victim/claimant. The victim or claimant is notified in writing of the decision to award or deny the claim. Claimants who are denied compensation may appeal.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>TO APPEAL</p> <p>The victim or claimant may ask the Division of Victim Compensation to reconsider its decision if he/she disagrees with the Division's decision. The victim or claimant must notify the Division of Victim Compensation of the reason for their dissatisfaction and provide additional information in the reconsideration process. If the outcome of the reconsideration process is not satisfactory, the victim or claimant may request a contested hearing before a hearing officer. If the victim or claimant does not agree with the outcome of the contested hearing, an appeal may be made to circuit court.</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>eligibility requirements for compensation:</p> <ul style="list-style-type: none"> • A victim who is engaged in illegal conduct. • The offender and/or the accomplice to the offender. • Anyone injured in a motor vehicle accident unless the vehicle was used as a weapon or the offense includes driving under the influence (DUI). • Anyone incarcerated in a penal institution when the crime occurred. • A victim or claimant who, after filing an application with the Program, is convicted of any felony involving the Controlled Substances Act, the use or possession of a weapon, personal injury or attempted personal injury and the conviction becomes known to the program. <p>http://www.ago.state.ms.us/divisions/crime/victim/cvcinfo.php</p> <p>COMPENSATION</p> <ul style="list-style-type: none"> • Reasonable and necessary medical and rehabilitation expenses, not to exceed \$10,000. • Funeral expenses, not to exceed \$4,500, include: transportation costs to make and/or attend funeral services that are at least 45 miles from the claimant's residence, not to exceed \$500 per claim. • Mental health counseling for the victim and victim's family members, not to exceed \$3,500 per claim. • Lost wages for work missed by the victim during recovery of injuries, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Lost wages for work missed by the claimant in order to assist the victim during recovery of injuries, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Lost wages for the victim or claimant to attend court proceedings, maximum of \$600 for one week per claim. • Lost wages for the claimant to arrange and attend funeral services, maximum of \$600 for one week per claim. 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • Loss of support for dependents of the deceased victim, maximum of \$600 per week up to 52 weeks; not to exceed \$15,000. • Transportation costs to obtain medical and mental health services that are at least 45 miles from the victim's residence, not to exceed \$500. • Overall maximum award for expenses incurred is \$15,000. • Additional financial assistance is provided by the CVC Division's Victim Assistance Program. <ul style="list-style-type: none"> ○ The Victim Assistance Fund was established to address and to respond to the unmet financial needs of crime victims. It provides assistance with: <ol style="list-style-type: none"> 1) immediate safety needs such as replacement of broken locks or broken doors/windows; 2) court related transportation costs; and 3) crime scene clean-up of a homicide or other violent crime that occurred in a residence or vehicle. 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>For additional information about these services, please call their office at 601.359.4144 or 800.829.6766</p> <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p> <p>Ineligible expenses:</p> <ul style="list-style-type: none"> • Stolen or damaged property. • Pain and suffering. • Attorney’s fees. • Expenses paid by an insurance plan, public funds, the offender or other sources. <p>http://www.ago.state.ms.us/divisions/crime_victim/cvcinfo.php</p>	
Missouri	<p>BACKGROUND</p> <p>The Crime Victims’ Compensation Program provides financial assistance to victims who have suffered physical harm as a result of violent crime. In the case of death, the Program helps the victim's dependents. The Crime Victims’ Compensation Program is designed to assist victims of violent crimes through a period of financial hardship as a payor of last resort. If a victim has exhausted other sources of compensation, such as health insurance, and has no other source of reimbursement, the Program can help pay for medical costs, wage loss, psychological counseling, funeral expenses and support for dependent survivors up to \$25,000.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. http://www.dolir.mo.gov/wc/forms/cv-14-ai.pdf; accessed August 14, 2006 • The incident must be reported to the proper law enforcement agency within 48 hours, unless the victim was a minor or there is good cause shown for reporting late. 	<p>TO APPLY</p> <p>For a claim application or other information: PO Box 3001 Jefferson City, MO 65102</p> <p>573-526-6006 1-800-347-6881 www.dolir.mo.gov/wc/cv_help.htm</p> <p>After receiving the proper claim forms, the Crime Victims’ Compensation Unit conducts an investigation. Witnesses, law enforcement officers, physicians, hospitals and employers may be contacted for report and verification. The Unit then makes a decision on the claim and the claimant is notified of the decision.</p> <p>TO APPEAL</p> <p>If a claim is denied, or if the settlement offer is unacceptable, a dissatisfied claimant may request the Crime Victims’ Unit to set the case before an Administrative Law Judge.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Those eligible to make a claim are:</p> <ol style="list-style-type: none"> 1. The victim; 2. In the case of a sexual assault victim: <ol style="list-style-type: none"> a. A relative of the victim requiring counseling in order to better assist the victim in his recovery; and 3. In the case of the death of the victim as a direct result of the crime: <ol style="list-style-type: none"> a. A dependent of the victim; b. Any member of the family who legally assumes the obligation, or who pays the medical or burial expenses incurred as a direct result; or c. A survivor of the victim requiring counseling as a direct result of the death of the victim. <p>§ 595.020, RSMo.</p> <p>In addition, the following conditions must be met:</p> <ul style="list-style-type: none"> • The victim must cooperate with law enforcement officials in the investigation and prosecution. • The injury or death must have occurred in Missouri, except when the victim is a Missouri resident who suffers personal injury or death in a state that does not have crime victims' compensation, or when a Missouri resident is injured by an act of terrorism which was committed outside of the United States; • A claim must be filed within 2 years of the crime, unless the victim is a minor; then the claim must be filed within 2 years of discovering the crime. <p>http://www.dolir.mo.gov/wc/forms/cv-14-ai.pdf; accessed August 14, 2006</p> <p>COMPENSATION</p> <p>Costs incurred by a victim or claimant eligible for compensation are medical and drug costs, counseling expenses, lost wages, funeral costs and loss of earnings or support. A claimant must suffer at least \$50 "out-of-pocket" loss. Out-of-pocket loss means unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services such as burial or funeral expenses. §</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>595.030, RSMo.</p> <p>The Fund is a payor of last resort. This means that all other sources of payment must be used before compensation is made from the Fund. Health insurance, funds from Medicaid or Medicare and any other sources of payment available to the victim are deducted from the total expense that may be eligible for reimbursement under the crime victim law. However, if a claimant has a health insurance policy but still has out of pocket expenses because of deductibles or co-payments, those out-of-pocket costs may be eligible for reimbursement.</p> <p>Program guidelines: http://www.dolir.mo.gov/wc/cv_guidelines.htm</p>	
Montana	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official confirmed that immigration status is not taken into consideration when determining whether a person is eligible for victim’s compensation benefits. • To qualify for compensation benefits, the victim must report the crime within 72 hours or show good cause for a delay in reporting and must cooperate with law enforcement and prosecuting attorneys. (Mont. Code Ann. § 53-9-125(3)). In addition, victims must fully report and cooperate with law enforcement officials and prosecuting attorneys to be eligible for benefits. (Mont. Code Ann. § 53-9-125(4)). <p>To be eligible for compensation, the applicant must be:</p> <ul style="list-style-type: none"> • A “victim”—defined as a person who suffers bodily injury or death as a result of criminally injurious conduct. (referred to as the Primary Victim) • A dependent of deceased victim (referred to as the Secondary Victim) • A person who engaged in a good faith 	<p>TO APPLY</p> <p>Applications may be obtained from Crime Victim Compensation Program, Office of Victim Services, Department of Justice, 1712 9th Avenue, P.O. Box 201410, Helena, MT 59620-1410 (phone 406.444.3653 or 800.498.6455). Claim forms are also available from law enforcement, city or county attorneys, hospitals, and victim advocate programs.</p> <p>The victim must file a claim with the Crime Victim Compensation Program within 1 year of the date the crime was committed or show good cause for delay. (Mont. Code Ann. § 53-9-125(1)).</p> <p>Once a claim has been submitted, it may take 2 to 3 months for the Crime Victim Compensation Program to make an eligibility determination.</p> <p>Copies of all crime-related medical bills must be sent to the Crime Victim Compensation as soon as possible. The Crime Victim Compensation Program is a program of last resort, so victims must first submit medical expenses to any other program for which they</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>effort to prevent a crime or apprehend a person reasonably suspected of engaging in criminally injurious activity. (Mont. Code Ann. § 53-9-103)</p> <ul style="list-style-type: none"> The victim may be either a non-resident who is injured in Montana or a Montana resident who is injured either in Montana or in a state which does not provide compensation for non-residents <p>A victim may receive compensation benefits for any criminally injurious conduct, which is defined as conduct that results in bodily injury or death and is punishable by fine, imprisonment, death, or would be so punishable except that the perpetrator lacked capacity to commit crime (i.e. a person who is found not guilty by reason of insanity). (Mont. Code Ann. § 53-9-103(3)).</p> <p>Compensation may be reduced or denied if:</p> <ul style="list-style-type: none"> Any offender or accomplice of the offender or any claimant if award would unjustly benefit the offender or accomplice. (Mont. Code Ann. § 53-9-125(2)). Persons injured while in prison. (Mont. Code Ann. § 53-9-125(6)). Compensation may be denied or reduced for any person who contributed to the death or injury for which the claim is made. (Mont. Code Ann. § 53-9-125(7)). the applicant is a victim of a traffic accident not related to drunk driving. <p>COMPENSATION</p> <p>Montana’s Crime Victims Compensation Act provides assistance with expenses (not to exceed \$25,000) including:</p> <ul style="list-style-type: none"> Payments for medical expenses including physician and hospital services, medicine, and ambulance costs; Benefits for mental health counseling are capped at \$2,000 or 1 year, whichever comes first (although the victim may request an extension); Benefits for chiropractic services can be paid for up to 30 visits Funeral expenses may not exceed \$3,500 and will be paid only if all other 	<p>are eligible, such as health insurance, Medicaid, Workers’ Compensation, etc. See http://www.doj.mt.gov/victims/victimcompensation.asp for additional information.</p> <p>TO APPEAL</p> <p>A claimant who disputes the Office’s determination may appeal to the district court for the county in which the claimant resides or Lewis and Clark County for review. (Mont. Code Ann. § 53-9-131).</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>collateral sources fail to cover the expense;</p> <ul style="list-style-type: none"> • If a victim is employed at the time the crime occurs and is physically unable to work as the result of a physical injury related to the crime, a portion of the lost wages can also be reimbursed. To receive wage loss benefits, the victim must provide a letter from his or her primary care physician stating that the victim is physically unable to work and setting forth the length of time that the victim will miss work. Wage loss claims are paid every 2 weeks. (Mont. Code Ann. § 53-9-128); • If a victim has no prospect of being employed in the normal labor market and was employable but not employed at the time of injury may, at the discretion of the office, receive up to \$100 per week. Payments continue until the victim is reasonably employable again; • Dependants of a victim who is killed are entitled to receive, in a gross single amount, weekly benefits amounting to 66 2/3% of the wages received at the time of the injurious conduct causing death. This payment is subject to a cap set at one-half the state’s average weekly wage; and • Dependants of a victim who was killed and unemployed at the time may, at the discretion of the office, receive a sum not to exceed \$100 per week. Parents, brothers, or sisters of a victim who is killed are entitled to receive reimbursement for mental health treatment received as a result of the victim’s death. (Mont. Code Ann. § 53-9-128). <p>Forensic Rape Examination Payment Program covers the cost of:</p> <ul style="list-style-type: none"> • complete sexual assault examination • emergency room facility charges • doctor/nurse examiner charges • STD prophylaxis • toxicology, lab, testing, pharmaceuticals, and supplies. <p>The 2005 Montana Legislature’s House Bill</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>577 (amending Mont. Code Ann. §§ 2-15-2014 and 46-15-411).</p> <p>Parents, brothers, sisters of a minor who is the victim of sexual assault and who are not entitled to receiving services under title 41 chapter 3 are entitled to reimbursement for mental health treatment as a result of that criminally injurious conduct. Total payments are not to exceed \$2,000 or 12 months. (Mont. Code Ann. § 53-9-128(9)(b)).</p> <p>Compensation benefits do not include:</p> <ul style="list-style-type: none"> • Property damage; • Pain and suffering; • Non-medical expenses; • In-patient psychiatric care; or • Chemical dependency counseling. <p>The CVC Program either will make payment directly to the service provider or will reimburse the victim for payments made.</p>	
Nebraska	<p>BACKGROUND</p> <p>Nebraska’s Crime Victims Reparations (“CVR”) Program assists victims of crime who suffer bodily harm and have incurred a financial loss as a direct result of a criminal act, provided the loss exceeds ten percent of the victim’s net financial resources.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To qualify for compensation, the victim must report the crime to a law enforcement agency within three (3) days of the crime and cooperate with criminal justice officials in the investigation of the crime and the prosecution of the offender. Neb. Rev. Stat § 81-1821. <p>A person may be eligible to receive</p>	<p>TO APPLY</p> <p>An applicant must file a claim with the CVR program within 2 years of the date of the crime. Neb. Rev. Stat § 81-1821).</p> <p>To apply for compensation, a victim must submit (1) a completed, notarized compensation application, (2) a completed Financial Resources Form, and (3) itemized copies of all medical bills relating to the incident to the Nebraska Crime Victim’s Reparations Program, P.O. Box 94946, Lincoln, Nebraska 68509-4946 (402.471.2828 or 402.471.2194).</p> <p>Forms and additional information are available at http://www.ncc.state.ne.us/services_programs/crime_victim_reparations.htm</p> <p>The claimant must also provide the CVR an itemized list of medical bills relating to the incident or an itemized copy of the funeral bill and death certificate.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>compensation benefits if the applicant is:</p> <ul style="list-style-type: none"> • A victim of a crime who suffers personal injury or death as a result of a crime committed in the State of Nebraska; • A dependent or legal representative of an innocent victim who has been killed as a result of a violent crime; • The parent or guardian responsible for the medical expenses of a minor; and • Persons injured in an attempt to prevent the commission of a crime, apprehend a criminal, aid a victim of a crime, or aid a police officer in the commission of their duties. (Neb. Rev. Stat § 81-1818). <p>A crime for which a victim may receive compensation benefits includes any crime that caused bodily injury or death to the victim in the State of Nebraska that occurred after January 1, 1979.</p> <p>Victims are not eligible if:</p> <ul style="list-style-type: none"> • They are injured in a motor vehicle accident unless the injury was intentionally inflicted or the offender was charged with D.U.I.; • They aided or abetted the offender in the commission of an unlawful act; • The offender will receive unjust economic benefit or enrichment from the compensation; and • The victim violated a criminal law of the state which contributed to his or her injury or death. <p>Neb. Rev. Stat § 81-1822</p> <p>COMPENSATION</p> <p>The maximum award per incident is \$10,000.</p> <p>Compensation is available for:</p> <ul style="list-style-type: none"> • Medical expenses (hospital, doctor, dental, prescriptions, etc.); • Lost wages; • Funeral expenses (up to a maximum of \$5,000); • Lost earning power; • Counseling expenses (up to a maximum of \$2,000); <p>Neb. Rev. St. §§ 1801—1842.</p>	<p>To request compensation for lost wages, a victim must submit (1) copies of three payroll stubs covering the period prior to the crime; (2) a statement from her employer, verifying hours of work missed and hourly wages; and (3) a copy of the doctor's release stating the exact date the victim could return to work.</p> <p>After the CVR Program receives the required information, it completes an investigation and presents the claim to a Hearing Officer. The Hearing Officer shall rule within 180 days after receipt of all required information. A copy of the Hearing Officer's decision will be mailed to the victim.</p> <p>TO APPEAL</p> <p>A decision may be appealed by submitting a written request for a hearing to the CVR program within 30 days of the decision. A claimant may appeal a decision by a hearing officer within 30 days of the initial decision. The appeal is heard by the committee and shall commence within 120 days of the request for rehearing.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Compensation is not available for expenses paid by collateral sources, including:</p> <ul style="list-style-type: none"> • A private or group insurance plans; • Public funds; • The offender; or • Other sources. <p>Victims may not be compensated for:</p> <ul style="list-style-type: none"> • Pain and suffering; • Loss of property; • Expenses not directly related to the crime; or • Expenses paid by private or group insurance plans, public funds, the offender, or other sources. 	
Nevada	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • Immigrants who are not lawfully entitled to reside in the U.S. are not eligible to receive victims compensation benefits. (N.R.S. § 217.220(b)). A social security number is required to receive compensation. • In addition, victims must file a criminal police report within 5 days following the crime unless there is an explanation as to why the victim was unable to notify authorities. Victims must also cooperate with law enforcement officials during their investigation and prosecution of the crime. http://hearings.state.nv.us/Victims.htm <p>The application must be made within 1 year of the date of the personal injury or death unless the time limit is waived based on good cause shown. The incident must have been reported to the police within 5 days of the time when a report could have been reasonably filed. (N.R.S. § 217.210).</p> <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • A victim who has suffered personal injury or any person responsible for the maintenance of a victim who has suffered a pecuniary loss (N.R.S. 217.160.); • Any dependents of a deceased victim; • A minor who is a member of a household or immediate family of a 	<p>TO APPLY</p> <p>Applications for compensation must be filed within one (1) year from the date of the crime, unless there is good reason why the application could not be filed within this timeframe. In addition, minors may apply until they reach the age of 21 years. http://hearings.state.nv.us/Victims.htm</p> <p>Applications for compensation resulting from sexual assault crimes must be made within 60 days of after the date of the assault. The sexual assault must be reported to the police within three (3) days of the assault or, if a report could not have been reported within that period, within 3 days after the time when a report could reasonably have been made. A compensation officer will obtain and review the police report, interview the applicant, accumulate medical bills and medical reports, as well as insurance, employment and financial information. The applicant will be notified in writing within 60 days of the interview if he/she is eligible for assistance.</p> <p>The application will be reviewed by a Compensation officer, a Hearing Officer, an Appeals Officer, and finally the Victims Compensation Board, if applicable.</p> <p>The application process can take 8-10 weeks. Payments will not be authorized until all required information is received.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>victim of a battery which constitutes domestic violence pursuant to N.R.S 33.018 who is in need of psychological assessment, evaluation, or counseling arising out of trauma suffered as a result of the battery;</p> <ul style="list-style-type: none"> • A member of the victim’s household or immediate family needing psychological counseling resulting from trauma suffered as a result of the crime of murder; and • An awardee of the Governor’s certificate for meritorious citizen’s service to a victim. <p>The following individuals are not eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • Those who were injured in motor vehicle, boat, or airplane accident unless such vehicles were deliberately used to injure the victim or the vehicle was used in some other crime. • Persons who were not citizens of the United States or legally permitted to reside in the United States at the time of injury. (N.R.S 217.220(b)) • Person injured or killed while serving sentence of imprisonment in prison or jail including juvenile detention. (N.R.S. 217.220) • A victim who is a relative of the offender who at the time of injury or death was living with the offender in a continuing relationship may be awarded compensation only if the offender would not profit by the compensation of the victim. (N.R.S. 217.220) • Compensation may be denied if the compensation officer determines that the victim will not suffer serious financial hardship, however, the following may not be considered: (1) the value of the victim’s home; (2) value of the victim’s motor vehicle; (3) Any savings or investments up to and equaling the victim’s annual salary. • Co-conspirators, codefendants, accomplices, or adult passenger of the offender whose crime resulted in the victims injuries. (N.R.S. 217.220.1(c)). • Those who fail to cooperate with law 	<p>For more information, contact the county board of commissioners where the crime occurred or the Victims of Crimes office, 2200 South Rancho Drive Suite 130, Las Vegas, Nevada 89102.</p> <p>Tel: (702)486-2740 Fax: (702)486-2825</p> <p>TO APPEAL</p> <p>Applicants may make a written request for reconsideration with the Hearings Division located at 555 East Washington Avenue, Suite 3200, Las Vegas, NV 89101, or 1050 E. Williams, Carson City, NV 89701 within 15 days of the decision.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>enforcement agencies but not limited solely to prosecution of the offender. http://hearings.state.nv.us/Victims.htm</p> <p>COMPENSATION</p> <p>The program has a monetary case cap of \$50,000 per victim. The following benefits may be available to victims of criminal acts:</p> <ul style="list-style-type: none"> • Medical expense payment and psychological counseling; • Counseling and medical treatment of victims of sexual assault (N.R.S. 217.290); • Counseling expenses (not to exceed \$3,500); • Funeral costs (not to exceed \$3,500); • Lost wages (not to exceed \$300 per week for 52 weeks); and • Replacement or repair of lost or damaged property which is essential to physical or mental health of the victim (including eye-glasses, dentures, prosthetics). <p>Victims may not be compensated for:</p> <ul style="list-style-type: none"> • Property loss or repair; • Legal fees; • Phone bills; • Meals; • Living expenses; or • Pain and suffering. <p>http://hearings.state.nv.us/Victims.htm</p> <p>Costs incurred by a hospital for initial emergency care for a victim of a sexual offense must not be charged directly to the victim, but must be charged to the county in whose jurisdiction the offense was committed (not to exceed \$1,000). N.R.S. 449.244.1(b). To qualify for this benefit the application for treatment must be made within 60 days of the sexual assault and reported to the police within 3 days of the occurrence or the time when a report could be reasonably made. (N.R.S. 217.340.)</p>	
New Hampshire	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions 	<p>TO APPLY</p> <p>A victims' assistance commission is</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>based on immigration status.</p> <ul style="list-style-type: none"> • In order to be eligible to receive benefits, the victim must have reported the crime to law enforcement authorities within 5 days, unless there is a reasonable explanation for not doing so. <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • Any person who sustains personal injury as a result of a felony or misdemeanor; • Any person who sustains personal injury caused by a person driving under the influence of alcohol or controlled substances; • Any person who is a victim of sexual abuse and is under the age of 18 at the time the claim is filed. (RSA 21-M:8-h.I(a)) <p>In the case of a child victim, the claimant, guardian ad litem, advocate or parent may claim compensation in the victim's stead. (RSA 21-M:8-h.I(b))</p> <p>Failure to apprehend the offender, or failure of the state to convict the offender, by itself, does not disqualify the claimant for compensation, if there is reasonable evidence to sustain the claim that a crime had been committed, which resulted in injury to the victim. (RSA 21-M:8-h.III)</p> <p>The Victims' Assistance Commission may consider the finding of innocence or guilt of the alleged offender, as well as the contributory fault of the victim in causing his injury, in determining the eligibility of the claimant. (RSA 21-M:8-h.IV)</p> <p>COMPENSATION</p> <p>There is a \$10,000 ceiling on recovery per claimant per incident. The claimant may be reimbursed for reasonable out-of-pocket</p>	<p>established to review and award victims' claims for compensation. Members of the commission are nominated by the attorney general. (RSA 21-M:8-g.I)</p> <p>The claimant, guardian ad litem or child advocate, or parent shall file a claim for compensation within one (1) year of the crime, unless good cause is shown. (RSA 21-M:8-h.II.)</p> <p>The commission shall review claims from victims for compensation and make compensation awards from the victims' assistance fund and from private donations and contributions (RSA 21-M:8-g.III)</p> <p>The commission may consider the finding of innocence or guilt of the alleged offender in determining the eligibility of the claimant. In determining eligibility and the amount of compensation to be awarded, the commission shall consider the contributory fault of the victim in causing his injury. (RSA 21-M:8-h.IV.)</p> <p>The accused shall receive no benefit as a result of compensation, if compensation is paid to members of the accused's immediate family, or persons who reside with or who have maintained a continuous relationship with the accused. (RSA 21-M:8-h.IV.)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>expenses, including:</p> <ul style="list-style-type: none"> • Medical expenses; • Funeral expenses; • Counseling expenses; and • Lost wages directly resulting from the crime. (RSA 21-M:8-h.V.) <p>Reimbursable expenses incurred has to be at least \$100. (RSA 21-M:8-h.V.)</p> <p>If expenses paid through the victims' assistance program fund are later covered by insurance settlements, civil suit settlements, restitution, or through any other source, the claimant shall reimburse the fund for the amount of expenses recovered. (RSA 21-M:8-h.V.)</p>	
New Jersey	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to the police within three (3) months after it occurs, or within three (3) months from the time it was known, or from the time there was reason to believe, that a crime occurred. (N.J.A.C. 13:75-1.5(b)) <p>The following persons are eligible for compensation benefits:</p> <ul style="list-style-type: none"> • A victim of a crime who has sustained personal injury, mental trauma or death; • A surviving spouse, parent/guardian, child or other relative dependent for support upon a victim of a crime who died as a direct result of such crime (N.J.A.C. 13:75-1.6(b)); or • A person injured while trying to prevent a crime or while assisting a police officer in making an arrest. <p>In addition, victims must meet the following conditions:</p> <ul style="list-style-type: none"> • For incidents prior to June 26, 1995, the victim must have suffered at least \$100 in out-of-pocket medical expenses 	<p>TO APPLY</p> <p>VCCB applications are available:</p> <ul style="list-style-type: none"> • At every law enforcement agency and medical institution in New Jersey; • Online at http://www.state.nj.us/victims/files/VCCB_Forms_Final.pdf; • From the 21 county prosecutors' offices through their respective Victim/Witness Coordinator. The Coordinators will assist crime victims in filling out the form; or • From the VCCB by calling 973-648-2107 or 877-NJ-VCCB1 (877-658-2221) for assistance. <p>The claim must be filed within two years from the date of the personal injury or death, or after two years if the Board determines that good cause existed for the delayed filing. (N.J.A.C. 13:75-1.5(a))</p> <p>To obtain benefits, the victim must file a completed claim form and comply with Board regulations which are explained in the instructions. The victim will be asked to submit information to support the application. Where possible and to speed up processing, it is helpful to submit a copy of a police report and related bills, receipts and insurance statements together with the application.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>and/or two weeks continuous loss of earnings or support. (N.J.A.C. 13:75-1.7(a));</p> <ul style="list-style-type: none"> • For incidents occurring on or after June 26, 1995, there are no minimum loss requirements (N.J.A.C. 13:75-1.7(a).2); • The victim must cooperate fully with the police and prosecutor's office (N.J.A.C. 13:75-1.6(c)4.vii); however, eligibility is not dependent upon conviction or prosecution of the offender; • Failure to cooperate with the Board investigator or failure to inform the Board of a change of address will result in a denial of compensation; • If there are any Victims of Crime Compensation Board assessments imposed on the victim by the courts for prior convictions, the victim must pay them in full before the victim can receive any compensation. (N.J.A.C. 13:75-1.7(k)); and • The crime must occur in New Jersey, although the victim does not need to be a New Jersey resident (N.J.A.C. 13:75-1.6(g)1), or the victim must be a New Jersey resident who became a victim in another state or jurisdiction that does not have a CVC program (N.J.A.C. 13:75-1.6(g)2) or has a program that has not provided full compensation for the crime-related losses (N.J.A.C. 13:75-1.6(g)3). <p>The following individuals are not eligible to receive benefits:</p> <ul style="list-style-type: none"> • A victim whose behavior contributed to the crime and injuries suffered (N.J.A.C. 13:75-1.7(a)3) • A victim who was engaged in illegal activity at the time of the crime (N.J.A.C. 13:75-1.6(e)) • An offender or an accomplice of the offender (N.J.A.C. 13:75-1.6(d)) • Anyone in prison for a crime when the incident occurred (N.J.A.C. 13:75-1.7(l)1) • A victim of a motor vehicle or boating accident except those listed under Crimes for Which Compensation is Available • A victim of a motor vehicle or boating 	<p>The claim will be processed in the chronological order in which it is received by the Board. Upon receipt of the application, the claim is opened, given a claim number, an acknowledgment of receipt is sent to the applicant, and if needed, additional information is requested. All requests for emergency assistance and counseling are reviewed immediately.</p> <p>After a police report is received, the Board's eligibility investigators will review all the circumstances surrounding the incident, including, but not limited to, direct discussion with police and prosecutorial personnel, securing trial related information from the courts, and speaking with witnesses. The investigator will provide the Board's commissioners with a recommendation either that the claim is eligible for compensation or to deny compensation because there has been a failure to comply with one of the statute's provisions.</p> <p>Once determined eligible for compensation, the claim enters the compensation phase. The Board's investigator will verify losses by communicating directly with providers of medical services, securing insurance benefit statements, and gathering loss of earnings and disability payment information.</p> <p>The victim is required to show a minimum loss of at least \$100 unreimbursed medical expenses or two continuous weeks loss of earnings or support. For incidents occurring on or after June 26, 1995, the minimum loss requirement no longer applies</p> <p>If additional information comes to the Board's attention which requires the Board to change its determination of eligibility, the victim will be notified and given an opportunity to respond to the Board's new decision.</p> <p>The investigator may send a recommendation denying eligibility or may recommend an amount of compensation with which the victim disagrees. The victim will have twenty (20) days to advise the Board in writing whether the recommendation is accepted. The victim is entitled to a hearing before the Board. At the hearing the victim will be given an opportunity to submit supporting proofs.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>incident where the victim knew, or had reason to believe, the vehicle or vessel was being operated by the offender while under the influence of alcohol or narcotics. (N.J.A.C. 13:75-1.7(i))</p> <ul style="list-style-type: none"> • A victim who is a non-resident of New Jersey and the crime incurred in a location other than New Jersey. <p>New Jersey “Resident” is defined as “a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.”</p> <p>(Medicaid Only Manual. N.J.A.C. 10:71-3.5.(a). p.20)</p> <p>The Board may order the payment of compensation for personal injury or death which resulted from the commission or attempt to commit any of the following offenses:</p> <ul style="list-style-type: none"> • Aggravated assault; • Threats to do bodily harm; • Lewd, indecent or obscene acts; • Indecent acts with children; • Kidnapping; • Murder; • Manslaughter; • Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact; • Any other crime involving violence including domestic violence; • Burglary (personal property loss or damage will not be compensated) (N.J.A.C. 13:75-1.7(f)); • Tampering with a cosmetic, drug or food product; • Driving a vehicle, commercial or private, or boat while under the influence of alcohol or narcotics; and • Theft of an automobile, eluding a law enforcement officer or unlawful taking of a motor vehicle where injuries to the victim occur in the course of operating the automobile. <p>(N.J.A.C. 13:75-1.7(f) citing N.J.S.A. 52:4B-11)</p> <p>COMPENSATION</p> <p>Compensation benefits may be awarded up</p>	<p>(check http://www.state.nj.us/victims/pages/hearings.htm for hearing dates)</p> <p>The Board does not require that the victim appear at formal hearings with an attorney. The victim does have the right, however, to be represented before the Board at all stages of proceedings by a New Jersey licensed attorney.</p> <p>At the hearing the victim will be called upon to respond to questions from the Board's legal counsel and the Board's commissioners. The victim will have the opportunity to make a statement and question witnesses. There may be issues and questions for which legal advice would be beneficial.</p> <p>If the victim decides to obtain an attorney, the Board must be notified within twenty (20) days of the hearing date. The attorney must also send a letter to the Board’s Legal Department confirming that the attorney is representing the victim.</p> <p>The Board does not assign or provide attorneys, but will be able to refer for assistance. For further information, contact the Board's Victim Counseling Service at 201-648-2535.</p> <p>For additional information, contact the State of New Jersey Victims of Crime Compensation Board (VCCB) For claim information, 50 Park Place Newark, New Jersey 07102 1-877-658-2221 or www.njvictims.org.</p> <p>TO APPEAL</p> <p>If, after the hearing, the victim does not agree with the Board's determination, the decision can be appealed directly to the Appellate Division of the Superior Court within forty-five (45) days from the date the Board's order is received.</p> <p>The following information has been summarized from http://www.state.nj.us/victims/admincode/admincode.htm; accessed July 2006</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>to a maximum of \$25,000 per claim (\$10,000 for crimes before December 5, 1982) (N.J.A.C. 13:75-1.7(g))and may include the following:</p> <ul style="list-style-type: none"> • Medically related expenses (including chiropractic/physical therapy. N.J.A.C. 13:75-1.7(j)); • Loss of earnings in personal injury cases (N.J.A.C. 13:75-1.7(b)2); • Loss of support from the victim for dependents in homicide cases (N.J.A.C. 13:75-1.7(b)3); • Loss of earnings for surviving spouse whose earning capacity has been reduced in case of victim/spouse's death; • Loss of support from the offender in domestic violence cases; • Limited transportation costs; • Mental health counseling for victim and immediate family members; • Limited domestic service, child care, day care and after school care costs; • Funeral allowances of up to \$5,000 (N.J.A.C. 13:75-1.7(e)5); • Loss of prescription eyeglasses; • Crime Scene Cleanup of up to \$1,500 (N.J.A.C. 13:75-1.7(o)(6); • Relocation expenses of up to \$2,500 (N.J.A.C. 13:75-1.7(m)3); and • Emergency financial assistance of up to \$1,500, if the victim is employed and unable to work and face undue hardship as a result of crime-related injuries. (N.J.A.C. 13:75-1.25(c)). <p>For crimes committed after June 26, 1995, if the victim is at least 60 years old or determined to be disabled and meet financial guidelines, the victim may be eligible for reimbursement for up to \$200 in stolen cash resulting from the assault and robbery. (N.J.A.C. 13:75-1.25(e))</p> <p>The Board will pay legal fees only if it awards compensation. Attorneys are limited to receiving fees that are set by statute and by the Board.</p> <p>For more information: http://www.state.nj.us/victims/pages/eligreq.htm</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Victims of sexual assault receive the following healthcare services during the forensic examination:</p> <ul style="list-style-type: none"> • routine medical screening; • medications for prophylaxis of some sexually transmitted infections; and • pregnancy tests. <p>Victims requiring emergency health care services beyond the scope of the forensic examination may be charged according to hospital policy for any services provided and can seek compensation.</p> <p>The following information has been summarized from http://www.state.nj.us/victims/admincode/admincode.htm; accessed July 2006</p>	
New Mexico	<p>BACKGROUND</p> <p>Generally, a victim of certain crimes (listed below) may receive compensation from the New Mexico Crime Victims Reparation Commission (the “Commission”) if the person who committed the crime is within the criminal jurisdiction of the State.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There is no eligibility requirement relating to immigration status. • In order to be eligible for compensation benefits, a victim must report the crime to the police within 30 days of its occurrence. However, if the person was a victim of domestic violence or sexual assault, the crime must be reported within 180 days of its occurrence. In the case of a crime against a child, compensation may still be awarded if the crime was reported within 30 days of its occurrence to the Children, Youth and Families Department, a domestic violence or sexual assault service provider, a teacher, or a health care provider. In 	<p>TO APPLY</p> <p>To apply for compensation, an application must be completed and submitted to the Commission.</p> <p>An application must be filed within 2 years after the date of the injury or death. N.M. Stat. Ann. § 31-22-14.A (2006) and NMAC § 10.40.2.8 (2006).</p> <p>Applications should be submitted to:</p> <p>Crime Victims Reparation Commission 8100 Mountain Road NE, Suite 106 Albuquerque, NM 87110</p> <p>For assistance, a victim may contact their local District Attorney’s Office.</p> <p>An applicant must provide all documentation that is necessary to verify reimbursable expenses. Such documentation may include invoices, receipts, and canceled checks. See</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>the latter case, a police report must be filed before payment is approved. The victim must fully cooperate with law enforcement. See N.M. Stat. Ann. § 31-22-14.A (2006) and NMAC § 10.40.2.8 (2006).</p> <p>Compensation may be paid to the victim, one or more of the victim’s dependents (in the case of the victim’s death), or to any person who voluntarily pays the funeral or medical expenses of the victim. See N.M. Stat. Ann. § 31-22-7.A (2006).</p> <p>The crimes for which compensation can be received include:</p> <ul style="list-style-type: none"> • arson resulting in bodily injury; • aggravated arson; • aggravated assault or aggravated battery; • dangerous use of explosives; • negligent use of a deadly weapon; • murder; • voluntary and involuntary manslaughter; • kidnapping; • criminal sexual penetration; • criminal sexual contact of a minor; • vehicular homicide or certain bodily injury caused by a vehicle; • child abandonment or abuse; • aggravated indecent exposure; and • aggravated stalking. <p>See N.M. Stat. Ann. § 31-22-8.A (2006).</p> <p>COMPENSATION</p> <p>The maximum amount that can be awarded on any one application is \$20,000 (except as discussed below). Compensation may be paid for:</p> <ul style="list-style-type: none"> • medical, dental, or hospital expenses incurred as a result of the victim’s injury or death; • funeral (not to exceed \$3,500); • counseling; • replacement or repair cost (including eyeglasses or medically necessary 	<p>NMAC § 10.40.2.10.C (2006).</p> <p>For more information, see http://www.state.nm.us/cvrc/</p> <p>For a claim application, see http://www.state.nm.us/cvrc/brochure/broc7.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>devices);</p> <ul style="list-style-type: none"> • loss of the victim’s earning power; • any other monetary loss resulting from the victim’s injury or death that the Commission determines is reasonable and proper; and • expenses relating to rehabilitation services provided to a victim of child abuse or neglect. <p>An additional \$30,000 may be awarded for extraordinary pecuniary losses if the victim’s personal injury is catastrophic and causes permanent and total disability. The extraordinary losses that may be compensated include:</p> <ul style="list-style-type: none"> • loss of wages; • cost of home health care; • cost of making home or automobile accessible; • cost of training in the use of special application; or • job training. <p>See N.M. Stat. Ann. § 31-22-14 (2006).</p> <p>In making its decision regarding whether to award compensation, the Commission will consider the behavior of the victim. The Commission may reduce or deny an award under certain circumstances, including if the victim:</p> <ul style="list-style-type: none"> • knowingly or willing was involved in the commission of the crime; • provoked or incited the crime; • engaged in illegal drug use; • engaged in gang-related crime or activity; • knowingly or willingly rode in a vehicle operated by a person under the influence of alcohol or a controlled substance; • was intoxicated or operated a vehicle while legally intoxicated; • failed to wear a seat belt; • falsified the application; • failed to have automobile insurance; or • engaged in a physical altercation. <p>See N.M. Stat. Ann. § 31-22-10 (2006); N.M. Stat. Ann. § 31-22-20 (2006); NMAC § 10.40.2.11 (2006).</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Expenses incurred must first be submitted to other available sources, including insurance, local indigent programs, Medicare, and Medicaid for payment. For example, certain counties may provide compensation for certain types of expenses. Expenses not covered will be considered for payment by the Commission.</p> <p>The Commission can appoint an impartial licensed physician to examine a person making an application for reparation. The fees for such examination will be paid by the Commission. See N.M. Stat. Ann. § 31-22-6.A (2006).</p> <p>Based on information provided through SANE, Sexual Assault Nurse Examiners, a victim may receive five free mental health sessions through the Behavioral Health Services Division of the Department of Health. Counseling also is available through Rape Crisis Centers. NMAC § 7.7.2.38 (2006).</p>	
New York	<p>BACKGROUND</p> <p>Innocent victims of crime may receive financial assistance under certain circumstances from the Board.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There is no eligibility restrictions based on immigration status. • In addition, the crime must have been reported to a criminal justice agency within 1 week of its occurrence. <p>A person is eligible to apply if he or she:</p> <ul style="list-style-type: none"> • Sustained personal physical injury as a result of the crime; • Was unlawfully imprisoned in the first 	<p>TO APPLY</p> <p>To apply for compensation, an application must be submitted to the Board within 1 year after the occurrence or discovery of the crime or not later than 1 year from the death of the victim. The Board may waive these deadlines for claims involving sex offenses or family offenses. In those cases, a police report must be filed within a reasonable time frame considering all circumstances.</p> <p>Applications should be submitted to:</p> <p>Crime Victims Board New York State 845 Central Avenue Albany, NY 12206</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>degree;</p> <ul style="list-style-type: none"> • Was kidnapped in the first or second degree; • Is 60 years or older, disabled and has suffered a loss or damage to essential personal property; • Is the surviving spouse, parent, grandparent, stepparent, child, stepchild or person dependent upon the victim if the victim died as a direct result of the crime; • Paid or incurred the burial expenses of an innocent victim who died as a result of the crime; • Is a child victim of or witness to a crime (under 18 years old) or his/her parent, guardian or sibling; or • Is the victim of a stalking offense. <p>If the victim is criminally responsible for the crime upon which his or her claim is based or if the victim was an accomplice, he or she will not be eligible to receive an award.</p> <p>For more information, see NY CLS Exec § 624 (2006) http://www.cvb.state.ny.us/services.htm</p> <p>COMPENSATION</p> <p>Generally, compensation benefits include:</p> <ul style="list-style-type: none"> • Medical expenses or other related services not covered by other resources; • Lost earnings or support up to \$600 per week, up to a maximum of \$30,000; • Burial expenses (up to \$6,000) or, in the case of the death of a police officer or firefighter who dies from injuries sustained in the line of duty, the Board will pay reasonable expenses related to costs incurred upon their death; • Occupational rehabilitation expenses; • Counseling for the victim and certain family members; 	<p>If available or applicable, the following documents should be attached to the application:</p> <ul style="list-style-type: none"> • correspondence with insurance companies or benefit plan that indicates whether the loss will be covered; • medical bills; • police reports; • insurance cards; • receipts for essential personal property; and • death certificate or funeral contract. <p>For a person under the age of 18 or a person who is incompetent, the claim application may be filed on their behalf by a relative, guardian, conservator, committee, or attorney.</p> <p>For more information, see NY CLS Exec § 625 (2006).</p> <p>For a claim application, see http://www.cvb.state.ny.us/app_forms.htm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • Repair or replacement cost of essential personal property up to \$500 (up to \$100 cash) or up to \$5000 for a good Samaritan’s property losses; • Transportation expenses for court appearances; • Cost of residing or using the services of a domestic violence shelter; • Crime scene related expenses up to \$2,500; and • Attorney’s fees for representation before the Board, up to \$1,000. <p>Emergency awards, not exceeding \$1,500, may be awarded in instances where an award will probably be made and where undue hardship will result to the claimant does not receive immediate payment. The amount of such awards will be deducted from the final award made to the claimant. However, if the amount of the emergency awards exceeds the final award, or if no final award is made, the claimant must repay the Board accordingly. See NY CLS Exec § 630 (2006).</p> <p>For more information, see http://www.cvb.state.ny.us/index.html</p> <p>Victims of sexual assault must be offered testing for HIV, hepatitis B, and hepatitis C when they are provided health care and the evidentiary exam is performed. Victims may receive a three-day supply of HIV prophylaxis and medication to prevent sexually transmissible infections, including chlamydia and gonorrhea. NY CLS Pub Health § 2805-p (2006).</p> <p>To receive reimbursement for expenses related to follow-up or post-exposure HIV prophylaxis, a victim can file a claim with the New York State Crime Victims Board (the “Board”).</p> <p>For more information, see:</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/docs/adult_protocol.pdf</p> <p>http://www.cvb.state.ny.us/FRE.htm</p>	
North Carolina	<p>BACKGROUND</p> <p>The compensation available to victims of crimes other than sexual assault is called Crime Victims Compensation. There are two types of compensation funds available to sexual assault survivors: Crime Victims Compensation and Rape Victims Assistance.</p> <p>Law enforcement agency investigating a crime committed against a victim must provide the victim with the following information:</p> <p>(1) The availability of medical services, if needed.</p> <p>(2) The availability of crime victims' compensation benefits and the address and telephone number of the agency responsible for providing these funds.</p> <p>NC Crime Victims Rights' Act § 15A-831.</p> <p>A crime victim has the right to receive restitution as ordered by the court. Article 81C of Chapter 15A of the General Statutes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • In order to receive Crime Victims Compensation, the victim must fully cooperate with the law enforcement investigation and also report the crime within a 72-hour period. • In order to receive Rape Victims Assistance, cooperation with law enforcement is not necessary. A police report in which the victim chooses not to press charges is sufficient to receive Rape Victims Assistance funds. However, the victim's name must be 	<p>TO APPLY</p> <p>The victim or legal representative may request an application for Crime Victims Compensation from the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services.</p> <p>In order to receive Crime Victims Compensation, the victim (or a legal representative) must file an application for compensation within two (2) years of the assault. Any economic losses must have been incurred within one (1) year of the assault, except for children under age ten who may be compensated for losses up to two years after the assault. In other words, children under age ten can continue to receive services (mental health therapy, medical services etc.) relative to the crime for up to two years after the incident while adults and children over age ten may only receive services for up to one year after the incident.</p> <p>There is no application for Rape Victims Compensation and the victim does not need to have any direct interaction with the Division of Victims Compensation Services in order for this kind of reimbursement to be provided. Instead, health care providers are responsible for providing all necessary materials to the Division on the victim's behalf.</p> <p>In order to receive Rape Victims Assistance:</p> <ul style="list-style-type: none"> • The bill must be submitted within six months of the date of service provided; • The victim's name must be identified for the service provider to apply for such funds; • The medical treatment covered must have been received within 90 days after the

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>identified for the service provider to apply for such funds. In addition, the assault must have been reported to law enforcement within five (5) days of the assault; and the forensic medical examination must have been performed within five (5) days of the assault.</p> <p>The following individuals are eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • The victim; • The victim’s family; or • The service providers (e.g., hospitals). <p>COMPENSATION</p> <p>Victims may receive up to a maximum of \$30,000 in compensation benefits. The following benefits may be covered under the program:</p> <ul style="list-style-type: none"> • Medical and mental health services; • Lost wages; • Funeral services; • Replacement services; • Crime scene cleanup costs; and • Travel costs necessary to obtain medical services. <p>The Assistance Program for Victims of Rape and Sex Offenses provides reimbursement for expenses incurred by victims of sexual assault including:</p> <ul style="list-style-type: none"> • Immediate and short-term medical expenses; • Ambulance services from the place of the attack to a place where medical treatment is provided; • Mental health services provided by a professional licensed or certified by the State to provide such services; and • Counseling treatment following the attack. <p>More specifically, rape victims can also receive coverage for STD screening and treatment, and pregnancy testing. (N.C.G.S.A. § 143b-480.2)</p> <p>The Assistance Program for Victims of Rape and Sex Offenses pays for all eligible expenses in addition to a forensic examination (as outlined above) in an amount not to exceed the difference</p>	<p>assault; and</p> <ul style="list-style-type: none"> • Itemized bills must be submitted by the medical staff to the Rape Victims Assistance Program (at the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services) within six (6) months after the date of service, along with the name of the law enforcement agency to which the crime was reported. <p>See the following link for more information:</p> <p>http://www.nccrimecontrol.org</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>between the full cost of the forensic medical examination and one thousand dollars (\$1,000). For instance, if the cost of the forensic medical examination is one thousand dollars (\$1,000) or more, then the Program will only pay for the forensic medical examination. (N.C.G.S.A. § 143b-480.2)</p> <p>If a rape victim has expenses that total more than the one thousand dollar maximum provided by the Rape Victims Assistance Program, the victim can then apply to receive Crime Victims Compensation funds. If the application is approved, the victim’s file is transferred from the Rape Victims Assistance Program to Crime Victims Compensation and the victim may receive additional benefits up to the \$30,000 maximum (\$31,000 including Rape Victims Assistance).</p>	
North Dakota	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement within 72 hours; provided that, in the case of child abuse or sexual molestation of a child, the crime must be reported by age 21. The victim must also reasonably cooperate with law enforcement, and must not have been assisting in, or committing a criminal act that caused the victim’s injuries. See N.D. Cent. Code §54-23.4-06 <p>Victims of certain types of crimes may receive compensation from the state if the crime occurred in North Dakota. The types of crimes compensated under the program include:</p> <ul style="list-style-type: none"> • Drunk driving; • Hit and run; and • Any violent crime that results in death or bodily injury, including domestic violence and sexual assault. 	<p>TO APPLY</p> <p>Absent good cause, an application must be filed within one year from the date of the crime or discovery of the crime.</p> <p>See N.D. Cent. Code §54-23.4-06</p> <p>The victim must complete an application and file it with the Crime Victims Compensation Program. Victims’ advocates, domestic violence/sexual assault programs, law enforcement personnel and medical providers provide victims with either applications or referrals to the Crime Victims’ Compensation Program for an application.</p> <p>TO APPEAL</p> <p>If an application is denied by the Crime Victims Compensation Program, a victim has 30 days to request an informal review by the Attorney General’s office. If that review is denied, a victim has the right to pursue either (1) a formal hearing with an administrative hearings officer or (2) an appeal to a district</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>N.D. Cent. Code §54-23.4-01</p> <p>Eligible claimants include the following:</p> <ul style="list-style-type: none"> • Innocent victims who have been physically or emotionally injured in a violent crime in North Dakota or where a compensation program is not available; • The victim does not need to be a resident of North Dakota; • North Dakota residents injured by an act of terrorism in a foreign country; • Dependents of a homicide victim; or • Individuals who assume responsibility for funeral and/or medical expenses of a homicide victim. <p>http://www.state.nd.us/docr/parole/victim_comp.htm</p> <p>“Victim” means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good-faith effort to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.</p> <p>N.D. Cent. Code §54-23.4-01.8</p> <p>COMPENSATION</p> <p>Maximum compensation benefits must not exceed \$25,000. Compensation benefits include:</p> <ul style="list-style-type: none"> • Medical and medical-related expenses (including STD and pregnancy testing, post coital treatment, HIV/AIDS); • Mental health counseling; • Loss of income (not to exceed \$300/week); • Replacement services loss (expenses incurred in obtaining services the victim would have performed if the victim had not been injured); • Dependent’s economic loss (loss of deceased’s wages); and • Funeral/burial expenses (not to exceed \$3,000). <p>http://www.state.nd.us/docr/parole/victim_comp.htm</p>	<p>court.</p> <p>For additional information:</p> <p>http://www.state.nd.us/docr/parole/victim_home.htm or</p> <p>http://www.ndcrimevictims.org/compensation.htm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>omp.htm</p> <p>N.D. Cent. Code §54-23.4-06.8.</p> <p>Compensation is only provided if there is no other source of reimbursement.</p>	
Ohio	<p>BACKGROUND</p> <p>Innocent victims may receive compensation under Ohio’s Crime Victims Compensation Act to recover economic losses resulting from violent crimes.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible for compensation, the crime must be reported to law enforcement officials within 72 hours from the time it occurs. <p>An applicant may be the direct victim of the crime, or a survivor if the crime results in a death.</p> <p>The applicant must be a resident of the U.S. or a resident of a foreign country of which the laws permit residents of Ohio to recover compensation as victims of offenses committed in that country; or</p> <p>The applicant has a permanent place of residence within Ohio at the time of the crime and falls into one of the following categories:</p> <ul style="list-style-type: none"> • had a permanent place of employment within Ohio; • was a member of the regular armed forces of the US or of the US coast guard, the Ohio organized militia, US army reserve, naval reserve, or air force reserve; • was retired and receiving social security or other retirement income; • was at least sixty years old; • was temporarily in another state for purpose of receiving medical 	<p>TO APPLY</p> <p>An application for compensation must be completed and filed with the Attorney General’s office. An application can be filed: (a) if the victim was a minor, within 2 years of a minor victim’s eighteenth birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later; (b) if the victim was an adult, within two years after the occurrence of the crime. Ohio Revised Code § 2743.56.</p> <p>An assistant attorney general will issue a Finding of Fact and Decision within 120 days from receiving the claim. If the applicant does not agree with the findings, the applicant may file a Request for Reconsideration within 30 days from the date of the Finding of Fact and Decision. The Attorney General has 60 days to issue a Final Decision.</p> <p>TO APPEAL</p> <p>If the applicant does not agree with the Final Decision, the applicant has 30 days to file an appeal for review before a three-commissioner panel of the Court of Claims of Ohio. Decisions by the panel may be appealed to the judge of the Court of Claims. However, the judge of the Court of Claims may only reverse the panel decision if the decision is contrary to law or not reasonable given the evidence in the claim.</p> <p>For additional information:</p> <p>http://www.ag.state.oh.us/victim/forms/cvc_co</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>treatment;</p> <ul style="list-style-type: none"> • was temporarily in another state for the purpose of performing employment-related duties required by an employer located within Ohio; or • was temporarily in another state for the purpose of receiving occupational, vocational, or other job-related training or instruction required by an employer located within Ohio. <p>Crimes covered under the program include homicide, assault, menacing, stalking, sexual assault, domestic violence, and intimidation of an attorney, victim, or witness. Ohio Revised Code § 2930.01(A)(2).</p> <p>However, a violent crime does not include conduct that arises out of the ownership, maintenance or use of a motor vehicle except if the person engaging in the conduct intended to cause injury or death, or if the injury or death occurred while the person engaging in the conduct was fleeing immediately after committing a felony. Ohio Revised Code § 2743.51</p> <p>Law enforcement agencies are required to provide victims of violent crimes with information, including medical care, counseling, housing, emergency, compensation, and any other services that are available to a victim. Ohio Revised Code § 2930.04.</p> <p>Each hospital in Ohio that offers emergency services is required to have on staff a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses. Each victim shall be informed of available venereal disease, pregnancy, medical, and psychiatric services. Ohio Revised Code §2907.29.</p>	<p>mpensation_application.pdf</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>COMPENSATION</p> <p>The maximum amount of compensation that will be paid per victim per claim will be \$50,000. Claims may be submitted for reasonable charges incurred for reasonable needed products, services, and accommodations, including:</p> <ul style="list-style-type: none"> • Medical care; • Counseling for family members of victims for specific crimes (up to \$2,500 each, maximum \$7,500 per claim); • Rehabilitation; • Wages lost; • Replacement services; • Crime scene clean-up/repair for safety (up to \$750); and • Funeral expenses (up to \$7,500). <p>Ohio Revised Code § 2743.51(F)(1).</p> <p>Compensation will not be paid on stolen, damaged, or lost property, or for pain and suffering due to violent crimes. However, if victim receives treatment for pain and suffering, the victim may receive compensation for the cost of treatment.</p> <p>Family members of a victim who died as a result of a violent crime may be reimbursed for wages lost and travel expenses in order to attend criminal justice proceedings (not to exceed \$500 for each family member of the victim and \$2,000 for all family members).</p> <p>Ohio Revised Code § 2743.51. http://www.ag.state.oh.us/victim/compensation.asp</p>	
Oklahoma	<p>BACKGROUND</p> <p>Victims of criminal acts suffering physical or psychological injury or death within Oklahoma or who are residents of Oklahoma who become victims in states with no crime victims compensation program may apply for compensation for</p>	<p>TO APPLY</p> <p>The applicant must complete an application and file it with the Crime Victims Compensation Board within one year after the injury or death upon which the claim is based. The one year requirement may be waived by the Board if there is good cause for failure to file the claim within one year, but in no event</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>economic losses resulting from the crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • To be eligible to receive compensation, the crime must be reported to a law enforcement agency within 72 hours of its occurrence. <p>Persons who are eligible for compensation under the Crime Victims Compensation Program are:</p> <ul style="list-style-type: none"> • Victims; • Dependents of a victim who died because of the crime; and • Persons authorized to act on behalf of the victim or the dependent of the victim. <p>Oklahoma Statutes § 142.3.</p> <p>Crimes covered under the Crime Victims Compensation Program include misdemeanors or felonies occurring or attempted within Oklahoma or against a resident of Oklahoma within a state that does not have a comparable program that results in bodily injury or death to a victim which may be punishable by fine, imprisonment, or death, or if the crime is committed by a child, the child could be adjudicated as a delinquent.</p> <p>Crimes do not include those acts involving the negligent maintenance or use of a motor vehicle, unless:</p> <ul style="list-style-type: none"> • The offender was under the influence of an intoxicating substance; • The offender intended to injure or kill; or • The act involved willful, malicious or felonious failure to stop after being involved in a personal injury accident. <p>Oklahoma Statutes § 142.3.</p>	<p>shall the filing be permitted after two years. If the victim is mentally handicapped or under eighteen years, the Board may use the date the criminal incident was disclosed to a responsible adult when determining whether or not the claim was filed in a timely manner.</p> <p>Oklahoma Statutes § 142.10.</p> <p>A three-panel Board will hear and make determinations on all matters relating to claims for compensation of \$2,500 or more and may hear claims under \$2,500. Oklahoma Statutes § 142.5.</p> <p>Applicants will be notified as to when their claim will be considered by the Board so they can attend if they choose to. Oklahoma Statutes § 142.5.</p> <p>Once the Board renders a decision, the applicant will be notified of the decision within 2-3 weeks.</p> <p>TO APPEAL</p> <p>Appeals may be made to the Board for a formal hearing if the applicant is not satisfied with the initial decision. If the applicant is dissatisfied with the formal decision, the applicant may file a petition in District Court.</p> <p>http://www.dac.state.ok.us/victim/victimcomp.asp?A=5&B=4</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>COMPENSATION</p> <p>Economic loss resulting in injury or death to victim, which may be claimed by the victim or another claimant, may not exceed \$20,000. Assistance is available for the following types of out-of-pocket expenses, among other things:</p> <ul style="list-style-type: none"> • Medical care (doctor exams, dental work, hospital treatment, hospital stay, artificial limbs, prescriptions, and eye glasses); • Wage loss; • Replacement services; • Survivor benefits; • Crisis counseling within 3 years of the crime not to exceed \$3,000 for each family member of a homicide victim; • Individual counseling sessions for victims of a crime not to \$3,000; • Individual mental health treatment will be considered for compensation not to exceed \$10,000; • Reasonable funeral, cremation or burial expenses not to exceed \$6,000. • Homicide crime scene cleanup; and • Caregiver loss of support (not to exceed \$2,000). <p>Property losses and Pain and Suffering is not covered under the program.</p> <p>http://www.dac.state.ok.us/victim/victimcomp.asp?A=5&B=4</p> <p>Loss of support for a dependent of the deceased victim is computed based on a formula which calculates the net loss of support for dependents based upon an estimated date of retirement or an estimated date of adulthood for the dependent children.</p> <p>Oklahoma Statutes § 142.13.</p> <p>For additional information, contact the District Attorney’s Council at (800) 745-6098.</p> <p>http://www.ok.gov/dac/documents/VICTIMS%20COMP%20ACT%20JULY%201,%2</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	02005.pdf	
Oregon	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. In addition, per the Application for Crime Victim Compensation, refusal to submit social security numbers will not result in denial. • Report the crime to the appropriate law enforcement officials within 72 hours. The reporting requirement may be waived with good cause. • The victim of a sexual assault may obtain a medical assessment and complete and submit an application form to the Sexual Assault Victims Emergency Medical Response Fund regardless of whether the victim reports the sexual assault to a law enforcement agency. <p>Victims of crime may receive compensation from the state of Oregon if the crime occurred in Oregon. The types of crimes include robberies, child abuse, assaults, rapes, domestic violence, homicides and other intentional, knowing or reckless acts by a person resulting in physical and/or emotional injury and/or death of another person which would be punishable as a crime.</p> <p>In order to be eligible to receive compensation benefits under the program, a victim must:</p> <ul style="list-style-type: none"> • Cooperate fully to apprehend and prosecute the assailant. • Not have been involved in a wrongful act and/or did not provoke the assailant. <p>An “eligible victim” for the purposes of accessing the Sexual Assault Victims Emergency Medical Response Fund (SAVE</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Oregon Department of Justice Crime Victims Compensation Program. The victim must:</p> <ul style="list-style-type: none"> • Be a victim of a compensable crime that occurred in Oregon. • Apply for compensation within six (6) months of the crime.* <p>*May be waived with good cause.</p> <p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738 http://www.doj.state.or.us/crimev/comp.shtml</p> <p>The victim applying for SAVE benefits must complete and submit a completed application form to the victim’s medical service provider. A copy of the form may be found at: http://www.doj.state.or.us/crimev/pdf/sa_fundf_inal.pdf.</p> <p>To obtain payment from the SAVE Fund, the medical services provider must submit the form to the Oregon Department of Justice within one year. A provider who submits a bill may not bill the victim or the victim’s insurance carrier for the medical assessment except to the extent that the SAVE Fund is unable to pay the bill due to lack of funds or declines to pay the bill.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>Fund) is a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a “complete medical examination” within 84 hours of the assault or a “partial medical examination” within 168 hours (seven days) of the sexual assault.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Reasonable mental health counseling expenses. • Reasonable medical and hospital expenses. • Eyeglasses, hearing aids, dentures, and other medically necessary devices and expenses. • Funeral expenses. • Documented loss of support to dependents of homicide victims. • Victim’s documented loss of earnings. • Grief counseling expenses for relatives of homicide victims. • Rehabilitation expenses. • Counseling expenses for children who witness domestic violence. • Mileage expenses. • In the case of child sex abuse, reasonable counseling expenses of the victim’s family. <p>Compensation is <u>not</u> provided for:</p> <ul style="list-style-type: none"> • Pain and suffering or property damage or loss. • Nervous or mental shock due to property damage or loss. <p>An individual’s benefits, such as sick leave, medical disability, social security, or restitution are considered resources that must be used before Crime Victim’s compensation dollars.</p> <p>Oregon Revised Statute Chapter 147.</p> <p>The Sexual Assault Victims Emergency Medical Response Fund (SAVE Fund)</p>	<p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738</p> <p>http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>provides dollars to pay for sexual assault medical exams, forensic exams, and STD prophylaxis for any victim of a sexual assault that occurred within Oregon, regardless of ability to pay. There is no restriction based on Oregon residency or immigration status, and the Crime Victims Assistance Section does not review the immigration status of victims. In addition, the SAVE Fund application does not ask for social security numbers. Both qualified and non-qualified immigrants are eligible.</p> <p>The SAVE Fund pays for any of or all the elements of a “Complete” Medical Assessment, which includes the collection of forensic evidence and must be conducted within 84 hours of the assault; and for any of or all the elements of a “Partial” Medical Assessment which does not include the collection of forensic evidence and must be conducted within 7 days of the assault.</p> <p>Examples of services not covered by the SAVE Fund include: treatment of injuries, DNA testing, HIV testing, laboratory testing of blood for any purpose, and prescriptions filled off-site of the location of the medical examination.</p> <p>For additional information, see Oregon Administrative Rules 137-084-0001 - 137-084-0030, temporary provisions relating to medical assessments for victims of sexual assaults compiled as a note preceding Oregon Revised Statute 147.0005, and http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml.</p>	
Pennsylvania	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • Victims must promptly report the crime to the proper authorities, and in no case may an award be made if the report was made more than 72 hours after the occurrence of the crime 	<p>TO APPLY</p> <p>A victim shall provide a valid address and telephone number and any other required information to all agencies responsible for providing information and notice to the victim. The information shall not be disclosed to any person other than a law enforcement agency, corrections agency or prosecutor’s office without the victim’s prior consent. 18 P.S. §</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>unless: (i) the victim was under the age of 18 and the alleged offender was a parent, a person responsible for the victim’s welfare, a person residing in the same household or a paramour of the victim’s parent; or (ii) the Office of Victims’ Services finds that the delay was justified. Similarly, no award for compensation will be made unless the direct victim or claimant has fully cooperated with all law enforcement agencies and the Office of Victims’ Services unless the Office of Victims’ Services finds such non-compliance to have been justified.</p> <p>A delay in reporting a crime to the appropriate authorities may delay or prohibit a victim from receiving compensation benefits. 18 P.S. § 11.707(a).</p> <p>Compensation benefits are available to:</p> <ul style="list-style-type: none"> • Victims of crimes committed in Pennsylvania (without regard to residency); • Residents of Pennsylvania who are victims of acts that would be a crime under Pennsylvania law if they occurred in Pennsylvania or constitute acts of international terrorism. <p>A “direct victim” is an individual that suffers “physical or mental injury, death or the loss of earnings.”</p> <p>The definition of a “victim” eligible for compensation under the Act includes, in addition to a direct victim:</p> <ul style="list-style-type: none"> • A parent or guardian of a child that is a direct victim (unless the parent or guardian is the alleged offender); • A minor child who is a material witness to certain crimes, including rape, committed or attempted against a family member; and • A family member (other than an alleged offender) of a homicide victim. <p>18 P.S. § 11.103.</p>	<p>11.211.</p> <p>A claim for compensation must be filed: (i) within two years of the discovery of the occurrence of the crime; (ii) within two years of the death of the direct victim as a result of the crime; or (iii) within two years of the discovery and identification of the body of a murder victim. The two-year limitation period may be extended for victims under the age of 18 until they reach 21 years of age. 18 P.S. § 11.702(b).</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>COMPENSATION</p> <p>Compensation is limited to out-of-pocket loss and loss of earnings, not to exceed \$35,000 in total. 18 P.S. § 11.707(b).</p> <p>Out-of-pocket losses include:</p> <ul style="list-style-type: none"> • Unreimbursed expenses for medical care and non-medical remedial care and treatment (including physical therapy, medications, ambulance, home health care, replacement services, child care medical equipment/supplies, or transportation costs to medical and counseling appointments or pharmacy visits) PA Code 411.103; • Expenses for counseling, prostheses, wheelchairs and other enumerated devices required as a result of the crime; • Expenses for temporary or permanent relocation; • Expenses for physical examinations and materials used to obtain evidence; • Other reasonable expenses deemed necessary as a direct result of the crime. 18 P.S. § 11.103. <p>In addition, the compensation fund will cover the costs for STD and pregnancy testing directly relating to the crime.</p> <p>http://www.pccd.state.pa.us/pccd/cwp/view.asp?A=1393&Q=572575</p> <p>Awards made pursuant to the Act will not affect the claimant's or direct victim's eligibility under public assistance or any other Federal or state social benefit or assistance program. 18 P.S. § 11.707(c).</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
Rhode Island	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • The law does not specifically exclude immigrants from receiving compensation benefits. However, the application for compensation requests that the applicant provide a social security number. An official from Rhode Island’s Victim Compensation office stated that an applicant’s inability to provide a social security number will not, in and of itself, limit an immigrant’s ability to receive benefits. • To be eligible to receive compensation, you must report the crime to law enforcement authorities within 10 days from the occurrence of the crime. <p>In any case in which a person is injured or killed by any act of a person or persons, the victim or a legal representative may apply to the state’s Victim Compensation Office. The Office may award compensation if the criminal act occurred:</p> <ul style="list-style-type: none"> ▪ Within the physical confines of the state of Rhode Island; ▪ Within the maritime jurisdiction of the state of Rhode Island; ▪ Outside the state of Rhode Island to any victim who has his or her residence in the state of Rhode Island and had the residence in the state at the time that the offense occurred, and is not entitled to compensation of any kind from the state in which the offense occurred; or ▪ Outside the state of Rhode Island to any victim who had his or her residence in the state of Rhode Island at the time the offense occurred who is injured or killed by an act of terrorism occurring either outside of the United States or within. <p>R.I. Gen. Laws §12-25-19.</p> <p>COMPENSATION</p> <p>No compensation shall be awarded in a</p>	<p>TO APPLY</p> <p>Section 12-25-22 (2006) of the General Laws of Rhode Island provides that actions for compensation under this chapter shall be commenced within three (3) years after the date of the personal injury or death, and no compensation shall be awarded for an injury or death resulting from a crime which was not reported to the appropriate law enforcement authority within ten (10) days of its occurrence; provided, that the office shall have the authority to allow a claim which was not reported pursuant to this section when the victim was below the age of eighteen (18) years of age or of unsound mind, or for good cause shown.</p> <p>In determining the amount of the judgment or order approving a settlement, the Office shall take into consideration the rates and amounts payable for injuries and death under other statutes of this state and of the United States, and the amount of revenue in the violent crimes indemnity account and the number and nature of claims pending against it. The Office shall make every effort to ensure that compensation awards are paid within six (6) months of the date of application. R.I. Gen. Laws § 12-25-21 (2006)</p> <p>For more information see:</p> <p>http://www.treasury.ri.gov/crimevictim/</p> <p>http://www.treasury.ri.gov/documents/CVCP_Regs_2009.pdf (2009)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>total amount in excess of twenty-five thousand dollars (\$ 25,000) plus any attorney’s fees awarded upon appeal to the treasurer or to the superior court.</p> <p>R.I. Gen. Laws §12-25-22.</p> <p>Compensation benefits include:</p> <ul style="list-style-type: none"> • Expenses actually and reasonably incurred as a result of the personal injury or death of the victim; • Pecuniary loss to the dependents of the deceased victim; • Any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the Office finds upon the evidence to be reasonable and necessary; • Supplemental award for compensation for additional medical expenses, including psychiatric care and mental health counseling, provided that the victim provides proper documentation that the additional medical expenses have been actually and reasonably incurred as a direct result of the personal injury; and • Expenses related to psychiatric care and mental health counseling for a parent, spouse, minor sibling or minor child of a victim who dies as a direct result of a violent crime, provided that proper documentation is provided. <p>R.I. Gen. Laws §12-25-21.</p> <p>The Office may award emergency compensation under this chapter for the burial expenses of a victim who dies as a direct result of a violent crime, not to exceed five thousand dollars (\$5,000). The award for emergency compensation shall be deducted from the final award. R.I. Gen. Laws § 12-25-21.1.</p> <p>The treasurer may award attorney' fees, not to exceed fifteen percent (15%) of the total amount awarded to the plaintiff, or fifteen hundred dollars (\$1,500). R.I. Gen. Laws § 12-25-25.</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>For more information see: http://www.treasury.ri.gov/crimevictim/</p>	
<p>South Carolina</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no explicit eligibility restrictions based on immigration status. However, a state agency representative indicated that an application may not be processed if the office becomes aware of that the applicant is undocumented. • The crime must promptly be reported to the proper authority and recorded in police records (a crime reported more than 48 hours after its occurrence is not ‘promptly reported’, absent a showing of special circumstances or causes which justify the delay). <p>A victim, surviving spouse, or a parent or legally dependent child of a victim is entitled to file for benefits from the state’s victim compensation fund if either:</p> <ul style="list-style-type: none"> • the offense was committed in South Carolina; or • the victim was a resident of South Carolina when the crime was committed in either another state or outside the United States if the crime is terrorism; or • the victim was a resident of South Carolina when the offense was committed in another state. South Carolina Code § 16-3-1210. <p>No award may be made unless:</p> <ol style="list-style-type: none"> (1) a crime was committed; (2) the crime directly resulted in physical or psychic trauma to the victim; (3) the crime was promptly reported to the proper authority and recorded in police records; and (3) the claimant or other award recipient has fully cooperated with 	<p>TO APPLY</p> <p>South Carolina Code § 16-3-1230 provides that a:</p> <ol style="list-style-type: none"> (1) A claim may be filed by a person eligible to receive an award, or, if the person is an incompetent or a minor, by his parent or legal guardian or other individual authorized to administer his affairs; (2) A claim must be filed by the claimant not later than one hundred eighty (180) days after the latest of the following four events: (a) the occurrence of the crime upon which the claim is based; (b) the death of the victim; (c) the discovery by the law enforcement agency that the occurrence was the result of crime; or (d) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor. Upon good cause shown, the time for filing may be extended for a period not to exceed four (4) years after the occurrence or death. "Good cause" for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim's Compensation Fund but does not mean simply ignorance of the law; and (3) Claims must be filed in the office of the Deputy Director by mail or in person. The Deputy Director shall accept for filing all claims submitted by persons eligible under this section and meeting the requirements as to the form of the claim contained in the regulations of the Board. <p>For more information see:</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>all law enforcement agencies and with the South Carolina Victim's Compensation Fund. § 16-3-1170</p> <p>COMPENSATION</p> <p>The aggregate of award to and on behalf of victims may not exceed \$15,000 unless extraordinary circumstances exist and in that case, the award may not exceed \$25,000. § 16-3-1180</p> <p>An award may be made for: (§ 16-3-1180)</p> <ul style="list-style-type: none"> • Medical services, including mental health counseling, required and rendered as a direct result of the injury on which the claim is based, as long as these services are rendered by a licensed professional. Payment for mental health counseling is limited to the number of sessions during a 180 day period beginning on the date of the first counseling session or 20 sessions, whichever is greater; § 16-3-1180 • Reasonable and customary charges for other services required and rendered as a direct result of the injury upon which the claim is based, as long as the service is rendered by a professional or paraprofessional who holds a license or other appropriate documentation of training; § 16-3-1180 • Loss of earning or support, provided that the claimant is deprived of that income for at least two consecutive weeks, the loss is not reimbursable, the amount may not exceed the average weekly wage in South Carolina for the preceding fiscal year (§ 42-1-50) (these conditions may be waived in severe hardship cases); • Employment-oriented retraining or rehabilitative services incurred as a direct result of the injury; and • Burial expenses not to exceed \$4,000. <p>The Office may award emergency compensation pending a final decision on the case, provided that the amount of each</p>	<p>http://www.oepp.sc.gov/sova/compensation.html</p> <p>South Carolina Code § 16-3-1520 provides that a victim is entitled to copy of initial incident report; assistance in applying for victim's compensation benefits; information on progress of case and that a law enforcement agency must provide a victim, free of charge, a copy of the initial incident report of his case.</p> <p>For more information see:</p> <p>http://www.oepp.sc.gov/sova/compensation.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>emergency award does not exceed five hundred dollars and a total amount of one thousand dollars. The award for emergency compensation must be deducted from the final award. § 16-3-1150</p> <p>For more information see: http://www.oepp.sc.gov/sova/compensation.html</p>	
South Dakota	<p>BACKGROUND</p> <p>The South Dakota Victims’ Compensation Program is implemented by S.D. Codified Law Chapter 23A-28B, including the creation of a Crime Victims’ Compensation Commission. S.D. Codified Laws § 23A-28B-3. “The department or commission, as applicable may order payment of victims’ compensation in accordance with the provisions of this chapter for reasonable economic losses incurred as a direct result of personal injury to or death of a victim, including any economic loss as defined in § 23A-28B-1. S.D. Codified Laws § 23A-28B-19. Sec. 23A-28B-1 defines economic loss as “medical and hospital expenses, loss of earnings, loss of future earnings, funeral and burial expenses,” among others.</p> <p>http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=23a-28b&Type=Statute</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Note that the Crime Victims’ Compensation Application has a space for the victim’s Social Security Number. A state agency representative confirmed that applicants will not be denied access to funding if they cannot provide a social security number. • Compensation may not be awarded if the crime is not reported to authorities within 5 days, unless that was not reasonable, in which case, it must have been reported within 5 days of the time 	<p>TO APPLY</p> <p>Persons seeking compensation must complete the Crime Victims’ Compensation Application Form, which are available from all local law enforcement agencies, the Department of Social Services, or the Office of the Attorney General. http://dss.sd.gov/victimservices/cvc/eligibility.asp</p> <p>S.D. Codified Laws 23A-28B-11.</p> <p>Compensation may not we awarded if:</p> <ul style="list-style-type: none"> • the victim fails or refuses to cooperate fully with any appropriate law enforcement officer or agency or with the department in the administration of this chapter; or • the claim is not filed within 1 year of the injury (can be waived for good cause). <p>S.D. Codified Laws § 23A-28B-25. See also S.D. Administrative Rules 67:55:01:07 and 67:55:01:08</p> <p>The Compensation Program is funded by VOCA, in addition to receiving \$2.50 on every criminal conviction, including traffic violations.</p> <p>S.D. Codified Laws 23A-28B-42. http://www.nacvcb.org/progdir/southdakota.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>it became reasonable to report it.</p> <p>Eligible Applicants to the Compensation Program include:</p> <ul style="list-style-type: none"> • innocent victims of a violent crime who suffered harm; • family member of a deceased victim; • person authorized to act on behalf of a victim or dependent; and • parents or other family member under limited circumstances. <p>S.D. Codified Laws 23A-28B-18.</p> <p>Acts eligible for compensation include injuries resulting from:</p> <ul style="list-style-type: none"> • a violent crime; • trying to stop a person from committing a crime; • trying to help a law enforcement officer; • trying to help a victim of a crime; or • witnessing a violent crime. <p>http://dss.sd.gov/victimservices/cvc/eligibility.asp</p> <p>Crimes Covered under the Compensation Program include any conduct that results in personal injury or death and is punishable as a felony or misdemeanor. S.D. Codified Laws § 23A-28B-3.</p> <p>COMPENSATION</p> <p>Not to exceed \$15,000 and including: (S.D. Codified Laws § 23A-28B-21).</p> <ul style="list-style-type: none"> • Medical Expenses <ul style="list-style-type: none"> ○ physician and other health services ○ hospital services ○ home health services (limited to \$100 a month for up to 12 months) ○ adult dental services ○ chiropractic expenses (limited to 10 treatment sessions, not to exceed a total of \$500) ○ payment for medical expenses 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>is limited to those medical services provided during the 12-month period immediately following the date the crime occurred; the Commission can extend it if good cause is shown.</p> <ul style="list-style-type: none"> • Mental Health Counseling (24 sessions for primary victim, 18 sessions for family member of homicides, 6 sessions for parents of juvenile victims and spouses of rape victims) • Lost wages/support (up to 40 hours for parents caring for children) • Funerals (\$6,500) • Replacement services (Housekeeping and child care) • Crime-scene cleanup/evidence (up to \$1,000 for homicide-scene cleanup and \$500 for clothing/personal items used for evidence) • Travel (mileage reimbursement of up to \$720 to attend treatment) • Rehabilitation • Emergency (\$1,000) (§ 23A-28B-27). <p>http://www.nacvcb.org/progdir/southdakota.html</p> <p>S.D. Codified Laws 23A-28B-21.</p> <p>No attorney is needed and compensation cannot be paid for attorney’s fees.</p> <p>http://dss.sd.gov/victimservices/cvc/eligibility.asp</p>	
Tennessee	<p>BACKGROUND</p> <p>An innocent victim of a violent crime committed in the State of Tennessee, may be eligible for compensation. The purpose of the program is to assist victims of crimes or, in the case of the victim's death, their dependent family members in paying out-of-pocket expenses incurred as the direct result of personal injuries sustained by a criminal offense.</p> <p>Tennessee Code 29-13-102 - 411. http://treasury.tn.gov/injury/</p> <p>ELIGIBILITY</p>	<p>TO APPLY</p> <p>Before seeking compensation from the fund, the victim or their surviving dependents must seek any amounts that they are legally entitled to receive as a result of the injuries from any other public or private source including, but not limited to, insurance, Medicaid, Medicare, workers' compensation, etc. Should the amounts received from such other sources not cover all eligible losses and expenses, then the victim may apply for criminal injuries compensation. In order to receive compensation, the following conditions must be met:</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. A state official from the Victim Compensation program confirmed that an immigrant’s inability to provide a social security number on the application should not affect his or her eligibility to receive compensation benefits. • In order to receive compensation benefits, the victim (or the victim's survivors) must report the crime to the proper authorities within 48 hours after the crime was committed, unless the victim was a minor, or unless good cause can be shown for reporting the crime late. In addition, the individual could not have contributed to his or her own victimization in any way and the victim must fully cooperate with law enforcement officials in their investigation and prosecution. <p>A person may be eligible for benefits under the following circumstances:</p> <ul style="list-style-type: none"> • A person who suffered bodily injury as an innocent victim of a criminal act occurring in a state or federal jurisdiction within the borders of Tennessee. • A resident of Tennessee who was an innocent victim of terrorism or mass violence that occurred outside the territorial boundaries of the United States and the claimant is not eligible for compensation under Title VIII of the Federal Omnibus Diplomatic Security and Antiterrorism Act of 1986. • A resident of Tennessee who was an innocent victim of a crime that occurred in another state which does not have a compensation program. • Survivors of a homicide victim for medical and funeral expenses, and, in some cases, dependency, mental health counseling and crime scene cleanup. If there are no surviving dependents, the victim's estate may receive compensation for unreimbursed funeral and burial expenses. • An innocent person who sustained bodily injury or death while attempting 	<ul style="list-style-type: none"> • A written claim for benefits must be filed within 1 year after the date of the criminal act, unless good cause can be established for not doing so. <p>Tennessee Code 29-13-108.</p> <p><i>Victim Compensation</i> 615-741-2734 Fax: 615-532-4979 Web site: http://treasury.tn.gov/injury/</p> <p><i>Victim Assistance</i> 615-741-8277 Fax: 615-532-2989 Web site: http://tennessee.gov/finance/rds/ocjp/</p> <p>Sexual Assault Crisis Center – SACC is a private nonprofit agency funded by United Way for victims of sexual assault. There are eight centers in Tennessee providing services including crisis intervention, forensic nursing, criminal justice support and advocacy, counseling and support groups.</p> <p>http://www.thesacc.org/pdfs/MainSACCInfo.pdf</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>to prevent a criminal act or in an attempt to apprehend a person or persons suspected of engaging in a criminal act.</p> <ul style="list-style-type: none"> • A person who suffered bodily injury or death as a result of a motor vehicle or watercraft accident caused by a drunk driver or by a driver who intentionally inflicted injury. In some circumstances, a passenger in the vehicle or watercraft driven by the drunk driver may not be eligible for compensation. • A person who sustained serious bodily injury or death directly as a result of a driver's failure to stop at the scene of an accident in violation of § 55-10-101 and the evidence shows that the operator of the motor vehicle knew or reasonably should have known that death or serious bodily injury had occurred. <p>Tennessee Code 29-13-105.</p> <p>COMPENSATION</p> <p>The overall maximum benefit currently available under the Criminal Injury Compensation Program is \$30,000. Compensation is provided for:</p> <ul style="list-style-type: none"> • Medical services, including hospital services in an amount not to exceed 75% of the billed charges; • Funeral and burial expenses (not to exceed \$6,000); • Mental health counseling or treatment (not to exceed \$3,500); • Permanent partial or total disability; • Expenses incurred as a result of traveling to and from the trial of the defendants, appellate, post-conviction, or habeas corpus proceedings resulting from the trial (not to exceed \$1,250); • Crime scene cleanup (not to exceed \$3,000); • Death benefits to the dependent of the deceased victim; • Relocation expenses; • Replacement costs (for example, for eyeglasses or hearing aids damaged during the crime); • Attorney's fees may be awarded (shall not exceed the lesser of (1) 15% of the first \$2,500 of compensation awarded 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>plus 10% of any compensation awarded over \$2,500 or (2) \$375 for claims resulting in death of victim or \$500 for all other claims. Tennessee Code 29-13-112; and</p> <ul style="list-style-type: none"> • Emergency award (not to exceed \$500). Tennessee Code 29-13-114. <p>Unless otherwise noted above, Tennessee Code 29-13-106 and Tennessee Code 29-13-107.</p> <p>Benefits are reduced by the amount of any other public or private insurance, workers' compensation benefits, or medical, health or disability benefits which may be available to the victim. Payment by the program is secondary to such other insurance or benefits, regardless of any contract or coverage provision to the contrary, as this is a fund of last resort. Tennessee Code 29-13-106(f)(1)</p> <p>Compensation will not be awarded for:</p> <ul style="list-style-type: none"> • Damage to Real or Personal Property; and • Pain and Suffering EXCEPT for victims of sexual assault (not to exceed \$3,000). Tennessee Code 29-13-107. <p>Tennessee Code 29-13-106.</p> <p><i>Note:</i> Commentary found in a 2005 Crime Victims' Needs Analysis produced by the Tennessee Office of Criminal Justice programs stated that "illegal and undocumented immigrant children . . . are ineligible for victim compensation. This information could not be confirmed by agency officials or through a review of the Tennessee Code. http://tennessee.gov/finance/rds/ocjp/documents/0609STOPIMPPLAN.pdf</p>	
Texas	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if: (1) the crime occurred in Texas and the victim is a Texas resident or a United States resident, (2) the crime occurred outside of Texas (in another state or county) that does not provide compensation and the victim is a Texas resident, or (3) the crime involves a Texas resident who becomes a victim of</p>	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Office of the Attorney General, Crime Victims' Compensation Program, which is responsible for the administration of the Compensation to Victims of Crime Fund which receives funds from state offender assessments, state donations, and VOCA funds. Tex. Const. Art. 1, Sec. 31; Tex. Code</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>international terrorism committed outside of the United States. <i>See</i> Tex. Code Crim. Proc. Art. 56.32(a)(11).</p> <p>The types of crimes include, sex offenses, kidnapping, aggravated robbery, assaultive offenses, arson, homicide, drunk driving and other violent crimes in which the victim suffers physical or emotional harm or death. <i>See</i> Tex. Code Crim. Proc. Art. 56.32(a)(4).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Tex. Code Crim. Proc. Art. 56.32(a)(11)(A)(ii); 1 Tex. Admin. Code § 61.101(a)(10). • A police report of the crime must generally be made within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime. Tex. Code Crim. Proc. Art. 56.46. <p>Persons eligible for compensation include:</p> <ul style="list-style-type: none"> • Victims of crime who suffer substantial threat of physical and/or emotional harm or death; • Dependents of victims, authorized individuals acting on behalf of a victim, or persons who voluntarily pay certain expenses on behalf of a victim; • Immediate family or household members related by blood or marriage who require counseling; or • A person who goes to the aid of a victim. <p>Tex. Code Crim. Proc. Art. 56.32(a)(2).</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Un-reimbursable medical and medical-related expenses, including hospital, nursing, and physical therapy; 	<p>Crim. Proc. Art. 56.31.</p> <p>The victim must reasonably cooperate with law enforcement. The application must be filed within 3 years from the date of the crime. The time period for filing may be extended for good cause, including the age of the victim or the physical or mental incapacity of the victim. Tex. Code Crim. Proc. Art. 56.37.</p> <p>TO APPEAL</p> <p>The victim or claimant must notify the Crime Victims' Compensation Program of the reason for their dissatisfaction of the decision not later than the 40th day after the final decision. The claimant must provide additional information in this reconsideration process. If the outcome of the reconsideration process is not satisfactory, the victim or claimant may request a final ruling hearing from the Crime Victims' Compensation Program. If the victim or claimant does not agree with the outcome of the final ruling, an appeal may be made to district court. Tex. Code Crim. Proc. Art. 56.48.</p> <p>For more information:</p> <p>e-mail: crimevictims@oag.state.tx.us</p> <p>Or write to:</p> <p>Crime Victim Services Division - CVC Program Office of the Attorney General - MC011 PO Box 12198 Austin, TX 78711-2198</p> <p>Or Call: 1 (800) 983-9933 or (512) 936-1200 (in Austin) Or Fax: 1 (512) 320-8270 http://www.oag.state.tx.us/victims/about_comp</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • Mental health counseling costs; • Rehabilitation; • Lost earnings or support; • Funeral and burial costs, including related travel expenses for immediate family of a deceased victim; • Bereavement leave costs for immediate family of a deceased victim (limited to 10 work days); • Expense of replacement services for childcare or housekeeping; • Travel costs for non-local travel to assist with the investigation, prosecution or judicial process, including attendance at a criminal's execution; • Relocation costs for victims of sexual assault or domestic violence occurring in the victims place of residence; • Replacement costs for the victim's clothing, bedding and other property seized as evidence or rendered unusable from the criminal investigation; • Crime scene clean-up and a portion of attorney's fees. <p>Tex. Code Crim. Proc. Art. 56.32(a)(9).</p> <p>Medical expenses to be reimbursed include hospitals, doctors, ambulance services, prescriptions, dental work, nursing homes, and medical appliances, such as wheelchairs and prosthetics. <i>See</i> Tex. Code Crim. Proc. Art. 56.32; 1 Tex. Admin. Code §§ 61.101, 61.407.</p> <p>Except in the case of extraordinary pecuniary losses, compensation may not exceed \$50,000 in the aggregate. Tex. Code Crim. Proc. Art. 56.42.</p> <p>Attorney's fees shall not exceed 25 percent of the amount the attorney assisted the claimant in obtaining. Tex. Code Crim. Proc. Art. 56.43.</p> <p>Emergency awards of up to \$1500 are available if it appears likely that a final award will be made and the claimant or</p>	<p>.shtml</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>victim would otherwise suffer undue hardship. Emergency awards can be issued for lost support and lost earnings, emergency medical and funeral charges. Tex. Code Crim. Proc. Art. 56.50.</p>	
<p>Utah</p>	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. However, a Social Security number is requested on the application. • The criminally injurious conduct shall be reported to a law enforcement officer, in his capacity as a law enforcement officer, or other federal or state investigative agencies. <p>Utah law provides reparations to crime victims. In order to be eligible for a reparations award:</p> <ul style="list-style-type: none"> • The claimant must be a victim of criminally injurious conduct; a dependent of a deceased victim of criminally injurious conduct; or a representative acting on behalf of one of the above; • The victim shall be either a resident of Utah or the criminally injurious conduct shall have occurred in Utah; • If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a reciprocal crime victims' compensation program, the Utah resident has the same rights under this chapter as if the injurious conduct occurred in this state; § 63-25a-411(5) • Application shall be made in writing in a form that conforms substantially to that prescribed by the Utah Crime Victim Reparations (“CVR”) Board; • The criminally injurious conduct shall be reported to a law enforcement officer or other federal or state investigative agencies. • The claimant or victim shall cooperate with the appropriate law enforcement 	<p>TO APPLY</p> <p>The crime victim must submit an Application For Crime Victim Reparations to</p> <p>State of Utah Office of Crime Victim Reparations 350 East 500 South Suite 200 Salt Lake City Utah 84111 Tel (801) 238-2360 Toll Free 1-800-621-7444 Fax (801) 533-4127</p> <p>Applications are available at http://www.crimevictim.utah.gov/Comp/CompApp.pdf</p> <p>Application requests for one time funding will be submitted to the CVR Board for their review and decision. Requests for ongoing funding may be approved by the CVR Board and then forwarded to the CVR grants program for administration and monitoring purposes.</p> <p>Awards may be denied or limited as determined appropriate by the Board. Decisions by the CVR Board are final and may not be appealed. The CVR office shall review expenditures by award recipients to insure compliance with the provisions of the request. Recipients shall be required to provide the CVR office with all documentation and receipts requested.</p> <p>Utah Admin. Code Rule R270-1-26</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>agencies in their efforts to apprehend or convict the perpetrator of the alleged offense (provided that an award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim; and</p> <ul style="list-style-type: none"> • The criminally injurious conduct shall have occurred after December 31, 1986. <p>Utah Code § 63-25a-409.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Funeral and burial (up to \$7,000); • Mental health counseling (up to \$3,500); • Attorney’s fees (up to 15% of the reward); § 63-25a-424 • Emergency awards; § 63-25a-422 • Loss of earnings (up to 12 weeks); • Moving (up to \$2,000) and transportation (up to \$500); • Essential personal property, including all personal articles necessary and essential for the health and safety of the victim, such as replacement of eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. (up to \$1,500); and • Medical awards cover prescription or OTC medications used during the course of treatment. • Reasonable and necessary charges incurred for products, services, and accommodations; • inpatient and outpatient medical treatment and physical therapy; • mental health counseling which (i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and (ii) qualifies within any further rules promulgated by the board; • actual loss of past earnings and anticipated loss of future earnings because of a death or disability 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;</p> <ul style="list-style-type: none"> • care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board; • funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board; • loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less; • personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board <p>An award of reparations shall not exceed \$25,000 in the aggregate unless the victim is entitled to proceeds in excess of that amount as provided in Subsection 77-38a-403(2). However, reparations for actual medical expenses incurred as a result of homicide, attempted homicide, aggravated assault, or DUI offenses, may be awarded up to \$50,000 in the aggregate. Utah Code § 63-25a-411.</p> <p>If the reparations officer determines that the claimant will suffer financial hardship unless an emergency award is made an amount may be paid to the claimant. The board may limit emergency awards to any amount it considers necessary. Utah Code § 63-25a-422.</p> <p>There is a 3-year limitation for payments of</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>benefits.</p> <p>Utah Admin. Code Rule R270-1-1 to 1-19.</p>	
Vermont	<p>BACKGROUND</p> <p>Vermont law provides compensation to crime victims and their dependents. The Vermont Center for Crime Victim Services was created and is responsible for strengthening and coordinating programs serving crime victims, promoting the rights and needs of crime victims statewide, administering the victims compensation program, the victims assistance program, and the restitution unit, assisting in the development and administration of other programs and services for crime victims and witnesses, administering the federal VOCA benefits, and serving as a clearinghouse for information regarding victims of crimes. Vermont Statutes § 13.167.5361.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. However, Vermont’s application requires social security numbers and payments can only be made directly to those victims with social security numbers. In practice, payments can be made to service providers on the victim’s behalf. Note: An official from the Crime Victims Compensation Fund stated that Vermont will soon be amending its application process to eliminate the request for social security numbers. • The crime must be reported to a law enforcement official. A law enforcement official must have probable cause that a crime has occurred. <p>http://www.leg.state.vt.us/statutes/statutes2.htm http://www.ccvs.state.vt.us</p> <p>The victim or victim’s dependent is eligible for compensation if:</p> <ul style="list-style-type: none"> • The victim was injured or killed in a crime committed in Vermont or if the victim was a Vermont resident and the 	<p>TO APPLY</p> <p>Complete the application for Vermont Crime Victims Compensation and send to:</p> <p style="padding-left: 40px;">Victims Compensation Program 58 S. Main St., Suite 1 Waterbury, VT 05676-1599</p> <p>http://www.ccvs.state.vt.us</p> <p>Vermont Statutes §13.167.5353.</p> <p>The board will review applications and consider all relevant information. Vermont Statutes §13.167.5354.</p> <p>TO APPEAL</p> <p>An applicant may file a petition with the board for review of the board’s preliminary decision within 30 days of the date on which the notice of its decision is mailed. The board will either affirm or reverse the preliminary decision, explaining its reasons in writing. Vermont Statutes §13.167.5355.</p> <p>Crime victims or their dependents should contact:</p> <p>Vermont Center for Crime Victim Services Victims Compensation Program 58 South Main St., Suite 1 Waterbury, VT 05676-1599 (802) 241-1250 FAX: (802) 241-1253</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>state in which the crime occurred does not have an eligible crime victim's compensation program and the applicant would have been eligible for compensation if the crime had occurred in Vermont; or the victim is a Vermont resident who is injured or killed by an act of terrorism outside the United States, to the extent that compensation is not otherwise available under federal law.</p> <ul style="list-style-type: none"> • A law enforcement official has filed a report concluding that a crime was committed resulting in injury or death of the victim. <p>Vermont Statutes §13.167.5353.</p> <p>A victim is:</p> <ul style="list-style-type: none"> • A person who sustains injury or death as a direct result of the crime; • Someone who intervenes on the crime and is injured or killed in an attempt to assist another victim or the police; • Surviving immediate family of a homicide victim, including a spouse, domestic partner, parent, sibling, child, grandparent, or survivor who suffer severe emotional harm as the result of the victim's death; or • Resident of Vermont who is injured or killed by an act of terrorism committed outside the U.S. <p>Vermont Statutes §13.167.5351(7).</p> <p>COMPENSATION</p> <p>Maximum compensation may not exceed \$10,000. Vermont Statutes §13.167.5356.</p> <p>Crime victims are eligible to receive the amount of medical or medically-related expenses, loss of wages, and any other expenses which the Vermont Crime Compensation Board feels became necessary as a direct result of the crime, including:</p> <ul style="list-style-type: none"> • Medical expenses (including costs of individual or family psychological, psychiatric or mental health counseling; or costs of replacing or repairing eyeglasses, hearing aids, 	<p>1-800-750-1213 (in-state only);</p> <p>1-800-845-4874 (TTY, in-state only)</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>dentures, or prosthetic devices);</p> <ul style="list-style-type: none"> • Reimbursement of health care facilities and health care providers will be at 70 percent of the billed charges for compensation claims for uninsured crime victims who do not qualify for the hospital's patient assistance program, Medicaid, or Medicare. These facilities are not allowed to balance bill. • Mental health counseling: up to 20 sessions with treatment plan, may request extensions at 20-session increments for crime-related symptoms still needing treatment; limit of \$70 per individual session; \$35 per group session; • Lost wages/support: \$2,000 per month maximum, for not more than 3 months; also may be paid for time lost to attend funeral and criminal proceedings; • Funerals: (not to exceed \$7,000); • Moving expenses; • Replacement services; • Crime-scene cleanup (not to exceed \$1,500); • Travel: 30 cents per mile to obtain medical and counseling assistance; up to \$1,500 per person (victims and survivors) for travel expenses, food and lodging to attend court hearings, trial and funeral; and • Rehabilitation: physical therapy, chiropractic, self-defense classes. <p>National Association of Crime Victim Compensation Boards: http://www.nacvcb.org/progdir/vermont.html.</p> <p>“Unreimbursed loss” means loss (A) which is not covered by medical, hospitalization or disability insurance or workers' compensation; and (B) which has not been ordered by the court to be restored to the victim or dependent by the person who caused the loss; or (C) which has been ordered by the court to be restored to the victim or dependent but has not been paid by the person who caused the loss. Vermont Statutes §5351(6).</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
Virginia	<p>BACKGROUND</p> <p>The Virginia Workers' Compensation Commission administers the Virginia Criminal Injuries Compensation Fund.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Although the application for compensation requests a social security number, an official from the CVC Fund program confirmed that an immigrant's inability to provide a social security number will not affect the immigrant's eligibility to receive benefits. • The crime must be reported to law enforcement within 120 hours (5 days) after occurrence unless good cause for the delay is shown. Virginia Code § 19.2-368.10 • CICF application must be filed within 1 year of the commission of the crime, unless good cause can be shown. <p>The following individuals are eligible for compensation:</p> <ul style="list-style-type: none"> • A victim who suffers personal physical injury or death as a result of a crime, trying to prevent a crime or apprehending a criminal. If a minor, the claim must be filed by the victim's parent or legal guardian. • A parent, grandparent, spouse, sibling or child of a homicide victim who dies as a result of the crime. • Any person legally dependent for principal support from a victim who dies as a result of the crime. • Any person who takes responsibility for funeral expenses of a homicide victim <p>Virginia Code § 19.2-368.4</p> <p>Applicants may file a claim for compensation if the following conditions are met:</p>	<p>TO APPLY</p> <p>The applicant must file a claim for compensation within one (1) year from the date of the crime in an injury case, the date of victim's death if death is caused by the crime, or the date a minor reaches majority age.</p> <p>A Victim of child sexual assault has ten (10) years past the date of their eighteenth (18th) birthday to file.</p> <p>A claim can be filed past the one (1) year deadline if "good cause" can be shown.</p> <p>Virginia Code § 19.2-368.5</p> <p>Applications may be obtained from and filed with:</p> <p>Criminal Injuries Compensation Fund 2201 West Broad St. Suite 207 Richmond, VA 23220</p> <p>Telephone: (804) 367-1018- Richmond 1-800-552-4007 - Toll-free Statewide e-mail cicfmail@vwc.state.va.us</p> <p>An application also can be obtained from your local Victim/Witness program.</p> <p>http://www.cicf.state.va.us/cicfapplication.shtml</p> <p>http://www.cicf.state.va.us/</p> <p>Applicants may contact the Criminal Injuries Compensation Fund directly by calling:</p> <p>Toll-free statewide(800) 552-4007</p> <p>Richmond or out-of-state..... (804) 378-3434</p> <p>Or writing:</p> <p>Criminal Injuries Compensation Fund 11513 Allecingie Parkway Richmond, Virginia 23235</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • The crime occurred in Virginia or resulted from an act of foreign terrorism and resulted in physical injury or death; • The victim cooperated with law enforcement and was willing to prosecute in court; • The value of the claim amounts to at least \$100; • The crime did not involve a motor vehicle accident unless it was a result of a violation of the Drunk Driving Statute or the injuries were intentionally inflicted; and • A Virginia resident who suffers a compensable crime in a country or territory without compensation program may be eligible. <p>http://www.cicf.state.va.us/benefits.shtml</p> <p>COMPENSATION</p> <p>Benefits are awarded from the Virginia Criminal Injuries Compensation Fund, up to a maximum award of \$25,000, for certain unreimbursed losses such as:</p> <ul style="list-style-type: none"> • Medical expenses; • Wage loss (based on 2/3 of the wages up to a maximum of \$600 per week); • Mental health counseling; • Mental health counseling expenses (up to \$2,500 for eligible family members of homicide victims); • Funeral/burial expense (up to \$5000); • Moving expenses up to \$1,000; • Crime scene clean-up expenses; • Other reasonable and necessary expenses incurred as a result of the crime, such as prescriptions, mileage to doctors, eyeglasses; • Emergency award of up to \$2,000 (Virginia Code § 19.2-368.9); • Expenses attributable to pregnancy resulting from forcible rape; and • other reasonable and necessary expenses resulting from your injury or from the death of a crime victim. <p>Virginia Code § 19.2-368.11:1</p>	<p>The National Crime Victim Bar Association provides victims referrals to local attorneys specializing in victim-related litigation. The referral service can be reached at (800) FYI-CALL (394-2255) between 8:30 a.m.–5:30 p.m. (EST) Monday through Friday.</p> <p>TO APPEAL</p> <p>If an applicant disagrees with the decision, an appeal process is available. Instructions for and assistance with filing an appeal are provided to each applicant.</p> <p>Virginia Code § 19.2-368.8.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>The following benefits are not available:</p> <ul style="list-style-type: none"> • Property loss • Attorney’s fees • Pain and suffering <p>Collateral resources include but are not limited to benefits provided by insurance, Social Services, Social Security and employers (sick leave or disability).</p> <p>For more information see:</p> <p>http://www.dcjs.virginia.gov/victims/documents/victimsWitnessRightsActSummary.pdf</p> <p>or</p> <p>http://www.dcjs.virginia.gov/victims/documents/saVictims.pdf</p>	
Washington	<p>BACKGROUND</p> <p>Victims of certain types of crimes may receive compensation from the state if (1) the crime occurred in Washington; (2) the victim is a Washington resident and the criminal act occurred in a state that does not have a CVC program; or (3) an act of terrorism as defined in 18 U.S.C. Sec. 2331, committed outside of the United States against a resident of the state. Wash. Rev. Code § 7.68.020.</p> <p>Policy Manual: http://www.lni.wa.gov/ClaimsIns/Files/CrimeVictims/CvcPolicyManual.pdf</p> <p>The types of crimes include acts that are punishable as a federal offense comparable to a felony or gross misdemeanor under the laws of the state (e.g., drunk driving, domestic violence, and any crime that results in death or personal injury, including sexual assault). Wash. Rev. Code § 7.68.020.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions 	<p>TO APPLY</p> <p>The victim must complete an application and file it with the Crime Victims Compensation Program.</p> <p>Absent good cause, the application must be filed within 2 years from the date the crime was reported or the date the victim turned 18, or within 5 years from the date the crime was reported with good cause. Wash. Rev. Code § 7.68.060.</p> <p>Although an application must generally be filed within 2 years of reporting the crime, there is no time limit on how long benefits can be received.</p> <p>Appeals are permitted for ninety days from the date the order, decision, or award is communicated to the parties. Wash. Rev. Code § 7.68.110.</p> <p>See the following link for more information:</p> <p>http://www.lni.wa.gov/ClaimsIns/CrimeVictims/default.asp</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>based on immigration status. The Crime Victims Compensation Program does not review the immigration status of victims.</p> <ul style="list-style-type: none"> The victim must report the crime within one year or within one year of when a report could have reasonably been made. The victim must cooperate with law enforcement. Wash. Rev. Code § 7.68.60. <p>A claimant may be the direct victim of the crime, or a survivor if the crime results in a death. Wash. Rev. Code § 7.68.070.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> Medical, dental, mental health counseling (including STD, AIDS, post coital screening/treatment, if the expenses are related to the crime and there is no other source of reimbursement.); Lost wages; Funeral/burial expenses (not to exceed \$5,750); Rehabilitation (not to exceed \$5,000); Modification to homes and vehicles to accommodate permanent injuries; Limited pension payment if the crime prevents victim from returning to work permanently; Limited pension payment to the spouse or child of a deceased victim; Permanent partial disability (not to exceed \$7,000); Total temporary disability (not to exceed \$15,000); Assist law enforcement agency or prosecutor in judicial proceedings relating to the death of the victim, who is not domiciled in Washington at time of request (not to exceed \$7,500); and Counseling for family members of sexual assault or homicide victims. <p>Wash. Rev. Code § 7.68.070.</p> <p><u>No more than fifty thousand dollars shall be</u></p>	<p>http://www.lni.wa.gov/ClaimsIns/CrimeVictims/Resources/default.asp</p> <p>http://www.lni.wa.gov/forms/pdf/F800-042-000.pdf</p> <p>http://www.lni.wa.gov/IPUB/800-006-909.pdf</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p><u>paid per claim.</u> Except for authorized medical benefits. Wash. Rev. Code § 7.68.070. No more than \$30,000 shall be awarded as a result of a single injury or death, except for medical aid. Total awards shall not exceed \$40,000 if permanent disability or death occurs. Wash. Rev. Code § 7.68.070(13).</p> <p>http://www.lni.wa.gov/forms/pdf/F800-042-000.pdf</p>	
West Virginia	<p>BACKGROUND</p> <p>West Virginia’s Crime victims Compensation Fund provides compensation to crime victims, relatives of victims, guardians, estate executors, and others who provide payment for expenses related to the crime.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime must be reported to law enforcement officials within 72 hours (unless just cause exists). WV Code §14-2A-14 <p>Eligible persons include:</p> <ul style="list-style-type: none"> • A victim who has suffered an injury as a result of a crime; • Anyone who pays for the medical and/or funeral/burial expenses of a victim; • A legal guardian of a minor; • An executor or executrix of the estate of a deceased victim; and • A spouse or dependent who suffers noneconomic loss due to the death of a victim. <p>Crimes that may result in personal injury, include:</p> <ul style="list-style-type: none"> • Malicious Assault; 	<p>TO APPLY</p> <p>A Crime Victims Compensation Fund application must be completed. Applications are available upon request by calling the Fund at 1-877-562-6878 (within W.Va. only) or (304) 347-4850. Applications may be obtained from local county prosecuting attorney offices.</p> <p>The application for an adult victim (18 years or older at the time of crime) must be filed with the Fund within two years of the crime. WV Code §14-2A-10.</p> <p>The application for a minor victim (under 18 year of age at the time of the crime) must be filed with the Fund before the minor’s 20th birthday.</p> <p>WV Code 14-2A-10.</p> <p>After receiving the application and related documentation, the claim is assigned to a claim investigator for review to determine eligibility. This involves verifying all of the information presented in the application. Witnesses to the crime, law enforcement officials, physicians, counselors, hospitals, and employers may be contacted for verification of the information presented.</p> <p>Upon completion of the application review process, the claim investigator will file with the Court a Finding of Fact and</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • Assault and Battery; • Child Abuse/Molestation; • Domestic Violence; • Driving under the Influence; • Reckless Driving; • Vehicle Homicide (Negligent Homicide); • Murder; • Other Violent Crimes; • Robbery; • Sexual Assault; • Kidnapping; • Hunting Accident; and • Arson. <p>WV Code 14-2A-3.</p> <p>To be eligible for compensation, there must be a crime involving personal injury or death, with the following additional requirements:</p> <ul style="list-style-type: none"> • The crime must either have occurred in West Virginia, or involved a West Virginia resident injured in another State without a compensation program, or involved a West Virginia resident injured outside the United States as a result of terrorism; • The claimant must fully cooperate with law enforcement officials; • The claim must be filed within two years of the date of the incident; • The victim must suffer a personal injury; and • There must be an economic loss. <p>In the case of domestic abuse, a claim resulting from domestic abuse will not be denied solely because the applicant lives with or has lived with the alleged offender of the crime.</p> <p>Payments to third party vendors will not be denied based upon a finding that the victim and the offender are maintaining a relationship.</p> <p>http://www.legis.state.wv.us/Joint/victims/e</p>	<p>Recommendation. A copy of the recommendation is sent to the applicant who may file a response within 30 days.</p> <p>One of the three Court of Claims judges will review the Finding of Fact and Recommendation, all other documents in the file, and the applicant’s response, if any. The judge will render a decision and a copy of the Order is sent to the applicant.</p> <p>In considering an award, the Court will consider the extent to which a payment to the victim will support the offender by paying for the offender’s living expenses, including food, shelter, clothing or entertainment, or the extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members, so as to avoid unjust enrichment.</p> <p>WV Code 14-2A-12.</p> <p>The law requires that awards be made directly to the medical or funeral/burial provider. WV Code 14-2A-19a.</p> <ul style="list-style-type: none"> • Awards are made to the applicant for reimbursement of approved expenses. • Awards are made to the applicant for approved wage/income losses. <p>TO APPEAL</p> <p>If the applicant disagrees with the judge’s decision, the applicant is given 21 days to request a hearing. Another judge will preside over the appeal hearing, which is the final process.</p> <p>See the following link for more information:</p> <p>http://www.legis.state.wv.us/Joint/victims/mai</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>ligibility.cfm</p> <p>COMPENSATION</p> <p>An applicant can be reimbursed for the following types of expenses if they are incurred as a direct result of a crime as long as there are no other sources of reimbursement available:</p> <ul style="list-style-type: none"> • Medical/Dental (including physician, hospital, and STD, AIDS, and post coital screening/treatment, if the expenses are related to the crime and there is no other source of reimbursement); • Mental Health Counseling; • Lost Wages/Income; • Funeral/Burial (not to exceed \$4,000); • Lost Support of eligible dependents; • Rehabilitation; • Replacement service loss; • Mileage to medical treatment facility; • Attorney fees, §14-2A-19; and • Compensation for being a witness in a hearing on a claim for an award of compensation. §14-2A-19 <p>WV Code 14-2A-3(f).</p> <p>The total of all reimbursement to or on behalf of a victim cannot exceed the maximum allowable benefits as set out below:</p> <p><u>Victim Suffers Injury</u></p> <ul style="list-style-type: none"> • Up to \$25,000.00 • Medical/Dental • Mental Health Counseling • Wage/Income Loss (victim only) • Mileage to and from medical treatment facility • Replacement Services 	<p>n.cfm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p><u>Victim Suffers Death</u></p> <ul style="list-style-type: none"> • Up to \$50,000.00 • Medical • Mental Health Counseling for Dependents • Economic Loss of Dependents • Funeral/Burial Expenses up to \$7,000.00 <p>WV Code 14-2A-14(g).</p> <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>Applicants may also seek assistance from an attorney. Reasonable fees will be paid by the Fund at no cost to the applicant regardless of the outcome of the claim. Attorney’s fees are paid from the Fund, not from awards. WV Code 14-2A-19.</p> <p>Persons not eligible to receive compensation include:</p> <ul style="list-style-type: none"> • Person who commits the crime; • Persons who do not cooperate with law enforcement officials or the claim investigator; and • Persons who are injured while incarcerated. <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>The following types of losses are not covered under the program:</p> <ul style="list-style-type: none"> • Personal property (except medically necessary items such as eyeglasses); and • Work loss of others (only the victim’s work loss is considered). <p>http://www.legis.state.wv.us/Joint/victims/eligibility.cfm</p> <p>By law, the Crime Victims Compensation Fund is the “payer of last resort.” As such, if any other sources of reimbursement are available for the victim’s/applicant’s crime-related losses, such sources must be used</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>before the victim/applicant becomes eligible for reimbursement from the Fund. Victims/applicants have the responsibility to inform the Fund of any reimbursement sources for their losses and are responsible for repayment of any amounts for which it was later determined they were not eligible. Other reimbursement sources that may be available include, but are not limited to:</p> <ul style="list-style-type: none"> • Medical/health, dental, or vision insurance; • Employee sick leave benefits; • Employee annual leave benefits; • Public program benefits (Medicaid, Medicare, etc.); • Workers’ Compensation; • Unemployment benefits; • Life insurance over \$25,000 and auto insurance; • Court-ordered restitution; and • Civil lawsuit recoveries. <p>WV Code 14-2A-14(f).</p> <p>For more information please see: W. Va. Code § 14-2A <i>et. seq.</i> (2006).</p>	
Wisconsin	<p>BACKGROUND</p> <p>The CVC Program provides sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. “Any person may apply for an award under this chapter.” W.S.A. 949.04(1). <p>Although the application requests a Social Security Number, Program officials confirmed that the inability to provide a social security number on the application will not, in and of itself, affect an</p>	<p>TO APPLY</p> <p>Application for reimbursement must be made within one year from the date of injury or death. If the crime is not reported within 5 days, within 5 days of the time when a report could reasonably have been made, or the application is not filed within one year from the date of the crime, attach a written explanatory statement to the application. The department may waive the one-year requirement in the interest of justice. W.S.A. 949.08.</p> <p>The Wisconsin department of justice will prescribe application forms for awards and will provide them to law enforcement agencies. W.S.A 949.04(2).</p> <p>Applicants should submit reports from all treating providers who treated or examined the</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>immigrant’s ability to receive benefits.</p> <p>Further, the Wisconsin Coalition Against Sexual Assault, Inc. Information Sheet states that undocumented immigrants are eligible for compensation in the event of sexual assault.</p> <ul style="list-style-type: none"> • The crime must be reported to law enforcement within five days of the date of the crime. <p>Additional compensable acts include:</p> <ul style="list-style-type: none"> • Preventing or attempting to prevent the commission of a crime; • Apprehending or attempting to apprehend a suspected criminal; • Aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; and • Aiding or attempting to aid a victim of a crime specified in par. <p>W.S.A. 949.03.</p> <p>Crimes are defined as “conduct prohibited by state law and punishable by fine or imprisonment or both.” W.S.A. 939.12</p> <p>COMPENSATION</p> <p>Awards will not be more than \$40,000 for any one injury or death. W.S.A 949.06(2).</p> <ul style="list-style-type: none"> • Medical treatment (including medical, surgical, dental, optometric, chiropractic, podiatric, hospital care; medicine; medical, dental and surgical supplies, crutches, artificial members, appliance and training in use of artificial members and appliances); • Mental health (see application for compensation); • Work loss (including homemaker, in an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to 	<p>victim at the time of or subsequent to the victim’s injury or death. W.S.A. 949.04(3).</p> <p>For additional information:</p> <p>http://www.doj.state.wi.us/cvs/documents/CVCompensation/CVCApplication.pdf</p> <p>Crime Victim Compensation Program P.O. Box 7951 Madison, WI 53707 (608) 264-9497 or (800) 446-6564</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>resume the responsibilities);</p> <ul style="list-style-type: none"> • Replacement of clothing and bedding that is held for evidentiary purposes (up to \$300), or is rendered unusable as a result of crime lab testing (up to \$200); • Funeral and burial expenses (up to \$2000); • Emergency compensation (up to \$500); • Attorney’s fees; • Dependent’s economic loss (4 times the victim’s average annual earnings); and • Cleaning crime scene (up to \$1000). <p>W.S.A. 949.06, 949.10, and 949.14.</p> <p>Any award made under the program will be reduced by the amount received from another source (for example, from the insurance company, public funds, emergency award, person who committed the crime). W.S.A. 949.06(f)(3).</p> <p>Personal property and pain and suffering are not compensated under the program. http://www.doj.state.wi.us/cvs/documents/CVCompensation/CVCApplication.pdf</p>	
Wyoming	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. Although the application for compensation requests social security numbers, immigrants will not be turned away if they do not have a Social Security Number. Rather, the auditor will assign them a number for purposes of tracking compensation benefits. • The crime must be reported to law enforcement as soon as possible. <p>Persons eligible to receive benefits include:</p> <ul style="list-style-type: none"> • A victim of a crime who has suffered physical injury or is killed as a result of: <ul style="list-style-type: none"> • a “criminal act” of another person; • trying to stop a person committing a crime; • trying to help a law enforcement officer; 	<p>TO APPLY</p> <p>The Attorney General, Division of Victim Services, will review applications and make a ruling.</p> <p>Primary victims must fill out an application. Applications are available at local law enforcement agencies, domestic violence/sexual assault agencies, prosecuting attorney’s offices, and victim assistance agencies. Applications are also available at: Herschler Building, 1st Floor West Barrett Building, 4th Floor Cheyenne, WY 82002</p> <p>Phone: (307) 777-7200 (you may call collect), Victim Helpline V/TTY: 888-996-8816</p> <p>e-mail: victimservices@state.wy.us</p> <p>http://victimservices.wyoming.gov/vcomp-primary.htm</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<ul style="list-style-type: none"> • trying to help a victim of a crime; or • a federal crime occurring in Wyoming; • Families and dependents of deceased victims; • Persons who are authorized to act on behalf of victims; • Wyoming residents injured or killed by an act of terrorism committed outside the U.S.; • Family members who are Wyoming residents and who have suffered a pecuniary loss as a result of a terrorist attack in the U.S., regardless of the actual victim’s residency; • Wyoming residents who are victims of a crime of terrorism occurring in another state which would have been compensable if it had occurred in Wyoming and who suffer a pecuniary loss; • Children who witness violent crimes against adults; • Spouses residing with sexual assault victims; • Household members of minor victims; and • Household members of homicide victims. <p>Household members means: persons married to each other; persons living with each other; persons formerly married to each other; persons formerly living with each other as if married; parents and their adult children; other adults sharing common living quarters; and persons who are the parents of a child but who are not living together.</p> <p>http://vssi.state.wy.us/documents/cvcAssocVInstr.pdf Wy. Stat. § 1-40-102</p> <p>In order to be eligible for compensation benefits:</p> <ul style="list-style-type: none"> • The crime must have occurred in Wyoming or in state that does not have a Crime Victims Compensation program or the crime was an act of terrorism; • The victim or claimant must fully cooperate in the investigation and 	<p>If associated victims are going to seek associated victim benefits, they do not need to complete a separate application (e.g., parents of minor children, survivors of homicide, caretakers of incompetent victims). If the associated victims are people other than the claimant, then they must also complete the Associated Victim Application (e.g., siblings or other household members, children who witness a violent crime being committed against an adult).</p> <p>The division staff will review the application and conduct an investigation to verify all of the information. Law enforcement, witnesses, service providers, employers, etc. will be contacts to substantiate the application. Application processing usually takes a minimum of 90 days.</p> <p>After conducting a hearing, the division will notify applicants of the amount of the award. If an award is reduced or denied, the reason will be provided in writing. Wy. Stat. § 1-40-108.</p> <p>Applicants may apply for emergency compensation (to cover basic, survival needs), which can be awarded within a shorter period of time, usually 10 working days. No appeals are granted on emergency claims. Wy. Stat. § 1-40-111</p> <p>http://vssi.state.wy.us/vcomp.htm</p> <p>TO APPEAL</p> <p>Applicants have the right to request an appeal of a claim reduction or denial within 30 days of receipt of the decision. Appeals must be in writing, state the reasons why the applicant disagrees with the decision, and provide additional information for review.</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>prosecution of the crime;</p> <ul style="list-style-type: none"> • The claim must be filed within one (1) year of the injury or death; • Federal crime victims are eligible to apply for compensation whether or not the crime falls under tribal, state or federal jurisdiction; • No portion of the compensation shall benefit the offender in any way; and • A victim whose own misconduct either caused or contributed to the criminal attack could be reduced or denied compensation. <p>Wy. Stat.§§ 1-40-102, 1-40-106.</p> <p>The following persons are not eligible to receive compensation benefits:</p> <ul style="list-style-type: none"> • The offender and/or accomplice; • A victim convicted of a felony after applying for compensation; • An individual who is a victim of a criminal attack while confined in a prison or other correctional facility at the time of the crime; • A victim whose expenses are paid entirely by other sources; • Victims of monetary or property loss; and • Victims seeking compensation only for pain and suffering. <p>Wy. Stat 1-40-106, Wy. Stat. §§ 1-40-110(d), and http://vssi.state.wy.us/documents/cvcPrimAppInstr.pdf</p> <p>Victims of a criminal act may be able to receive compensation benefits. A "criminal act" means an act committed or attempted in this state, including an act of domestic violence, which constitutes a crime as defined by the laws of this state or an act of terrorism, committed outside the United States, and which results in actual bodily injury, or actual mental harm, or death to the victim. No act involving the operation of a motor vehicle, boat or aircraft which results in injury or death constitutes a crime for the purpose of this act unless the injury or</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>death was recklessly or intentionally inflicted through the use of the vehicle, boat or aircraft, or unless the act constitutes a violation of under Wyoming’s law on driving under the influence of alcohol. Wy. Stat. §§ 1-40-102.</p> <p>COMPENSATION</p> <p>Maximum award may be up to \$15,000. Compensation paid to an associated victim is included in the primary victim’s cap of \$15,000.</p> <ul style="list-style-type: none"> • Medical, dental and hospital services (including dental and prosthetic devices, eyeglasses, or other corrective lenses, STD screening, pregnancy testing, DNA testing, and services rendered in accordance with any method of healing as recognized by the state of Wyoming); • Mental health and counseling care; • Funeral/burial expenses (not to exceed \$5,000); • Loss of earnings (not to exceed \$500/month); • Loss of support to dependents, including home maintenance and day care; • Homemaker replacement services loss; • Eyeglasses, corrective lenses, dental and other prosthetic devices; • Relocation services (including U-Haul rental, gas, mileage, and per diems); • Emergency award (not to exceed \$1,000); and • Other expenses incurred as a result of the crime (including crime scene cleanup and travel costs). <p>Wy. Stat. §§ 1-40-102; 1-40-109, and 1-40-110. http://www.cispark.org/faq.cfm</p> <p>Victims of catastrophic injury, the permanent disability of limbs or functions as a result of being a victim of a crime, are eligible for additional compensation (exceeding the maximum \$15,000 award) up to \$10,000 to cover future lost</p>	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>wages, special medical needs and any other special assistance needed as a result of the injury. The additional award may be made only for losses and expenses occurring within twenty-four (24) months after the date of the injury. Wy. Stat. §§ 1-40-109(e).</p> <p>Associated victims may be eligible for compensation with regard to counseling (not to exceed \$1,500) and economic losses (including, but not limited to, mileage, food, lodging, and loss of earnings). These expenses may be reimbursed if they were incurred by the associated victim due to the death or injury of the primary victim.</p> <p>Insurance benefits must be used first, as well as other sources such as sick or vacation leave from an employer, disability insurance, worker’s compensation and social security. Wy. Stat. §§ 1-40-110(d).</p> <p>http://victimservices.wyoming.gov/vcompFAQ.htm</p> <p>For additional information: Crime Victim Compensation Program Herschler Building 122 W. 25th 1st Floor West Cheyenne, WY 82002 (307) 777-7200 (888) 996-8816</p> <p>http://victimservices.wyoming.gov/vcompFAQ.htm</p> <p>http://vssi.state.wy.us/documents/cvcAssocVInstr.pdf</p>	
Territories		
Guam	BACKGROUND	TO APPLY

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>In Guam, a victim of certain types of crime may receive compensation if injured or killed by any act or omission of another person. The types of crimes include aggravated murder, murder, manslaughter, aggravated assault, assault, kidnapping, felonious restraint, child stealing, custodial interference, criminal sexual conduct in the first, second, third or fourth degree, assault with intent to commit criminal sexual conduct, driving under the influence of alcohol or controlled substances, conviction involving a child, vehicular negligence, vehicular homicide, drinking while driving a motor vehicle upon any highway, stalking, and family violence. 9 Guam Code Ann. § 86.55 (1998).</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no restrictions based on immigration status. • The Commission requires that the crime has been reported to the police “without undue delay.” <p>8 Guam Code Annotated § 161.50 (2006)</p> <p>A victim may be the direct victim of the crime, or a survivor if the crime results in a death.</p> <p>COMPENSATION</p> <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • expenses actually and reasonably incurred as a result of the injury or death of the victim; • loss to the victim of earning power as a result of total or partial incapacity; • pecuniary loss to the dependents of the deceased victim; • pain and suffering; and • any other pecuniary loss directly result from the injury or death of the victim which the Commission determines to be reasonable and proper. 	<p>An application must be filed with the Criminal Injuries Compensation Commission. The Guam Code does not set forth the process to receive compensation.</p> <p>An application must generally be filed within 1 year. There is no time limit on how long benefits can be received.</p> <p>TO APPEAL</p> <p>The Commission may, on its own motion or upon application of</p> <p>any person disagrees with an order/decision of the Commission, reconsider the order/decision and revoke, confirm and verify it, based on the findings of the Commission.</p> <p>Any person adversely affected by the order/decision of the Commission on the sole ground that the order or decision was in excess of the Commission’s authority or jurisdiction, shall have a right of appeal to the Superior Court, if the appeal is filed with the Commission within 30 days after receiving such order/decision. Otherwise, orders/decisions of the Commission shall be conclusive and not subject to judicial review.</p> <p>Office of the Attorney General The Justice Building 287 West O'Brien Drive Hagatna, GU 96910 USA phone: (671) 475-3324 fax: (671) 472-2493 email: law@guamattorneygeneral.com</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>There is a \$10,000 limit on any award. 9 Guam Code Ann. § 86.60 (1998).</p> <p>The same benefits may apply, in the discretion of the Commission, to private citizens who incur injury or property damage in preventing the commission of a crime within Guam, in apprehending a person who has committed a crime within Guam, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person. 9 Guam Code Ann. § 86.75 (1998).</p> <p>Medical expenses to be reimbursed include STD, AIDS, and post coital screening/treatment or pre-natal care. The limit is \$70,000. The expenses must be related to the crime. Reimbursement is not available if there is another source of reimbursement.</p>	
Puerto Rico	<p>ELIGIBILITY</p> <ul style="list-style-type: none"> • While the law does not appear to place any restriction on the immigration status of the victim, the instructions to the application form require evidence of legal residence, and a copy of a social security card. • The victim must report to the officers of public law and order the commission of the criminal conduct within ninety-six (96) hours following the delinquent act, unless there is just cause for the delay. <p>The following victims of crime may receive compensation:</p> <ul style="list-style-type: none"> • legal residents of Puerto Rico; • nonresident persons if their resident jurisdiction does not provide for compensation under a Federal Crime Victims Compensation Act; • persons related to the victim by legal or 	<p>TO APPLY</p> <p>The victim must:</p> <ul style="list-style-type: none"> ▪ complete an application and file it with the Crime Victims Compensation Office; and ▪ claim the benefits within six (6) months following the date of the commission of the crime, unless there is just cause. 25 L.P.R.A. §981(f) and (g) and Law 3 of 2006. <p>A minor or disabled claimant must be represented by his/her parents, custodian or guardian. 25 L.P.R.A. §981(g).</p> <p>The application should include all medical reports available regarding the injury and any other information required by regulations. 25 L.P.R.A. §981(g).</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>consensual ties, consanguinity or affinity up to the second degree or who depend on the victim for more than 50% of his/her subsistence expenses; and</p> <ul style="list-style-type: none"> • persons suffering from acts of terrorism under certain circumstances. 25 L.P.R.A. §981. <p>The compensable crimes or attempted crimes are: murder; homicide; involuntary manslaughter; rape (sexual aggression); kidnapping; lascivious acts; child stealing; domestic violence; child abuse, aggravated robbery; battery in the third degree and any equivalent federal crime. 25 L.P.R.A. §981(d) and Law No. 3 of 2006.</p> <p>The victim must cooperate with the corresponding authorities in the phases of solving and prosecuting the persons responsible for the commission of the crime. The continuous availability of the victim will be verified through reports filed by the officers to the Crime Victims Compensation Office.</p> <p>COMPENSATION</p> <p>The compensation payable depends on the date of the crime:</p> <ul style="list-style-type: none"> • Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; • crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; • crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family and \$25,000 for catastrophic or permanent injury. <p>Compensation is provided for:</p> <ul style="list-style-type: none"> • Expenses incurred for medical treatment, including chiropractic, rehabilitation, hospitalization services 	<p>The application should be accompanied by the following information:</p> <ul style="list-style-type: none"> (a) photo I.D. of the victim and claimant; (b) copy of the social security card(s) of the victim and claimant; (c) birth certificate or passport; evidence of legal residence of the victim or claimant, if an alien; (d) marriage or death certificate, as applicable; (e) evidence of loss of income; (f) evidence of compensatory benefits received from any other source; (g) medical evidence of the incapacity of the victim to work; (h) police report of the crime; (i) other documents to evidence expenses incurred as a result of the crime. <p>In an emergency, where the victim’s physical injury is obvious, the Office may relax the requirement for the victim to file an application, until the victim’s emergent needs have been attended to.</p> <p>See website for forms and instructions: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_TDoc.html</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>and medical care, including ambulance service, medication, medical equipment, prosthetics, eyeglasses, dental prosthetics and transportation expenses for medical appointments and treatments;</p> <ul style="list-style-type: none"> • Expenses for psychological, psychiatric treatment, including transportation and medical expenses; and • Income the victims would have earned if he/she had not suffered the injury. <p>Death benefits include:</p> <ul style="list-style-type: none"> • Expenses for funeral services, burial or cremation (\$1,000 for crimes committed before 21 August 03; \$1,500 for crimes committed between 21 August 03 and 04 January 06; \$3,000 for crimes committed after 05 January 06); • Medical, chiropractic, rehabilitation treatment, hospitalization services and medical care; ambulance service, medications, medical equipment, prosthetics, eye-glasses and dental prosthetics incurred prior to the death of the victim; (1) Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; (2) crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; (3) crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family; • Psychological and psychiatric expenses for the treatment of certain surviving claimants of the victim, up to \$500 if the crime was committed between 21 August 03 and 04 January 06 and up to \$1,000 if the crime was committed after 05 January 06; and • Loss of support of up to \$500 if the crime was committed between 21 August 03 and 04 January 06 and up to \$1,000 if the crime was committed after 05 January 06 for certain surviving claimants; 25 L.P.R.A. §981(h) and Law No. 3 of 2006. 	

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>See compensation table: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html</p> <p>Deductions on compensation may be made if the victim or dependants have received compensation from another source. 25 L.P.R.A. §981(i). Mental anguish and suffering are not compensable. 25 L.P.R.A. §981(h).</p> <p>Funding comes from both the state and federal government.</p>	
Virgin Islands	<p>BACKGROUND</p> <p>The Crime Victims Compensation Program provides public compensation to certain eligible persons.</p> <p>ELIGIBILITY</p> <ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. In 1978, the following provision was deleted from the Code: "Provided, however, that no person who is not a citizen of the United States or who is not an immigrant alien admitted to the United States for permanent residence under the pertinent provisions of the Immigration and Nationality Act, as amended (8 U.S.C. §§ 1101 et seq.) may apply for or receive compensation under the provisions of this chapter;" • In order to receive compensation, the criminal offense or act of domestic violence giving rise to the claim must be reported to the Police Department or other appropriate law enforcement agency within twenty-four (24) hours of its occurrence. <p>Eligible victims include:</p> <ul style="list-style-type: none"> • Victims of a criminal act; • Any person who is responsible for the maintenance or care of the victim and who has incurred expenses as a result of injury to or the death of the victim; 	<p>TO APPLY</p> <p>Applications should be completed and filed with the Executive Secretary within two (2) years after the personal injury or death occurs. In addition, applicants must file a notice of intention to file an application given to the Commission within ninety (90) days of the occurrence of the criminal offense, or act of domestic violence.</p> <p>CVIR 34-007-000, Sec. 161-A and 161-B (2006).</p> <p>TO APPEAL</p> <p>In order to obtain reconsideration by the Commission of an order, the applicant must file a written request for reconsideration with the Executive Secretary within one calendar year after the issuance of the order.</p> <p>Virgin Islands Code 34.7.166.</p> <p>The contact information:</p> <p>Knud Hanson Complex, Building A 1303 Hospital Ground</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>and</p> <ul style="list-style-type: none"> • The estate or any dependents of the victim may apply for compensation, in the case of the death of the victim. Virgin Islands Code 34.7.161 • The victim was injured or killed by any act that constitutes a criminal offense which is a felony or aggravated assault and battery or domestic violence; • The victim was injured or killed while attempting to prevent the commission of a criminal offense; • The victim was injured or killed by an act or omission that constitutes a criminal offense had it occurred in the Virgin Islands but which occurred in a state, territory, or possession of the United States of America which does not have a CVC program; • The victim was injured or killed while attempting to prevent the commission of a criminal offense but which occurred in a state, territory, or possession of the United States of America which does not have a CVC program; • The victim was injured or killed by an act of terrorism committed outside of the United States. Virgin Islands Code 34.7.161 and 162. CVIR 34-007-000, Sec. 161-A and 161-B (2006). <p>COMPENSATION</p> <p>Maximum award is \$25,000. Virgin Island Code 34.7.164.</p> <p>Applicants may apply for:</p> <ul style="list-style-type: none"> • Lost income (resulting from total or partial disability resulting from the injury equal to two-thirds (2/3) of the difference between earnings (or earning power, if the victim was not employed) at the time when the injury occurred, and the wages, if any earned by the victim during disability); • Medical expenses (including examinations for sexual assault and treatment for venereal disease) [Virgin Islands Code 34.8.206]; • Mental Health counseling (10 sessions 	<p>Charlotte Annalie, VI 00802 (340) 774-0930, ext. 4104 FAX: (340) 774-3466</p>

Jurisdictionally Sound Civil Protection Orders

State	Victim Compensation Laws	Process to Receive Compensation
	<p>at \$75 per session);</p> <ul style="list-style-type: none"> • Replacement services; • Travel (in extraordinary circumstances transportation can be paid but requires a medical referral); • Pain and suffering (not to exceed \$5,000); • Pecuniary losses (\$20,000 to the spouse of the deceased victim and \$5,000 for each dependent minor child or other dependent of the deceased victim for pecuniary losses); • Emergency benefits pending final decision in the case (not to exceed \$500); • Attorney's fees to be deducted from the award and not to be paid in addition to an award - two percent (2%) of any recovery under \$ 1,000 or five percent (5%) of any recovery over \$ 1,000 for legal expenses; and • Burial expenses (not to exceed \$2,500). <p>CVIR 34-007-000, Sec. 161-B, Section 163-A and Virgin Island Code 34.7.163. http://www.nacvcb.org/progdir/virginislands.html</p> <p>Compensation awards will be reduced by:</p> <ul style="list-style-type: none"> • Moneys received by the applicant from the offender, person on behalf of the offender, from public or private source (other than insurance on victim's life); and • Collateral source payments. <p>Virgin Islands Code 34.7.165.</p>	

Jurisdictionally Sound Civil Protection Orders

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

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Coverage for Forensic Costs for Undocumented Immigrants

By Legal Momentum and Morgan Lewis, LLP

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This information is current as of November 18, 2010. It is intended to provide an overview regarding health benefits and victim compensation for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Introduction

Recognizing the importance of having evidence to prosecute criminal actions against perpetrators of sexual assault and in light of the federal goal of encouraging states to bear the costs of forensic examinations that help the police locate and prosecute victims of sexual assault, most states pay for forensic examinations necessary to prosecute the perpetrators of sexual assaults. In general, states require the victim to report the crime, sometimes within a specified period of time after the assault, and a majority of the states provide that the forensic examination must be for the purpose of gathering evidence for the prosecution of a crime. The immigration status of the victim is not relevant.

Generally, the victim who reports the sexual assault is not billed for the cost of the examination. Payment is made by the law enforcement agency, the county or the Victims' Compensation Board. In some states, the victim's insurance may be used for the examination. If the victim is billed for the examination, the state provides a mechanism for reimbursement.

In those jurisdictions with Sexual Assault Nurse Examiners, the victim can request that an examination be provided by a Sexual Assault Nurse Examiner at no cost to the victim, generally even if the victim does not report the crime.

In a fewer number of states, the victim does not need to report the crime to obtain an examination. The immigration status of the victim is not relevant in those states.

Victims must pay close attention to the requirements in the particular state in which they were assaulted, particularly the need to report the crime and the time period within which the crime must be reported, to avoid being billed for the forensic examination. A few states will pay the cost of an examination incurred by a resident who is assaulted in a different state when such state will not pay for the forensic examination.

There follows a summary of the federal law that encourages states to pay for forensic examinations and a chart that sets forth a state-by-state summary of the laws or procedures governing the provision of forensic examinations to victims of sexual assault.

Relevant Federal Laws

The Violence Against Women Act of 2004 created a grant program known as STOP (Service, Training, Officers, and Prosecutors) where states receive grants to develop and strengthen law enforcement and prosecution strategies to combat violent crimes against women. In order to receive STOP grants the state or local government must incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault (see 42 U.S.C. §3796gg-4). A state or local government is deemed to assume the full out-of-pocket costs if it (1) provides such exams to the victim free of charge, (2) arranges for the victim to obtain the exam free of charge, or (3) reimburses the victim for the costs of the exam if (i) the reimbursement covers the full cost of the exam, (ii) the victim is permitted at least one year to apply for reimbursement, (iii) the victim is reimbursed within 90 days after written notification of the expense, and (iv) the victim is provided with notice at the time of the exam regarding how to obtain reimbursement.

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Alabama	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless good cause for a later report is found • The victim does not pay for the examination. The Division of Criminal Justice pays for the examination. <p>Victim compensation is governed by Ala. Code § 15-23. The law was passed in 1984 and has been amended several times. E.g., Alabama Crime Victims Compensation Commission (“ACVCC”) Annual Report (http://www.acvcc.state.al.us/downloads/annualreport05.pdf) contains both the statutory provisions and the administrative code.</p> <p>Ala. Code § 15-23-8 provides that the “commission may award compensation for economic loss arising from criminally injurious conduct.” In 1995, the law was modified to authorize the commission to “provide for the cost of medical examinations for the purpose of gathering evidence and treatment for preventing venereal disease in sexual abuse crimes and offenses.” Ala. Code § 15-23-5 (24).</p>	<p>The examination costs should be automatically charged to the Division of Criminal Justice.</p> <p>The toxicology costs should be automatically charged to the Division of Scientific Services within the Department of Public Safety.</p> <p>For additional information, please contact:</p> <p>The Office of Victim Services 860-747-3994 800-822-8428</p>

¹ The information contained in this chart is based upon a review of the statutes and regulations of jurisdictions published before November 2010, as well as interpretive advice obtained from representatives of various state agencies. State officials contacted for this survey may take the position that their views are unofficial and therefore non-binding

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Alaska	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The sexual examination kit is provided at no charge to health care providers. <p>Billing of sexual assault victims for forensic examinations is prohibited. Immigration status is not relevant.</p> <p>AS. 18.68.040 of the Alaska Statutes states as follows: “A law enforcement agency, health care facility, or other entity may not require a victim of sexual assault under AS 11.41.410-11.41.425 who is 16 years or older to pay, directly or indirectly, through health insurance or other means, for the costs of examination of the victim necessary for (1) collecting evidence using the sexual assault examination kit under AS 18.68.010 or otherwise; or (2) determining whether a sexual assault has occurred.”</p> <p>http://www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx05/query=*/doc/{t8751}?</p>	<p>No process required – billing prohibited. Note: AS 18.68.010 provides that the sexual assault examination kits will be provided at no charge to health care providers.</p>
Arizona	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for forensic examinations that are for law enforcement purposes. The county in which the sexual assault occurred pays for the examination. <p>Arizona law provides that any medical expenses arising out of the need to secure evidence that a person has been the victim of a sexual assault shall be paid by the county in which the offense occurred. A.R.S. § 13-1414. Under this statute, counties reimburse costs of the forensic examination; other costs (e.g., hospital exam charges) are not reimbursed and remain the</p>	<p>Claims for examination costs are submitted on standard forms by forensic examination providers to the county in which the offense occurred. Detectives must have provided prior approval for forensic exams for reimbursement, and a law enforcement case number associated with the report of the assault is included with the submission. The victim is not billed for forensic examination charges.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>responsibility of the victim, but may be recoverable under Arizona’s Victim Compensation law.</p> <p>The law provides for reimbursement without regard to citizenship or immigration status, and therefore both qualified and non-qualified immigrants are eligible.</p>	
Arkansas	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless the victim is a minor or good cause for a later report is found • The victim does not pay for the examination. The Crime Victims Reparations Board may reimburse the medical provider. <p>Ark. Code Ann§ 12-12-403. Examinations and treatment -- Payment</p> <p>(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.</p> <p>(b) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the following conditions are met:</p> <p>(1) The assault must be reported to a law enforcement agency; and</p> <p>(2) (A) The victim must receive the medical-legal examination within seventy-two (72) hours of the attack.</p> <p>(B) However, the seventy-two-hour time limitation may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide the exam within the required time.</p>	<p>Ark. Code Ann§ 12-12-404. Reimbursement of medical facility -- Rules and regulations</p> <p>(a) The Crime Victims Reparations Board may reimburse any medical facility or licensed health care provider that provides the services outlined in this subchapter for the reasonable cost for such services.</p> <p>(b) The board is empowered to prescribe minimum standards, rules, and regulations necessary to implement this subchapter. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>(c) (1) A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement which meets the requirements of 45 C.F.R. 164.512(d), as it existed on January 2, 2001, directly to the board for payment.</p> <p>(2) The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the board to the victim.</p> <p>(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.</p>	
California	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The local governmental agency pays for the examination. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim for the exam. All costs related to the exam are treated as local costs and charged to the local governmental agency in whose jurisdiction the offense was committed. The victim can obtain such an exam at no cost regardless of her immigration status. Cal. Penal Code §13823.95. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>A victim is to be informed that he or she may refuse to consent to a physical examination for evidence of a sexual assault, including collection of physical evidence, and that a refusal is not a ground for denial of treatment for injuries and for possible pregnancy and STDs, if the person wishes to obtain such treatment.</p> <p>The physical examination consists of inspection</p>	<p>Health care providers must submit bills for the examination costs to the law enforcement agency in the jurisdiction in which the alleged offense was committed. Cal. Penal Code §13823.95.</p> <p>For more information see:</p> <p>www.ag.ca.gov/victimservices</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>of body, clothes, for injuries or foreign materials, examination of mouth, vagina, cervix, penis, anus and rectum as required, and documentation of injuries.</p> <p>Collection of evidence includes, collection of clothing worn during assault, foreign materials, swabs and slides from mouth, vagina, rectum and penis, the victim's blood and urine samples for toxicology purposes, reference specimens, baseline gonorrhea culture, syphilis serology and specimens for a pregnancy test.</p> <p>Post-coital contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. See Cal. Penal Code §13823.11(e), and California Attorney General's Office Women's Rights Handbook, Chapter 7.</p> <p>For more information see:</p> <p>http://ag.ca.gov/publications/womansrights/cht.htm</p>	
Colorado	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The crime should be reported to law enforcement officials within 72 hours, but this requirement may be waived for good cause. • The victim does not pay for the examination. The local governmental agency pays for the examination. <p>Any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency. (C.S.R. 18-3-407.5)</p>	<p>Colorado's Coalition Against Sexual Assault will also cover the costs of a medical exam for sexual assault victims if for some reason the local law enforcement or victim compensation boards fail to cover the expenses.</p> <p>They can be reached at:</p> <p>Colorado Coalition Against Sexual Assault PO Box 300398 Denver, CO 80203-0398 Phone: 303-861-7033 / 1-877-37-CCASA (22272) Fax: 303-832-7067 Email: info@ccasa.org</p>
Connecticut	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. 	<p>The examination costs should be automatically charged to the Division of Criminal Justice.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<ul style="list-style-type: none"> The victim does not pay for the examination. The Division of Criminal Justice pays for the examination. <p>The examination costs of a victim of sexual assault, when the examination is performed to gather evidence, cannot be charged directly or indirectly to the victim. (C.G.S.A. §19a-112a(e))</p> <p>The examination costs include the costs of testing for pregnancy, sexually transmitted diseases and prophylactic treatment.</p> <p>The costs associated with a toxicology screening of a victim of sexual assault cannot be charged directly or indirectly to the victim.</p>	<p>The toxicology costs should be automatically charged to the Division of Scientific Services within the Department of Public Safety.</p> <p>For additional information, please contact:</p> <p>The Office of Victim Services 860-747-3994 800-822-8428</p>
Delaware	<ul style="list-style-type: none"> There are no eligibility restrictions based on immigration status. There is no specific time period within which the assault must be reported. The victim does not pay for the examination. The Compensation Fund pays for the examination. However, the hospital or medical facility performing the exam may seek to recover the costs associated with the exam from the victim's insurance carrier. If the hospital recovers less than 100% of the cost of the exam from the victim's insurance carrier then the hospital may seek reimbursement from the compensation fund. <p>The Delaware Victim Compensation Board will pay for the cost of a forensic medical examination done for the purpose of gathering evidence that may be used in the prosecution of a sexual offense.</p> <p>Forensic medical examination is defined as a medical diagnostic procedure examining for physical trauma and determining penetration, force or lack of consent.</p>	<p>The hospitals and healthcare professionals are required to provide the forensic medical examinations free of charge to the victims of sexual offenses. The hospital will then seek reimbursement from the Compensation Fund</p> <p>The victim of the sexual offense shall not be required to pay any out-of-pocket costs associated with the forensic examination and shall not be required to file an application with Compensation Board.</p> <p>For additional information, please contact:</p> <p>Delaware Violent Crimes Compensation Board 240 N. James Street, Suite 203 302-995-8383</p> <p>Delaware Hotline 1-800-464-4357 (in state) 1-800-273-9500 (out of state)</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>The cost of the examination includes the collection of all evidence required in the sexual offense evidence kit and may also include the following:</p> <ul style="list-style-type: none"> - the physician’s fee for the collection of the patient history, physical, collection of specimens, treatment for the prevention of venereal disease, including one return follow-up visit; - emergency department expenses, including emergency room fees and costs of pelvic trays; and - laboratory expenses including testing for sperm, pregnancy and sexually transmitted diseases. <p>11 Del. C. § 9019</p>	
District of Columbia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status but the assault must have occurred in D.C. or the victim must be a resident of D.C • A report to the authorities must be made within 7 days after the assault. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. • A claim for compensation must be made within one year of the assault to the Crime Victims Compensation Program (CVCP) or within one year of learning of the CVCP. <p>There is no separate program specifically for the coverage of forensic costs for victims of sexual assault. Forensic exams are paid for through the Crime Victims Compensation Program.</p> <p>Victims of crime, and secondary victims (e.g. people who legally assume the obligation or voluntarily pay for a victim’s expenses) may receive compensation from the Crime Victims Compensation Program (CVCP) if the crime occurred in DC or the victim is a resident of DC.</p>	<p>Both qualified and non-qualified aliens are eligible for the CVCP. People eligible for compensation include victims of violent crime and people who legally assume the obligation or voluntarily pay for a victim’s expenses.</p> <p>Eligibility requirements include:</p> <ul style="list-style-type: none"> • A claim for compensation must be filed within one year after the crime or one year after learning of the CVCP. • The victim must have been injured in the District of Columbia or be a resident of DC. • A police report must have been filed within seven days of the crime. In cases of sexual assault, seeking medical treatment is sufficient. In cases of domestic violence, requesting a civil Restraining Order is sufficient. • The claimant must have reasonably provided information to and cooperated with requesting law enforcement agencies. • The claimant cannot have

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>The Crime Victims Compensation Office does not review the immigration status of victims. Both qualified and non-qualified immigrants are eligible for the CVCP.</p> <p><i>See also</i> D.C. Code §§ 4-501-4-508.</p>	<p>participated in, consented to, or provoked the crime.</p> <ul style="list-style-type: none"> • The award cannot unjustly enrich the offender. <p>Applications for compensation are available at:</p> <ul style="list-style-type: none"> • The Crime Victim’s Compensation Program office located in Suite 203 of DC Superior Court Building A, at 515 5th Street, NW • http://mpdc.dc.gov/mpdc/frames.asp?doc=/mpdc/lib/mpdc/serv/victims/pdf/victimscomp.pdf&group=1523 • DC Metropolitan Police Department and Capitol/Park Police Stations • DC Area Hospital Emergency Rooms • The Victim/Witness Assistance unit of the US Attorney’s Office <p>This form must be completed and mailed to, and further information may be sought from:</p> <p>Crime Victim’s Compensation Office Superior Court Building A 515 5th Street, NW, Suite 203 Washington, DC 20001 (202) 879-4216 http://mpdc.dc.gov/mpdc/cwp/view_a.1241.q.539157.mpdcNav_GID.1523.mpdcNav.l.asp</p> <p>The form does ask for a Social Security number, but it will not be asked for if it is not filled in. The Crime Victim’s Compensation Office does not review immigration status.</p>
Florida	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the 	<p>Reimbursement forms used by Florida’s Crime Victims Services office are generally maintained by emergency rooms and other forensic exam providers, and are also available to police officers.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>examination if the victim reports the assault. Florida's Crime Victims Services Office pays for the examination.</p> <p>Florida's Crime Victims Services office, through its Sexual Battery Examination Program, pays for medical expenses connected with an initial forensic examination of a victim who reports a violation of Florida's sexual assault or lewdness (child molestation) laws. F. S. A. 960.28(2).</p> <p>Florida law expressly precludes a medical provider from directly or indirectly billing a victim (or the victim's parent or guardian if the victim is a minor). F.S.A. § 960.28(1) & (2).</p> <p>It is the policy of Florida's Crime Victim Services office to reimburse forensic exam costs without regard to citizenship or immigration status, and therefore both qualified and non-qualified immigrants are eligible.</p> <p>Information received or maintained by the Crime Victims Services office identifying an alleged victim for purposes of payment of medical expenses is confidential and exempt from state laws providing access to public records. F. S. A. § 960.28(4).</p>	<p>Payment is limited to medical expenses not to exceed \$250, and may not be made unless a law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense. F.S.A. § 960.28(2).</p>
Georgia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim must report the assault immediately. • The victim does not pay for the examination. The local law enforcement agency pays. <p>Ga. Code Ann. §§ 16-6-1 and 16-6-2 provide that the victim of rape or forcible sodomy should contact a local police department or other law enforcement agency immediately and a police officer will come and take a report and collect evidence. An officer will take the victim to the hospital for a medical examination. The law requires that the police department or law</p>	<p>Georgia law does not provide a process for the submission of medical bills.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>enforcement agency investigating the crime pay for the medical examination to the extent of the cost for the collection of evidence of the crime. The law does not specify any restrictions with respect to the immigration status of the victim.</p>	
Guam	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. . The Crime Victims' Compensation Commission pays. <p>The Criminal Injuries Compensation Commission may appoint an impartial licensed physician to examine any person applying for compensation for injuries resulting from a crime, and the fees for the examination shall be paid from funds appropriated for expenses of administration. 9 Guam Code Ann. § 86.35 (1998).</p>	<p>The Code does not provide the mechanism by which such expenses will be reimbursed.</p>
Hawaii	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless good cause for a later report is found if payment by the Crime Victims' Compensation Commission is sought. • The victim does not pay for the examination. The Crime Victims' Compensation Commission pays. <p>Unlike some other states, Hawaii does not have a special statute covering payment for forensic exams. The Crime Victim Compensation statute, however, specifically provides coverage for any hospital or medical expenses and allows for billing directly to the provider. Haw. Rev. Stat. § 351-61. Sexual assault is included in the list of crimes for which compensation may be received. Haw. Rev. Stat. § 351-32.</p>	<p>A CVCC representative explained that county administrative units generally handle reimbursement to hospitals for forensic examinations and related services. Most of the time, the alleged victim will not receive a bill. If the medical provider has difficulty obtaining reimbursement, the CVCC has, and frequently does, provide payment. The CVCC witness agreed that the statute is not clear on this point.</p> <p>If the CVCC reimbursement process is used for some reason, a person seeking reimbursement must fill out an application form, which may be obtained directly from the CVCC or from its website. Following review of that application, compensation may be awarded for all expenses incurred in connection with the crime, including medical examinations. A CVCC application must be filed within eighteen months of the incident unless there is good cause for delay. Haw.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>A representative of the Crime Victims' Compensation Commission (CVCC) explained that forensic examinations are generally covered through county administrative units, which work cooperatively with the CVCC and other state bodies.</p> <p>The statute does not discuss immigration status, nor do any of the applicable definitions address this issue. Instead, "resident" is defined broadly to include "every" individual who "intends to permanently reside in this State" or who "has a permanent abode in State." Haw. Rev. Stat. § 351-2. A CVCC representative stated emphatically that immigration is not a relevant consideration.</p>	<p>Rev. Stat. § 351-62(a). In addition, the incident itself must be reported within 72 hours unless there is "good cause" for delay. See Haw. A.D.C. § 23-605-2. "Good cause" usually requires "mental, physical, or legal impairment"—that is, an actual inability to file a report and application. Failure to understand the law, negligence, and incarceration do not qualify as good cause. Haw. A.D.C. § 23-605-2.</p> <p>Information on the CVCC process (including application forms) is available at 1-800-587-1143 or www.hawaii.gov/cvcc. The CVCC can also provide information on different crisis and treatment facilities and county medical providers.</p>
Idaho	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made within 72 hours after the assault unless there is good cause. • The victim of a sexual assault pays for the examination. The Idaho Crime Victims Compensation Program will reimburse the victim after all third party sources of payment have met their obligations. • The victims of other crimes do not pay for examinations directed or authorized by a law enforcement agency. The law enforcement agency pays. <p>When the victim of any alleged crime is directed or authorized by a law enforcement agency to receive a medical examination for the purpose of gathering evidence for use by a law enforcement agency in the investigation of prosecution of a crime, the costs of the examination will be paid for by the law enforcement agency – not the victim – except in cases of a sexual assault. (Idaho Code § 19-5303)</p> <p>When the victim has allegedly been sexually assaulted, the costs of any forensic or medical examinations, which must be performed by a licensed medical facility and trained practitioner for the purposes of gathering evidence for a</p>	<p>The Idaho Industrial Commission provides on its website a reimbursement form for sexual assault examinations. These forms should be available at hospitals and other licensed medical facilities that perform sexual assault examinations and should be provided to a victim of a sexual assault for completion by the victim and a member of the law enforcement agency that directed or authorized the examination. Portions of the reimbursement form must be completed by a law enforcement agent. If the reimbursement form is provided at a licensed medical facility, the normal process would be for that facility to submit the form to the IIC. If not, the victim must submit the reimbursement form within one year of the date of service. (Telephone call with Idaho Industrial Commission on August 7, 2006, and, see www.iic.idaho.gov/cv/cvsexassault.htm)</p> <p>Reimbursement from the IIC comes only after all other third party sources of payment have met their obligations.</p> <p>For additional information, see www.iic.idaho.gov/cv/cvsexassault.htm</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>possible prosecution, will be reimbursed by the Idaho Industrial Commission under the Idaho Crime Victims Compensation Program – after any collections from any third party who has liability. (Idaho Code §§ 19-5303 and 72-1019(2))</p> <p>NOTE: Because the cost of a forensic exam relating to an alleged sexual assault is payable under the Idaho Crime Victims Compensation Program, the maximum dollar amount of benefits payable to a victim who applies for further benefits under the Program will be reduced by the cost of the forensic exam. (Telephone call with Idaho Industrial Commission on August 7, 2006)</p> <p>A victim does not have to be a resident of Idaho, a U.S. citizen or a qualified immigrant in order for a forensic exam to be charged to a law enforcement agency or the IIC, as applicable. (Telephone call with Idaho Industrial Commission on August 7, 2006)</p>	
Illinois	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The state distributes sexual assault evidence collection kits to hospitals. <p>The Sexual Assault Survivors Emergency Treatment Act requires provision of emergency hospital services to all alleged sexual assault victims. 410 Ill. Stat. § 70/2. Illinois law specifically provides for medical examinations and related laboratory tests, including those to be used as evidence in a criminal proceeding. The medical provider is to maintain the results of these tests and provide them to law enforcement officials upon the alleged victim’s request. 410 Ill. Stat. § 70/5. In addition, the same law creates a statewide sexual assault evidence collection program to arrange for the distribution of sexual assault evidence collection kits to hospitals and collection and analysis of the results. 410 Ill. Stat. § 70/6.4.</p>	<p>If the alleged victim is not otherwise eligible to receive the services under the Illinois Public Aid Code or through insurance, the provider must furnish services without charge and will be reimbursed by the state of Illinois. 410 Ill. Stat. § 70/7. ICASA noted, however, that some victims have received bills when reimbursement has not been received promptly by the medical provider.</p> <p>Information may be obtained from ICASA at 1-217-753-4117 or at their website, http://www.icasa.org. The website includes a list of crisis centers.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>There is no reference to immigration status. Discussion with both the Attorney General's office and the Illinois Coalition Against Sexual Assault (ICASA) confirmed that immigration status should not be relevant.</p>	
Indiana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported although additional forensic services may be billed to a victim or an insurer if the victim does not report the crime within 96 hours and cooperate with law enforcement. • The victim does not pay for the examination. The state pays. <p>The Emergency Services to Sex Crime Victims Act requires provision of services and procedures to alleged sexual assault victims. Ind. Code § 16-21-8-1, 3. Recent amendments (effective July 1, 2006) specifically provide that such services include “forensic medical exams,” which are defined as procedures for acquiring evidence that may be used in a criminal proceeding. Ind. Code § 16-18-2-139.5.</p> <p>(“Additional forensic services,” including pregnancy testing and STD testing, may also be received without charge. Ind. Code § 16-21-8-1, 3; Ind. Code § 16-18-2-1.8.)</p> <p>Immigration status is not addressed, and a representative of the Indiana Crime Victims’ Compensation Committee (CVCC) confirmed that this is not a factor.</p>	<p>The statute and administrative code do not provide for a reporting time limit or cooperation in order to receive a forensic medical examination without charge. Ind. Code § 5-2-6.1-39(b), § 16-21-8-5. Victims are not to be billed for these procedures even if the hospital does not receive reimbursement promptly. (Additional forensic services, however, may be billed to a victim or an insurer if the victim does not report the crime within 96 hours and cooperate with law enforcement. Ind. Code 5-2-6.1-39(c)).</p> <p>Providers are reimbursed through various procedures by the state of Indiana or local agencies, depending on the circumstances. Ind. Code § 16-21-8-6, § 5-2-6.1-39.</p>
Iowa	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Victim Compensation Program pays regardless 	<p>Payment is made out of the state-sponsored Victim Compensation Fund. To obtain payment, health care providers submit bills, including the appropriate paperwork and coding, to the Department of Justice Crime Victim Compensation Program.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>of whether the victim reports the crime to law enforcement.</p> <p>Iowa law provides that the cost of a medical examination of a victim for the purpose of gathering evidence and the cost of treatment of a victim for the purpose of preventing venereal disease will be paid for by the state-sponsored Victim Compensation Fund. As such, screening and treatment for STDs, HIV/AIDS and hepatitis, a pregnancy test and post-coital birth control, are provided through the forensic examination program.</p> <p>No distinction is made concerning the immigration status of the victim. In addition, treatment costs are covered even if the woman refuses to have an evidence examination - - in fact, costs are covered even if the woman chooses not to file a report with law enforcement.</p> <p>Sexual assault victims have the right to petition the court for an order requiring the convicted offender to submit to an HIV-related test.</p>	
Kansas	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination as long as the examination is requested by a law enforcement officer. The county where the assault occurred pays. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim for the exam if requested by any law enforcement officer and with the written consent of the reported victim. The victim's immigrant status is not a factor. Accordingly, both qualified and non-qualified immigrants are eligible. (Kan. Stat. Ann. §65-448)</p>	<p>Costs of conducting the examination of the victim are to be charged to and paid by the county where the alleged offense was committed. The county may charge the defendant for the costs. (Kan. Stat. Ann. §65-448)</p> <p>http://www.accesskansas.org/ksag/Crime/victims_comp_program.htm</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Kentucky	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported but the victim must report an assault by the victim’s spouse. • The victim does not pay for the examination as long as the examination is requested by a law enforcement officer. The Crime Victims’ Compensation Board pays. <p>A victim of a sexual assault is entitled to receive a medical examination to gather physical evidence of the assault. The medical examination includes, but not limited to, basic treatment and evidence gathering services and laboratory tests, if appropriate. The medical examination is available at no cost upon the request of any peace officer or prosecuting attorney with a written consent of the reported victim, or upon the request of the reported victim. (Ky. Rev. Stat. Ann. §216B.400)</p> <p>The victim can obtain such an exam at no cost regardless of her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p>	<p>Health care providers must submit bills for the examination costs to the Crime Victims’ Compensation Board and no charge is to be made to the victim of sexual assault examination.</p> <p>For more information see:</p> <p>http://chfs.ky.gov/dhss/cadv/rsa_default.htm</p>
Louisiana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault. • The victim does not pay for the examination. The parish governing authority pays for the examination to secure crime scene evidence. <p>The Louisiana Foundation Against Sexual Assault (“LAFASA”) stated that there is no uniformity across the state in coverage of forensic examination. In jurisdictions with Sexual Assault Nurse Examiners (“SANE”), the victim requests their services and the SANE performs the examination. If there is no SANE, then the coroner must perform the exam. The LAFASA representative said that there are instances in which the victim has received a bill for the forensic exam.</p>	<p>The bills for the medical expenses associated with the medical examination and the collection of medical evidence should be tendered to the coroner for payment. The coroner in turn may present the bill to the parish governing authority for payment. The victim has the responsibility for payment for medical treatment excluding the forensic examinations.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>The legislature has recently convened a Sexual Assault Task Force to provide statewide protocol for collection forensic evidence and payment for the examinations.</p> <p>A forensic medical examination for a victim of sexual assault is considered an expense associated with the collection and securing of crime scene evidence. Payment for this examination by the parish governing authority is mandated by state law. All other expenses related to these crimes are eligible for reimbursement by the board at 100 percent, subject to the provisions of the Crime Victims Reparations Act and its administrative rules. Louisiana Admi. Code § 22:XIII.503</p> <p>A victim of a sexual assault is entitled to decide whether or not to report the alleged sexual assault. If the victim does not wish to report the incident, the victim shall be examined and treated as a regular emergency room patient. Tests and treatments exclusive to a rape victim shall be explained to the victim along with the costs for such tests. The patient shall decide whether or not such tests shall be conducted. If the patient does not wish to report the incident, the hospital's duties, beyond medical treatment, shall be limited to the collection of tests, procedures or samples that may serve as potential evidence.</p> <p>Hospitals have a mandatory duty to provide medical treatment and examination to sexual assault victims. This does not vary with immigration status.</p> <p>The coroner "or his designee" is required to perform a medical examination of the victim when the case is under police investigation. The coroner should appoint every licensed hospital in the jurisdiction as the "designee" for the performance of medical examinations.</p> <p>Attorney General Opinion 89-78 http://www.ag.state.la.us/ShowDoc.asp?DocID=</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>11346</p> <p>Attorney General Opinion 94-499 http://www.ag.state.la.us/ShowDoc.asp?DocID=14397</p> <p>Louisiana Revised Statute § 40:2109.1</p>	
Maine	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Victim’s Compensation Board pays for the examination <p>Me. Code Title 5 §3360-M. Payment for forensic examinations for alleged victims of gross sexual assault as defined in Maine Revised Statute 17-A.11, 253, including a compelled sexual act or a sexual act with a person who is not 14 or older.</p> <ol style="list-style-type: none"> 1. PAYMENT. The Victims’ Compensation Board (board) shall pay the costs of forensic examinations for alleged victims of gross sexual assault from the Victims' Compensation Fund. The board shall track expenditures for forensic examinations separately from all other expenditures. Forensic examination payments are not subject to any other provision of this chapter. 2. FORENSIC EXAMINATION. The board shall determine by rule what a forensic examination may include for purposes of payment. An examination must include at least all services directly related to the gathering of forensic evidence and related testing and treatment for pregnancy and sexually transmitted diseases. The board shall pay a licensed hospital or licensed health care practitioner the actual cost of the forensic examination up to a maximum of \$ 500. 3. OTHER REIMBURSEMENT. The 	<p>PROCESS FOR PAYMENT. A licensed hospital or licensed health care practitioner that performs forensic examinations for alleged victims of gross sexual assault shall submit a bill to the board directly for payment of the forensic examinations. The hospital or health care practitioner that performs a forensic examination shall take steps necessary to ensure the confidentiality of the alleged victim's identity. The bill submitted by the hospital or health care practitioner may not identify the alleged victim by name, but must be assigned a tracking number that corresponds to the forensic examination kit. The tracking number may not be the alleged victim's social security number. The hospital or health care practitioner that performs the examination may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or medical service organization or health maintenance organization for payment of the examination. The alleged victim is not required to report the alleged offense to a law enforcement agency.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>fact that forensic examinations are paid for separately through the Victims' Compensation Fund does not preclude alleged victims of gross sexual assault from seeking reimbursement for expenses other than those for the forensic examination. A victim seeking reimbursement from the Victims' Compensation Fund for expenses other than the forensic examination is subject to all other provisions of this chapter.</p>	
Maryland	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Department of Health and Mental Hygiene pays for the examination. <p>A victim of an alleged rape of sexual offense is entitled to receive (1) a physical examination for the purpose of gathering evidence as to the alleged crime; (2) emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and (3) up to 5 hours of professional time to gather information and evidence as to the alleged sexual abuse by a physician, qualified hospital health care personnel, or a mental health professional. There is no charge to the victim for the covered services. Md. Code. Ann., Health-General § 15-127. The victim can obtain the covered services at no cost regardless of her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p>	<p>Health care providers must submit bills for the examination costs to the Department of Health and Mental Hygiene. Md. Code. Ann., Health-General § 15-127.</p>
Massachusetts	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Sexual Assault Nurse Examiner's program pays for the examination. 	<p>An individual must access SANE services in hospitals designed as SANE sites by the Massachusetts Department of Public Health.</p> <p>For more information or to locate a SANE site see: http://www.mass.gov/dph/fch/sane/index.htm</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>The Sexual Assault Nurse Examiner’s (SANE) program is a Massachusetts Department of Public Health Program that provides access to Nurse Examiners who are specifically trained in evidence collection and court testimony for cases of rape and sexual assault. There is no charge for this service. The examination is free and provided regardless of immigration status.</p> <p>A victim may be entitled to reimbursement for medications and other treatment through Victim’s Compensation.</p> <p>Emergency contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. Mass. Gen. Laws ch. 111, § 70E.</p>	
Michigan	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made generally within 48 hours after the assault and the victim must cooperate with law enforcement. • The victim can be reimbursed from the Crime Victims Services Commission for the cost of the examination if an application is filed within one year of the date of the assault, the date the victim turned 18 or the date after discovery by a law enforcement agency that injuries previously determined to be accidental or of unknown origin were incurred as a result of a crime. <p>If a person tells a physician or other member of a hospital’s staff that within the preceding 24 hours the person has been the victim of criminal sexual conduct, the attending health care personnel must immediately inform the person of the availability of a “sexual assault evidence kit” and, with the person’s consent perform, the procedures required by the sexual assault evidence kit can be provided to the victim. See 1978 Mich. Pub. Act 368; Mich. Comp. Laws §333.21527.</p>	<p>The victim may seek reimbursement of the cost of the administration of a “sexual assault evidence kit” by filing an application with the Crime Victims Services Commission, if the person meets the eligibility requirements. See Mich. Comp. Laws §18.361.</p> <p>For more information see:</p> <p>http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---,00.html</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>A victim is eligible to receive compensation for the costs of a forensic examination from the Crime Victims Services Commission if the crime occurred or is attempted in Michigan, if the crime occurred to a Michigan resident outside of Michigan and that jurisdiction does not have a crime victim reparations law covering the resident's injury or death, or if the person is a Michigan resident who is injured in another country by a crime involving an act of international terrorism. See Mich. Comp. Laws § 18.361, Sec. 1(c). The victim must complete an application and file it with the Crime Victim Services Commission, which is empowered by statute to administer funds received under VOCA grants and state assessments. See Mich. Comp. Laws § 18.353, Sec. 3(j).</p> <p>A police report must generally be made within 48 hours and the victim must reasonably cooperate with law enforcement and (absent good cause) the application must be filed within one year from: the date of the crime; the date the victim turned eighteen (18); or the date after discovery by a law enforcement agency that injuries previously determined to be accidental, or unknown origin, or resulting from natural causes, were incurred as a result of a crime. See Mich. Comp. Laws §18.355.</p> <p>There is a charge to the victim for the exam regardless of immigration status. However, the victim can obtain compensation for the exam by filing an application with the Crime Victims Services Commission, if the person meets the eligibility requirements. See Mich. Comp. Laws §18.361. Pending legislation would require the health care provider to seek reimbursement of the cost of administering the sexual assault evidence kit.</p> <p>For more information see:</p> <p>http://www.michigan.gov/mdch/0,1607,7-132-2940_3184---.00.html</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Minnesota	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault. • The victim does not pay for the examination. The county in which the assault occurred pays for the examination unless the victim authorizes the county to seek reimbursement from the victim's insurer. <p>The Forensic examination shall be paid for by the county in which the criminal sexual assault occurred. The costs include rape kit examinations, tests for sexually transmitted diseases, and pregnancy status. A county may seek insurance reimbursement from the victim's insurer only if authorized by the victim. <i>See</i> Min. Crim. Code § 609.35.</p> <p>The victim is not required to report the offense to law enforcement or pursue prosecution of the offender for the victim to be eligible for county payment for the examination.</p> <p>There are no specified restrictions based upon immigration status. <i>See</i> Min. Crim. Code § 609.35. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>For more information see:</p> <p>http://www.ojp.state.mn.us</p>	<p>The victim may file an application for reimbursement with the Crime Victims Reparations Board for any costs not covered by the county, if the person meets the eligibility requirements. <i>See</i> Min. Stat. 611A.52, Subd. 8.</p> <p>For more information see:</p> <p>http://www.ojp.state.mn.us</p>
Mississippi	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The Division of Victim Compensation pays for the examination. <p>Miss. Code § 99-37-25. Payment by Division of Victim Compensation of costs associated with</p>	<p>The Division of Victim Compensation is authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be available as a result of services rendered to crime victims under Section 99-37-25.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>medical forensic examination and sexual assault evidence collection</p> <p>When a person is brought into a doctor's office, a hospital or a medical clinic in this state by a law enforcement agency as the victim of an alleged rape or sexual assault, or comes into a doctor's office, a hospital or a medical clinic in the state alleging rape or sexual assault against the person which results in a criminal investigation, the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General.</p> <p>The Division of Victim Compensation shall pay for the medical examination conducted for the procurement of evidence to aid in the investigation and prosecution of the alleged offense. Such payment shall be limited to the customary and usual hospital and physician charges for such services in the area. Such payment shall be made by the Division of Victim Compensation directly to the health care provider. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. However, if the victim refuses to cooperate with the investigation or prosecution of the case, the Division of Victim Compensation may seek reimbursement from the victim. The victim may be billed for any further medical services not required for the investigation and prosecution of the alleged offense. In cases where the damage caused by the alleged sexual assault requires medical treatment or diagnosis in addition to the examination, the patient will be given information about the availability of victim compensation and the procedure for applying for such compensation.</p>	
Missouri	<input type="checkbox"/> There are no eligibility restrictions based on immigration status. <input type="checkbox"/> There is no specific time period within which the assault must be reported but the victim must file the report of examination with	Reasonable hospital and physicians charges for eligible examinations shall be billed to and paid by the department of health and senior services.

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>the prosecuting attorney of the county in which the assault occurred.</p> <p><input type="checkbox"/> The victim does not pay for the examination. The Department of Health and Senior Services pays for the examination.</p> <p>Mo. Ann. Stat. 191.225. Costs of medical examination of certain crime victims.</p> <p>The department of health and senior services shall make payments to hospitals and physicians, out of appropriations made for that purpose, to cover the cost of the medical examination not covered by insurance, Medicare or Medicaid of persons who may be a victim of the crime of rape or a victim of a crime, if:</p> <p>(1) The victim or the victim's guardian consents in writing to the examination;</p> <p>(2) The report of the examination is made on a form approved by the attorney general with the advice of the department of health and senior services; and</p> <p>(3) The report of the examination is filed by the victim with the prosecuting attorney of the county in which the alleged incident occurred.</p> <p>References: Victim of the crime of rape as defined in section 566.030, RSMo. Victim of a crime as defined in chapter 566, RSMo, or sections 568.020, 568.050, 568.060, 568.080, 568.090, 568.110, and 568.175, RSMo.</p>	
Montana	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim need not report the assault but Montana’s forensic rape examination program (“FREPP”) pays for the examination only if the victim has an examination within 72 hours of the assault. • The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The FREPP pays for the examination. <p>Montana’s forensic rape examination payment program (FREPP) provides direct payment to</p>	<p>The healthcare provider applies for reimbursement by submitting a FREPP Claim Form, a Patient Information Form, an itemized bill, and a copy of the medical records to FREPP no later than 90 days from the date of the forensic exam.</p> <p>These forms, along with more information about FREPP, can be found at http://doj.state.mt.us/victims/forensicrapeexaminationpaymentprogram.asp.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>healthcare providers for forensic rape examinations of victims who have an exam within 72 hours of the assault, even if they choose not to report the crime to law enforcement.</p> <p>FREPP pays the cost of a sexual assault examination up to a maximum of \$600.</p> <p>Sexual assault victims cannot be billed for costs, fees, or charges associated with a forensic rape examination and may decline to use their private insurance or any other payment sources, including Medicaid or Medicare. However, medical services provided to a victim as a result of any physical injuries that may have occurred at the time of the sexual assault may be billed to the victim.</p> <p>The 2005 Montana Legislature’s House Bill 577 (amending MCA §§ 2-15-2014 and 46-15-411).</p>	
Nebraska	<p>There are no eligibility restrictions based on immigration status.</p> <p>The victim must report the assault.</p> <p>The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The law enforcement agency investigating the reported sexual assault pays.</p> <p>The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the law enforcement agency of a political subdivision if such law enforcement agency is the primary investigating law enforcement agency investigating the reported sexual assault.</p> <p>Neb. Rev. St. § 13-607.</p>	<p>The statute calls for the costs of the examination to be paid for by the primary investigating law enforcement agency. There is not a centralized, standardized process for handling these costs.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Nevada	<ul style="list-style-type: none"> • The victim must be a qualified immigrant. • There is no specific time period within which the assault must be reported but the victim must file the report. • The victim does not pay for the examination as long as the examination is within 72 hours of the assault. The county in which the sexual assault occurred pays. <p>N.R.S. 449.244.1 provides that any costs incurred by a hospital for a forensic examination of a victim of a sexual offense must not be charged directly to the victim, but must be charged to the county in whose jurisdiction the offense was committed.</p>	<p>Costs for initial emergency care are billed by the health care provider directly to the county in whose jurisdiction the offense was committed.</p>
New Hampshire	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. If the victim's insurance doesn't pay for the examination, the department of justice pays. <p>Most hospitals participate in the Sexual Assault Nurse Examiner</p> <p>Program (SANE). A SANE is a specially trained Registered Nurse who provides complete care to the sexual assault victim. The victim should request that a SANE be called if possible. (A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.56)</p> <p>(http://www.nh.gov/csw/; accessed August 8, 2006)</p> <p>The emergency room in any public hospital must give the victim emergency medical care, even if the victim is an undocumented immigrant or does not have insurance. The victim can request that the hospital provide an interpreter or other accommodation, if necessary. (A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.56)</p> <p>(http://www.nh.gov/csw/; accessed August 8, 2006)</p> <p>If a physician or a hospital provides any physical</p>	<p>The bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim.</p> <p>(RSA 21-M:8-c)</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>examination of a victim of an alleged sexual offense to gather information and evidence of the alleged crime, these services shall be provided free to the individual. (RSA 21-M:8-c)</p> <p>http://www.gencourt.state.nh.us/rsa/html/I/21-M/21-M-mrg.htm;accessed August 8, 2006)</p> <p>After submitting the appropriate paper work, the physician or hospital shall be reimbursed for the cost of such examination by the department of justice to the extent such costs are not the responsibility of a third party under a health insurance policy or similar third party obligation. (RSA 21-M:8-c)</p> <p>http://www.gencourt.state.nh.us/rsa/html/I/21-M/21-M-mrg.htm;accessed August 8, 2006)</p> <p>What kind of services are covered?</p> <p>1) The sexual assault exam includes tests for the sexually transmitted diseases:</p> <ul style="list-style-type: none"> - Trichomonas - Chlamydia - Gonorrhea <p>(On a case by case basis; NOT standard procedure for all sexual assault exams)</p> <p>The victim can request that these tests are conducted as part of the exam.</p> <p>2) An antibiotic medication may be offered as a preventative measure. The medication usually is administered before the patient leaves the hospital.</p> <p>3) A baseline pregnancy test is done at the hospital to determine the victim's eligibility for emergency pregnancy prevention (the "morning after pill"). The victim should make sure to receive the medication while he/she is in the hospital, otherwise the expense may not be covered as part of the exam.</p> <p>4) Although an HIV test can be done at the time of the sexual assault medical exam, it is NOT</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>routinely part of the exam.</p> <ul style="list-style-type: none"> - If the victim chooses to have a separate and confidential HIV test done at the hospital, the results will become part of his/her hospital record. - The HIV test done at hospital is a baseline test and will determine if victim was infected prior to the assault. It will not indicate if the offender infected the victim. - You also may be eligible for HIV post-exposure prophylactic medication. - The hospital can provide you with anonymous testing sites throughout New Hampshire where you can have the test results documented by a number rather than by your name. - The local sexual assault crisis center or NH HELPLINE (800-852-3388) also can provide the victim with the telephone numbers for anonymous or confidential testing sites in his/her area <p>The local crisis center can</p> <ul style="list-style-type: none"> a) arrange for immediate funding for some post-sexual assault medications. b) provide victim with referrals for a physician or clinic in his/her area for additional or follow-up testing. <p>For the nearest crisis center – New Hampshire Statewide Sexual Assault Hotline 800-277-5570 (800-735-2964 TDD/VOICE) (A Legal Handbook for Women in New Hampshire. Chap.5. Abusive Behaviors – Sexual Assault, p.57) (http://www.nh.gov/csw/; accessed August 8, 2006)</p>	
New Jersey	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • Sexual assault must be reported within 5 days of the incidents. • The victim does not pay for the examination. The Prosecutor's Office 	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>will make the New Jersey Sexual Assault Forensic Evidence Collection Kit available to the emergency department of every acute care hospital in its county.</p> <p>Who is eligible?</p> <p>The opportunity to undergo a sexual assault medical forensic examination will be offered to all victims who are at least 13 years of age and disclose a sexual assault within 5 days of when the incident occurred. Victims who present more than 5 days after the assault will not routinely undergo a sexual assault medical forensic examination.</p> <p>Victims who present at a medical facility more than 5 days after the assault occurred and/or victims who present within 5 days but decline a sexual assault medical forensic examination must be evaluated and treated for any emergent medical needs. These victims must be advised that they are still entitled to rape care advocacy services and law enforcement intervention.</p> <p>What rights do the victims have?</p> <p>Every adolescent or adult victim of sexual assault has the right to consent or decline a sexual assault medical forensic examination. No sexual assault medical forensic examination will be performed without the express consent of the victim, regardless of the wishes of any Sexual Assault Response Team (SART) member, hospital staff member or the victim's parents, guardian, spouse, family or friends.</p> <p>In the situation where the victim is unable to consent due to temporary mental incapacity, no medical forensic examination will be done until the victim is able to personally consent to the exam. In cases where the victim is unable to consent due to permanent mental incapacity, the consent of the victim's medical proxy will be obtained prior to the initiation of the examination. For purposes of this document, "medical proxy" refers to the individual</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>designated by the patient or recognized by the health care facility as able to consent to care for that patient.</p> <p>What test kit will be used? All sexual assault medical forensic examinations performed in New Jersey, including those performed at agencies that are not SART participants, should utilize a New Jersey Sexual Assault Forensic Evidence Collection Kit. The Prosecutor’s Office will make evidence collection kits available to the emergency department of every acute care hospital in its county.</p> <p>What kind of tests are covered (free of charge)? A victim who is seen at a participating facility will not be charged any fee for services that are directly associated with the sexual assault medical forensic examination. These services include: routine medical screening, medications for prophylaxis of some sexually transmitted infections, pregnancy tests and emergency contraception, supplies, equipment, and use of space.</p> <p>Incidents of adult sexual assault that do not involve the use of a weapon or result in certain injuries, see N.J.S.A. 2C:58-8, are not required to be reported to any law enforcement agency by hospital personnel. An adult victim of sexual assault who is eligible for SART services has the option of obtaining those services without reporting the incident to law enforcement.</p> <p>Victims requiring emergency health care services beyond the scope of the forensic examination may be charged according to hospital policy for any services provided. Victims will be informed of the services of the Victims of Crime Compensation Board and given an application form.</p> <p>Source: Attorney General Standards for Providing Services to Victims of Sexual Assault, 2nd Ed. New Jersey Department of Law &</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>Public Safety, Division of Criminal Justice, December 2004</p> <p>(http://www.state.nj.us/lps/dcj/agguide/standards/standardssartsane.pdf)</p>	
<p>New Mexico</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The examination must be performed within 5 days of the crime. The victim must file a police report within 180 days of the crime if compensation will be sought through the Crime Victims Reparation Commission. • The victim does not pay for the examination as long as the examination is obtained within 5 days of the crime and the victim files the police report within 180 days of the crime. <p>Free exams are available through any of nine Sexual Assault Nurse Examiners (“SANE”) Units in the State. Additionally, a physician using a forensic kit can perform the exam. In either case, the exam must be performed within 5 days of the crime.</p> <p>There is no requirement pertaining to immigration status/citizenship or residency. Also, the victim is not required to file a police report (so long as compensation is not being sought through the Crime Victims Reparation Commission).</p> <p>SANE will also reimburse up to \$150 in related medical costs to any facility that provides medical services to a victim. To cover further costs, a victim may seek reimbursement or compensation by applying to the Crime Victims Reparation Commission.</p> <p>In practice, it appears that most victims should be able to access a free exam without being billed. However, if the victim bears the cost of the exam, the law provides that reimbursement must cover the full cost of the exam, without any</p>	<p>Exams may be received free of charge at any SANE Unit.</p> <p>To apply for reimbursement or compensation through the Crime Victims Reparation Commission, a victim may submit an application. This application must be filed with within two (2) years of the crime. Additionally, the victim must file a police report within 180 days of the crime.</p> <p>For more information, see: http://www.state.nm.us/cvrc/brochure/broc7.html</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>deductible or limit on the amount reimbursed. The victim is entitled to apply for reimbursement for up to one year from the date of the exam. Reimbursement is provided not later than 90 days after the State receives written notification of the expense the victim incurred. All victims must receive information at the time of the exam regarding how to seek reimbursement</p> <p>For more information, see: N.M. Stat. Ann. § 29-11-7 (2006)</p>	
New York	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported to ensure payment for the exam. • The victim will be asked to use the victim’s private insurance benefits to pay for the examination but the victim may refuse. The Crime Victims Board will pay if the insurance carrier does not. <p>A sexual assault survivor can receive a free medical examination that will gather evidence of the assault in a manner suitable for use in a court of law. There is no requirement pertaining to immigration status.</p> <p>At a minimum, specific services covered by the forensic exam reimbursement fee include forensic examiner services, related hospital or healthcare facility services, and related laboratory tests and pharmaceuticals.</p> <p>While an assault survivor will be asked to use their private insurance benefits to pay for the examination, the survivor must be advised orally and in writing that he or she may decline to provide such information if she believes that providing the information would substantially interfere with her personal privacy and safety. The survivor will be advised that providing such information may provide additional resources to</p>	<p>The Crime Victims Board will reimburse any accredited hospital, accredited sexual assault examiner program, or licensed health care provider that provides forensic exams to sexual assault survivors. Such provider must bill the Board directly.</p> <p>The survivor is not required to file an application with the Crime Victims Board or follow through with prosecution to ensure payment for the exam.</p> <p>For more information, see: NY Executive Law § 631 (2006) and http://cvb.state.ny.us/FRE.htm</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>provide services to other survivors.</p> <p>For more information, see: NY Executive Law § 631 (2006) and http://cvb.state.ny.us/FRE.htm</p>	
North Carolina	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • In order for the Rape Victims Assistance Program to cover the forensic costs, a report to the authorities must be made and the examination must be performed within 5 days after the assault unless the requirements are waived for good cause. • The victim does not pay for the examination as long as the examination is reported and obtained within the required time periods. <p>N.C.G.S.A. § 143b-480.2 provides that following a sexual assault the Assistance Program for Victims of Rape and Sex Offenses will pay the full cost of the forensic examination.</p> <p>Under N.C.G.S.A. § 143b-480.2 "forensic medical examination" means an examination provided to a sexual assault victim by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.</p> <p>Additionally, assistance not to exceed fifty dollars (\$50.00) shall be provided to victims to replace clothing that was held for evidence tests.</p>	<p>Under N.C.G.S.A. § 143b-480.2, the following criteria must be met for forensic costs to be covered:</p> <ul style="list-style-type: none"> • The assault must have been reported to law enforcement within five (5) days of the incident; • The forensic medical examination must have been performed within five (5) days of the assault; • The bill must be submitted within six months of the date of service rendered. <p>Note: These five-day requirements may be waived for good cause.</p> <p>Under N.C.G.S.A. § 143b-480.2, the Rape Victims Assistance Program will pay the expenses for the forensic exam directly to the service provider. Thus, the victim does not need to interact with the Division of Victims Compensation Services.</p> <p>Service providers submitting claims for forensic costs must obtain the name of the investigating law enforcement agency where the report was completed and submit this document with an itemized statement indicating the services rendered. Providers can obtain claim forms and related information from the North Carolina Dept. of Crime Control & Public Safety, Division of Victims Compensation Services in Raleigh, N.C., 1-800-826-6200 (within NC) or (919) 733-7974. For more information see:</p> <p>http://www.nccrimecontrol.org</p> <p>Under N.C.G.S.A. § 143b-480.2, payment for the cost of the forensic medical examination</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
		shall be paid to the provider no later than 90 days after receiving the required written notification of the victim's expense.
North Dakota	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the victim must report the assault but a health care worker must report any suspected sexual assault. • The victim does not pay for the examination. Third party payers or the North Dakota Crime Victims' Compensation Program pays. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. A health care provider is never supposed to directly bill a victim for the examination. The facility is to first bill third-party payers. If none, the North Dakota Crime Victims' Compensation Program has a practice of covering the cost of the examination, however, there is no statute or order providing they must do so. The program will reimburse a medical provider regardless of a victim's immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>Post-coital contraception is handled in the same manner as the forensic examination.</p> <p>For more information, see North Dakota Sexual Assault Evidence Collection Protocol:</p> <p>http://www.ndcaws.org/assault/2004%20CASA ND%20Protocol%20-%20final.pdf</p>	<p>Health care providers must first submit bills to a third party payer if available. If not, the victim applies to the North Dakota Crime Victims' Compensation Program, and upon approval, the medical provider is reimbursed for the examination costs.</p> <p>For more information see:</p> <p>www.state.nd.us/docr/parole/victim_home.htm</p>
Ohio	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim does not pay for the examination. The reparations fund pays for the examination 	The hospital shall submit requests for payment to the attorney general on a monthly basis, through a procedure determined by the attorney general and on forms approved by the attorney general. Ohio Revised Code § 2907.28(A)(2)

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>The Ohio Treasury established the reparations fund to, among other things, fund the expense of sex offense examinations for the purpose of gathering evidence for potential prosecution of the offender and the costs of administering DNA specimen collection and analysis. Ohio Revised Code § 2743.191(A)(1).</p> <p>Each hospital in Ohio that offers emergency services is required to have on staff a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses. Medical facilities are required to inform victims of available venereal disease, pregnancy, medical, and psychiatric services. Ohio Revised Code § 2907.29.</p> <p>The program does not distinguish victims based on immigration or alien status.</p> <p>The Sexual Assault Forensic Exam Program (SAFE) reimburses hospitals up to \$532 per rape kit completed for the purpose of gathering evidence for possible prosecution and in compliance with established state protocol. http://www.ag.state.oh.us/victim/index.asp</p> <p>For additional information, call Beth Malkiss, Bureau of Health Promotion and Risk Reduction at (614) 466-8960.</p>	<p>The cost of a medical examination of a sexual assault victim for the purpose of gathering physical evidence for potential prosecution of the offender, including the cost of prescribed antibiotics, will be paid by the reparations fund. Ohio Revised Code § 2907.28(A).</p> <p>A victim of sexual assault or the victim’s insurer will not be billed or charged directly or indirectly for any costs incurred by a hospital or emergency facility for conducting a medical examination and testing of the victim in order to gather physical evidence for possible prosecution. Ohio Revised Code § 2907.28(B)</p> <p>[</p>
Oklahoma	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported • The victim may seek reimbursement in an amount up to \$250 for the examination. <p>Forensic examinations are funded by the Crime Victims Compensation Program through the</p>	<p>Applications submitted and approved by the district attorney or assistant district attorney before payment will be made. Oklahoma Statutes §142.20(D).</p> <p>The hospital emergency room should have the victim complete the “Victim Verification” section of the Application for Payment of Sexual Assault Examination.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>Sexual Assault Examinations Fund.</p> <p>A victim of a sexual assault is entitled to receive a medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and provide the victim medications. Oklahoma Statutes §142.20(A).</p> <p>The program does not distinguish between victims, regardless of immigration or alien status.</p> <p>Victims can receive compensation for medical costs up to \$250 for the forensic examination (which can be paid directly to the service provider) and \$50 for medications. However, should the victim/guardian pay the examination costs out of pocket, a social security number is required to be provided on the application in order to be reimbursed.</p>	<p>The attending nurse (or a qualified nurse) should complete the “Examining Physician or SANE Nurse Verification” section of the application.</p> <p>The hospital should complete the “Medical Facility Information” section of the application and attach to the application an itemized statement for each provider applying for payment.</p> <p>The application must be forwarded to the District Attorney of the county in which the crime was committed (to the attention of “Victim Witness Coordinator”). The District Attorney’s Office will forward the application to the Oklahoma Crime Victims Compensation Program.</p> <p>Oklahoma District Attorneys Council 421 N.W. 13th, Suite 290 Oklahoma City, OK 73103 Local: (405)264-5000 Fax: (405)264-5099</p>
Oregon	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the sexual assault occurred in Oregon and the examination is obtained within 84 hours of the assault or a partial medical examination is obtained within 168 hours of the sexual assault. • The victim does not pay for the examination as long as the examination has been performed within the required time period. The Sexual Assault Victims Emergency Medical Response Fund pays for the examination <p>The Sexual Assault Victims Emergency Medical Response Fund (SAVE Fund) provides dollars to pay for sexual assault medical exams, forensic</p>	<p>An “eligible victim” for the purposes of accessing the SAVE Fund is a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a “complete medical examination” within 84 hours of the assault or a “partial medical examination” within 168 hours (seven days) of the sexual assault</p> <p>The victim must complete submit a completed application form to the victim’s medical service provider. A copy of the form may be found at:</p> <p>http://www.doj.state.or.us/crimev/pdf/sa_fundfinal.pdf. To obtain payment from the SAVE Fund, the medical services provider must submit the form to the Oregon</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>exams, STD prophylaxis and emergency contraception for any victim of a sexual assault that occurred within Oregon, regardless of ability to pay. There is no restriction based on Oregon residency or immigration status, and the Crime Victims Assistance Section does not review the immigration status of victims. In addition, the SAVE Fund application does not ask for social security numbers. Both qualified and non-qualified immigrants are eligible.</p> <p>The SAVE Fund pays for any of or all the elements of a “Complete” Medical Assessment, which includes the collection of forensic evidence and must be conducted within 84 hours of the assault; and for any of or all the elements of a “Partial” Medical Assessment which does not include the collection of forensic evidence and must be conducted within 7 days of the assault.</p> <p>Examples of services not covered by the SAVE Fund include: treatment of injuries, DNA testing, HIV testing, laboratory testing of blood for any purpose, and prescriptions filled off-site of the location of the medical examination.</p> <p><i>See also</i> Oregon Administrative Rules 137-084-0001 - 137-084-0030, temporary provisions relating to medical assessments for victims of sexual assaults compiled as a note preceding Oregon Revised Statute 147.0005, and http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml.</p>	<p>Department of Justice within one year.</p> <p>Further information may be found at:</p> <p>Crime Victims’ Compensation Program Department of Justice 1162 Court St. NE Salem, Oregon 97301-4096 Telephone (503) 378-5348 TDD (503) 378-5938 FAX (503) 378-5738 http://www.doj.state.or.us/crimev/sex_aslt_vtms_emrf.shtml</p>
Pennsylvania	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • Pennsylvania’s Crimes Victims Act will pay for the medical examination if the victim does not have or does not want to use the victim’s insurance. <p>The cost of a forensic rape examination or other physical examination conducted for the purpose of gathering evidence in any criminal</p>	<p>Under the Crime Victims Act (18 P.S. § 11.707), a hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance or if the victim requests that the insurance carrier not be billed. Upon the filing of a claim, the Office of Victims’ Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where applicable, shall be at a rate set by the Office of Victims’ Services. The cost of a forensic</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>investigation and prosecution under provisions of Pennsylvania’s Crimes Code relating to sexual offenses and the cost to provide medications prescribed to the victim shall not be charged to the victim. 42 Pa. C.S.A. § 1726.1.</p> <p>Although 42 Pa. C.S.A. § 1726.1 provides that Pennsylvania’s Crime Victims Act (18 P.S. § 11.101 <i>et seq.</i>) will pay for the medical examination “if the appropriate insurance is not available,” the Crime Victims Act provides reimbursement for forensic rape examinations if the cost is not covered by insurance or “if the victim requests that the insurance carrier not be billed.” 18 P.S. § 11.707. Apparently, allowing the victim to request reimbursement (a change resulting from an amendment made in 2002) addresses confidentiality/retaliation concerns where the victim is covered by the assailant’s insurance and the insurance company may provide an explanation of benefits to the assailant.</p>	<p>rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim. <i>Id.</i> A sexual assault or rape victim need not be an applicant for any other compensation under the Crime Victims Act. <i>Id.</i></p>
Puerto Rico	<ul style="list-style-type: none"> • The victim must be a legal resident and must have a Social Security number. • The victim must report the assault within 96 hours after the assault and cooperate with the authorities. • The victim does seek compensation under the Crime Victims Compensation Act within 6 months of the assault, unless there is just cause. <p>No specific statutes except for compensation under Crime Victims Compensation Act as described, in relevant part, below.</p> <p>The following victims of crime may receive compensation:</p> <ul style="list-style-type: none"> (a) legal residents of Puerto Rico; (b) nonresident persons if their resident jurisdiction does not provide for compensation under a Federal Crime Victims Compensation Act; (c) persons related to the victim by legal or consensual ties, consanguinity or affinity up to the second degree or who depend on 	<p>The victim must</p> <ul style="list-style-type: none"> (a) complete an application and file it with the Crime Victims Compensation Office; (b) report to the officers of public law and order the commission of the criminal conduct within ninety-six (96) hours following the delinquent act, unless there is just cause for the delay; (c) cooperate with the corresponding authorities in the phases of solving and prosecuting the persons responsible for the commission of the crime. The continuous availability of the victim will be verified through reports filed by the officers to the Crime Victims Compensation Office; (d) claim the benefits within six (6) months following the date of the commission of the crime, unless there is just cause. 25 L.P.R.A. §981(f) and (g) and Law 3 of 2006. <p>A minor or disabled claimant must be represented by his/her parents, custodian or</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>the victim for more than 50% of his/her subsistence expenses;</p> <p>(d) persons suffering from acts of terrorism under certain circumstances. 25 L.P.R.A. §981.</p> <p>The compensable crimes or attempted crimes include: rape (sexual aggression); kidnapping; lascivious acts; violence; child abuse. 25 L.P.R.A. §981(d) and Law No. 3 of 2006.</p> <p>The compensation payable depends on the date of the crime: (1) Crimes committed before 21 August 03 receive a maximum of \$3,000 per person and \$5,000 per family; (2) crimes committed between 21 August 03 and 04 January 06 receive a maximum of \$4,000 person and \$6,000 per family; (3) crimes committed after 05 January 06 receive a maximum of \$6,000 per person, \$15,000 per family and \$25,000 for catastrophic or permanent injury. Compensation is provided for:</p> <p>(a) reasonable expenses incurred for medical treatment, including chiropractic, rehabilitation, hospitalization services and medical care, including ambulance service, medication, medical equipment, and transportation expenses for medical appointments and treatments;</p> <p>(b) reasonable expenses for psychological, psychiatric treatment, including transportation and medical expenses;</p> <p>(c) income the victims would have earned if he/she had not suffered the injury.</p> <p>See compensation table: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_Tabla.html</p> <p>Deductions on compensation may be made if the victim or dependants have received compensation from another source. 25 L.P.R.A. §981(i). Mental anguish and suffering are not compensable. 25 L.P.R.A. §981(h).</p> <p><u>Important:</u> While the law does not appear to place any restriction on the immigration status of the victim; the instructions to the application</p>	<p>guardian. 25 L.P.R.A. §981(g).</p> <p>The application should include all medical reports available regarding the injury and any other information required by regulations. 25 L.P.R.A. §981(g).</p> <p>The application should be accompanied by the following information:</p> <p>(a) photo I.D. of the victim and claimant;</p> <p>(b) copy of the social security card(s) of the victim and claimant;</p> <p>(c) birth certificate or passport; evidence of legal residence of the victim or claimant, if an alien;</p> <p>(d) marriage or death certificate, as applicable;</p> <p>(e) evidence of loss of income;</p> <p>(f) evidence of compensatory benefits received from any other source;</p> <p>(g) medical evidence of the incapacity of the victim to work;</p> <p>(h) police report of the crime;</p> <p>(i) other documents to evidence expenses incurred as a result of the crime.</p> <p>In an emergency, where the victim’s physical injury is obvious, the Office may relax the requirement for the victim to file an application, until the victim’s emergent needs have been attended to.</p> <p>See website for forms and instructions: www.justicia.gobierno.pr/rs_template/v2/CompVic/CV_TDoc.html</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>form, require evidence of legal residence.</p> <p>Funding comes from both the state and federal government.</p>	
Rhode Island	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. If the victim has no insurance, the facility will pay for the examination. <p>Every health care facility that has an emergency medical care unit shall provide to every person prompt life saving medical care treatment in an emergency, and a sexual assault examination for victims of sexual assault without discrimination on account of economic status or source of payment, and without delaying treatment for the purpose of a prior discussion of the source of payment unless the delay can be imposed without material risk to the health of the person. R.I. Gen. Laws § 23-17-26.</p>	<p>The Rhode Island Crime Victim Compensation Program provides victims of violent crimes, including sexual assault, with financial assistance for such expenses as medical bills, loss of earnings and funeral expenses, up to \$25,000. The crime must be reported to law enforcement authorities within 10 days and the victim must apply for compensation within three years from the date of the crime.</p> <p>FAQs: http://www.treasury.ri.gov/crimevictim/faq.php</p> <p>CVC Application: http://www.treasury.ri.gov/crimevictim/download.php</p>
South Carolina	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The South Carolina Crime Victim's Compensation Fund pays if the offense occurred in South Carolina. <p>South Carolina Code, § 16-3-1350 provides that South Carolina must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault if the victim has filed an incident report with a law enforcement agency. These exams must include treatment for venereal disease, and</p>	<p>A licensed health care facility, may file a claim for reimbursement directly to the South Carolina Crime Victim's Compensation Fund if the offense occurred in South Carolina. SC Code Ann. § 16-3-1350.</p> <p>For more information see: http://www.oep.sc.gov/sova/compensation.html</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>must include medication for pregnancy prevention if indicated and if desired. SC Code Ann. § 16-3-1350.</p> <p>For more information see: http://www.oepp.sc.gov/sova/new/billing.html</p>	
<p>South Dakota</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The county in which the alleged sexual assault occurred pays for the examination. <p>Billing of sexual assault victims for forensic examinations is prohibited. Bill is paid by the county where the alleged rape occurred. To qualify, however, the assault must be reported to the state.</p> <p>The relevant statute from South Dakota states as follows: “If a physician, hospital, or clinic examines a victim of an alleged rape or sexual offense to gather information or evidence about the alleged crime, the examination shall be provided without cost to the victim if the alleged offense is reported to the state. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted. S.D. Codified Laws § 22-22-26.</p> <p>http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=22-22-26&Type=Statute</p>	<p>Must report assault to the state. If so reported, the examination is provided without cost to the victim. The examination provider is reimbursed by the county (or the defendant if convicted of the assault).</p>
<p>Tennessee</p>	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim may seek reimbursement for out of pocket expenses under the Criminal Injuries Compensation 	<p>Applications may be made by completing the form found at: http://www.treasury.state.tn.us/injury/application.pdf</p> <p>or by contacting:</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>Program.</p> <ul style="list-style-type: none"> Sexual assault victims are permitted to seek reimbursement under the Criminal Injuries Compensation Program for out-of-pocket expenses incurred as the direct result of personal injuries sustained by a criminal offense, including medical expenses (including the cost of a forensic exam following a sexual assault), lost wages, pain and suffering. <p>A victim of a sexually-oriented crime shall be entitled to forensic medical examinations without charge to the victim. No bill for the examination shall be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. All claims for forensic medical examinations are eligible for payment from the criminal injuries compensation fund, created under § 40-24-107. The victims shall not be required to report the incident to law enforcement officers or to cooperate in the prosecution of the crime in order to be eligible for payment of forensic medical examinations. A claim for compensation under this section shall be filed no later than one (1) year after the date of the examination by the health care provider that performed the examination, including a hospital, physician, SANE program, Child Advocacy Center, or other medical facility. T.C.A. 29-23-118</p>	<p>State of Tennessee Criminal Injuries Compensation Program Division of Claims Administration 502 Deaderick Street Nashville, TN 37243-0202 p - (615) 741-2734 f - (615) 532-4979</p>
Texas	<ul style="list-style-type: none"> To receive compensation for costs associated with the examination, the victim must be either a resident of Texas or a U.S. resident who is victimized in Texas or a Texas resident who is victimized in another state or country that does not have a compensation fund. A report to the authorities must be made within a reasonable period of time but not so late as to interfere with or hamper the investigation and prosecution of the crime and the victim must also reasonably cooperate with law enforcement. The victim may seek reimbursement in an amount up to \$700 for the examination. In addition, the law 	<p>The victim may file an application for reimbursement with the Crime Victims Compensation Program for any costs not covered, if the person meets the eligibility requirements. <i>See</i> Tex. Const. Art. 1, § 31; Tex. Code Crim. Proc. Art. 56.31.</p> <p>For more information see:</p> <p>https://www.oag.state.tx.us/victims/about_comp.shtml</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>enforcement agency that requests a medical examination of a victim of an alleged sexual assault will pay the costs of the evidence collection kit. The law enforcement agency may apply to the Attorney General for reimbursement.</p> <p>In order for a victim be eligible to receive compensation for the costs associated with a forensic exam from the Crime Victims Compensation Program in Texas, the victim must be a resident of Texas who is victimized in Texas, a U.S. resident who is victimized in Texas or a Texas resident who is victimized in another state or country that does not have a compensation fund.</p> <p>The victim must file a police report within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime. <i>See</i> Tex. Code Crim. Proc. Art. 56.37. The victim must also reasonably cooperate with law enforcement. <i>See id.</i></p> <p>The victim must complete an application and file it with the Office of the Attorney General, Crime Victims’ Compensation Program, which is responsible for the administration of the Compensation to Victims of Crime Fund which receives funds from state offender assessments, state donations, and VOCA funds. <i>See</i> Tex. Const. Art. 1, Sec. 31; Tex. Code Crim. Proc. Art. 56.31. The application must be filed within three years of the date of the crime. <i>See</i> Tex. Code Crim. Proc. Art. 56.37. The time period for filing an application may be extended for good cause, including the age of the victim or the physical or mental incapacity of the victim. <i>See</i> Tex. Code Crim. Proc. Art. 56.37.</p> <p>Crime Victims’ Compensation will reimburse “reasonable costs” associated with forensic sexual assault examinations of victims of alleged sexual assaults in an amount not to exceed \$700.00 in the aggregate. A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault or other sex offense for use in the investigation or prosecution of the offense shall pay the costs of</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>the evidence collection kit. Law enforcement agencies may apply to Attorney General for reimbursement. This does not require a law enforcement agency to pay any costs of treatment for injuries. <i>See</i> Tex. Code Crim. Proc. § 56.06. Evidence collected may not be released unless the survivor of the offense or a legal representative of the survivor signs a written consent to release the evidence. <i>See</i> Tex. Gov't. Code Ann. § 420.031.</p> <p>There are no specified restrictions based upon immigration status. <i>See</i> Tex. Gov't. Code Ann. § 420.031. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>For more information see:</p> <p>http://www.oag.state.tx.us/victims/cvc.shhtml</p>	
Utah	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The Utah Office of Crime Victim Reparations (“CVR Office”) will pay up to \$600 for the examination and the CVR Office may pay additional amounts. <p>Utah law provides that the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the Utah Office of Crime Victim Reparations (“CVR Office”) in the amount of \$300.00 without photo documentation and up to \$600.00 with a photo examination. The CVR Office may also pay for the cost of medication and up to 85% of the hospital expenses. Utah Admin. Code Rule R270-1.</p> <p>Utah agency guidelines provide the following guidance for payments for sexual assault forensic examinations:</p>	<p>The Utah Office of Crime Victim Reparations may reimburse any licensed health care facility that provides services for sexual assault forensic examinations. The CVR Office also may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.</p> <p>For more information: http://www.crimevictim.utah.gov/</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<ol style="list-style-type: none"> 1. A sexual assault forensic examination shall be reported to law enforcement. 2. Victims shall not be charged for sexual assault forensic examinations. 3. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations. 4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations. 5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault. 6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider. 7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination. 8. The billing for the sexual assault forensic examination shall: <ol style="list-style-type: none"> a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number; b. indicate the claim is for a sexual assault forensic examination; and c. itemize services and fees for services. 9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source. 10. Evidence will be collected only with the 	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.</p> <p>11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.</p> <p>12. Payment for sexual assault forensic examinations shall be considered for the following:</p> <p>a. Fees for the collection of evidence, for forensic documentation only, to include:</p> <ul style="list-style-type: none"> i. history; ii. physical; iii. collection of specimens and wet mount for sperm; and iv. treatment for the prevention of sexually transmitted disease up to four weeks. <p>b. Emergency department services to include:</p> <ul style="list-style-type: none"> i. emergency room, clinic room or office room fee; ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease; iii. serum blood test for pregnancy; and iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy. <p>13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.</p> <p>http://www.crimevictim.utah.gov/Documents/Provider%20Information/Sexual%20Assault%20Code%20R%20Rule.pdf</p>	

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
Vermont	<ul style="list-style-type: none"> • Free counseling, testing, preventative treatment and support services for HIV infection prevention are available for sexual assault survivors. • There are no eligibility restrictions based on immigration status. • A report to the authorities does not have to be made to obtain reimbursement for the examination. • The Vermont Center for Crime Victim Services pays for the services. <p>Vermont law provides compensation to crime victims, including reimbursement for uninsured expenses of rape exams, HIV testing, and counseling and emotional support. If you report the rape and are not insured, you can apply to the Victims Compensation Program for the cost of the initial exam, any followup, examinations, and treatment.</p> <p>13 Vermont Statutes Annotated Chapter 167.</p>	<p>Crime victims should contact:</p> <p>Vermont Center for Crime Victim Services Victims Compensation Program 58 South Main St., Suite 1 Waterbury, VT 05676-1599 (802) 241-1250 FAX: (802) 241-1253 1-800-750-1213 (in-state only); 1-800-845-4874 (TTY, in-state only)</p> <p>http://www.ccv.s.state.vt.us/joomla/index.php?option=com_content&task=view&id=41&Itemid=33</p>
Virginia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Commonwealth of Virginia pays for the examination. <p>Virginia law provides that all medical fees involved in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred, and for cases involving abuse of children under the age of 18, shall be paid by the Commonwealth of Virginia.</p> <p>Va. Code § 19.2-165.1.</p>	<p>Virginia law provides that the costs of medical exams for crime victims shall be paid out of the appropriation for criminal charges, provided that any medical evaluation, examination, or service rendered be performed by a physician or facility specifically designated by the attorney for the Commonwealth in the city or county having jurisdiction of such case for such a purpose. If no such physician or facility is reasonably available in such city or county, then the attorney for the Commonwealth may designate a physician or facility located outside and adjacent to such city or county.</p> <p>Where there has been no prior designation of such a physician or facility, such medical fees shall be paid out of the appropriation for criminal charges upon authorization by the attorney for the Commonwealth of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within 48 hours after the medical evaluation, examination, or service rendered.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
		<p>Upon conviction of the defendant in any such case, the court shall order that the defendant reimburse the Commonwealth for payment of such medical fees.</p> <p>Va. Code § 19.2-165.1</p>
Virgin Islands	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • A report to the authorities must be made. • The victim does not pay for the examination. The Victim’s Compensation Fund pays for the examination. <p>Virgin Islands Code, 34 V.I.C. § 206, provides that the Government of the Virgin Islands shall ensure that alleged victims of criminal sexual conduct, in any degree, or child sexual abuse shall not bear the cost of the routine medicolegal exam following the assault, provided the victim has filed an incident report with the U.S. Virgin Islands Police Department. These exams shall include treatment for venereal disease, and shall include medication for pregnancy prevention if indicated and if desired. 34 V.I. Code Ann. § 206.</p>	<p>Virgin Islands Code, 34 V.I.C. § 206, provides that a licensed health care facility, may file a claim for reimbursement directly to the Virgin Islands Criminal Victims Compensation Commission. The Virgin Islands Criminal Victims Compensation Commission shall reimburse eligible health care facilities directly. 34 V.I. Code Ann. § 206.</p>
Washington	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • There is no specific time period within which the assault must be reported. • The victim does not pay for the examination. The Washington State Crime Victim’s Compensation Program pays for the examination. <p>A victim of a sexual assault is entitled to receive a medical examination for the purpose of gathering evidence for possible prosecution of the assailant. There is no charge to the victim for the exam. Wash. Rev. Code § 7.68.170; Wash. Admin. Code 296-30-170. The victim can obtain such an exam at no cost regardless of</p>	<p>Health care providers must submit bills for the examination costs to the Washington State Crime Victim’s Compensation. Wash. Rev. Code § 7.68.170.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>her immigration status. Accordingly, both qualified and non-qualified immigrants are eligible.</p> <p>Emergency contraception shall be offered to a female victim of sexual assault, and provided to the victim if she requests it. Wash. Rev. Code § 70.41.350; Wash. Admin Code 246-320-286.</p>	
West Virginia	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the examination is obtained within a reasonable time after the assault. • The victim does not pay for the examination. The forensic medical examination fund pays for the examination. <p>In West Virginia, when any person alleges that he or she has been the victim of a sexual assault, the prosecuting attorney shall pay a licensed medical facility the cost of the forensic medical examination on the following conditions and in the following manner: (i) the payment shall cover all reasonable, customary and usual costs of the forensic medical exam; (ii) the costs of additional non-forensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund, and (iii) the exam must have been conducted within a reasonable time of the alleged violation. W. Va. Code § 61-8B-16. The statute does not distinguish between the eligibility of qualified and non-qualified immigrants.</p>	<p>The licensed medical facility must apply for payment for the costs of a forensic medical examination from the fund within a reasonable time of the examination. The licensed medical facility must certify that the forensic medical examination was performed and may submit a statement of charges to the West Virginia Prosecuting Attorneys Institute for payment from the fund. No licensed medical facility may collect the costs of a forensic medical examination from the alleged victim or from the alleged victim's insurance coverage, if any. An alleged victim of sexual assault is not required to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination. W. Va. Code § 61-8B-16.</p>
Wisconsin	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the examination is obtained within 5 days of the assault and reimbursement is requested within 1 year of the assault. • The victim does not pay for the 	<p>Two programs for paying for Forensic Exams:</p> <ul style="list-style-type: none"> • CVC (Crime Victims Compensation) will reimburse for forensic exams (and other expenses) if the victim reports crime to police and to her health insurance. CVC is

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>examination as long as the examination is obtained and the request for reimbursement is made within the required time frames. The Sexual Assault Forensic Exam covers the examination if the victim does not notify the victim's insurance or the police.</p> <p>Victims of sexual assault can make an application for reimbursement of medical expenses if they report the assault to the police within five days and make the application within one year of the assault. Wis. Stat. ch. 949 (Crime Victim Compensation and Sexual Assault Forensic Exam Compensation).</p>	<p>available for undocumented aliens.</p> <ul style="list-style-type: none"> • Victim must fill out report the crime within five days and apply within a year. Out of pocket expenses will be reimbursed by CVC. • SAFE (Sexual Assault Forensic Exam) covers the cost of the exam and laboratory testing. This option is available if the victim chooses to not notify her insurance or the police. SAFE is available for undocumented aliens. • The hospital, at the victim's discretion, will bill CVC directly for the SAFE. By doing so, she relinquishes her right to any reimbursement for other expenses not associated with the forensic exam. <p>There is no requirement that victims be notified of either of these options.</p> <p>SAFE: http://www.doj.state.wi.us/cvs/CVCompensation/safefund.asp</p> <p>CVC Application: http://www.doj.state.wi.us/cvs/CVCompensation/Compensation_Brochure.asp</p>
Wyoming	<ul style="list-style-type: none"> • There are no eligibility restrictions based on immigration status. • The victim does not pay for the examination as long as the examination is arranged by a law enforcement agency with the victim's consent. • The victim does not pay for the examination as long as the examination is arranged by a law enforcement agency with the victim's consent. <p>A victim of a sexual assault, regardless of immigration status, is entitled to receive a medical examination by a licensed health care provider, arranged by a law enforcement agency with the victim's consent, after the agency receives a report of sexual assault. The examination may include a medical examination</p>	<p>Costs of any examination relating to the investigation or prosecution of a sexual assault should be billed to and paid by the investigating law enforcement agency.</p> <p>Wyo. Stat. Ann. § 6-2-309.</p>

State ¹	Forensic Examination Laws	Process to Receive Payments for Examination Costs
	<p>and treatment, evidence collection and evaluation, and appropriate referrals for follow-up treatment and services,</p> <p>Upon consent of the victim to release the results of the examination, the evidence, record and reports shall be delivered to the law enforcement agency.</p> <p>Wyo. Stat. Ann. § 6-2-309.</p>	

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

17.1

Emergency Medicaid for Non-Qualified Immigrants¹

By Legal Momentum and Morgan Lewis, LLP

Introduction and General Guidelines

Recognizing the importance of ensuring that all residents are able to receive necessary emergency medical care, every state has enacted some sort of emergency Medicaid program. While states are constrained by federal law in their ability to provide public benefits to certain types of “non-qualified” aliens, all states provide them coverage for emergency medical services. While program features and restrictions vary somewhat across the states, most have borrowed essential definitions and restrictions from federal law. Thus, there is some degree of conceptual uniformity. For example, because the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) allows the provision of only emergency benefits to nonqualified aliens, most states have borrowed the federal definition of “emergency medical condition” in order to ensure their compliance.

This information is current as of November 18, 2010. It is intended to provide an overview regarding health benefits and emergency Medicaid for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Who Qualifies for Emergency Medicaid?

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), P.L. 104-193, provides that only “qualified aliens” are permitted access to federal and state public benefits, including Medicaid. A “qualified alien” is one who falls into one of the following nine categories:

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1. Aliens lawfully admitted for permanent residence under the INA;(Note that aliens who entered the U.S. after the date of PRWORA, August 22, 1996, are subject to a 5 year bar or waiting period on the receipt of benefits.)
2. Refugees admitted under § 207 of the INA;
3. Asylees admitted under § 208 of the INA;
4. Cuban or Haitian Entrants as defined in § 501(e) of the Refugee Education Assistance Act of 1980;
5. Aliens granted parole for at least one year under § 212(d)(5) of the INA;
6. Aliens whose deportation is being withheld under either § 243(h) of the INA in effect prior to April 1, 1997, or § 241(b)(3) of the INA, as amended;
7. Aliens granted conditional entry under § 203(a)(7) of the INA in effect before April 1, 1980;
8. Battered aliens who meet the conditions set forth in § 431(c) of PRWORA;
9. Victims of a severe form of trafficking, in accordance with § 107(b)(1) of the Trafficking Victims Protection Act of 2000.

Under the PRWORA, aliens who do not fall into the categories enumerated above, including undocumented immigrants, are considered “non-qualified aliens.” “Non-qualified aliens” can receive only limited federal and state public benefits. However, they may receive Medicaid benefits for care and services necessary for the treatment of an emergency medical condition (excluding organ transplants), provided that they meet all other general Medicaid requirements except those related to immigration status.

State residency is one of the federal Medicaid eligibility requirements that non-qualified aliens must meet in order to receive emergency Medicaid benefits. According to the State Medicaid Manual, “in some cases an alien in a currently valid non-immigrant classification may meet the State rules” for residency (see “Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, State Medicaid Manual (1997), Section 3211.10.) The State Medicaid Manual indicates that non-citizens holding valid Employment Authorization Cards (“EAD” cards) as well as those in valid status as visitors, foreign students, and certain work-authorized non-immigrants may be eligible for emergency Medicaid. However, note that in *Okale v. North Carolina Department of Health and Human Services*, 570 S.E. 2nd 741 (N.C. Ct. App. 2002), the state Medicaid agency of North Carolina denied emergency Medicaid benefits to an individual who was in the U.S. on an unexpired tourist visa. The court took the position that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. *Okale*, 570 S.E. 2d at 741. See also, *Salem Hospital v. Commissioner of Public Welfare*, 574 N.E. 2nd 385 (1991.)On the other hand, state residency may be established even by individuals who enter the U.S. illegally or without inspection (see, e.g., *St. Joseph’s v. Maricopa County*, 142 Ariz. 94, 688 P. 2nd. 986 (1984).)

What Constitutes an Emergency Medical Condition?

“Emergency medical condition” is defined at §1903(v)(3) of the Social Security Act (“SSA”) (42 U.S.C. §1396b(v)(3)) as a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part. Although the PRWORA severely limits what public benefits a state can provide to non-qualified aliens, it allows states to provide additional state funded benefits if state laws enacted after August 22, 1996 affirmatively provide for such eligibility. There is also a federal rule requiring that the condition must have had a “sudden onset,” however, the Medicaid Act does not contain this language. See *Medical Coverage of Emergency Medical Conditions* by Jane Perkins, in Clearinghouse Review Journal of Poverty Law and Policy September-October 2004.

In nearly every state, the condition for which treatment is sought must be severe and acute, such that the absence of immediate attention may lead to either placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.

There have been several cases dealing with the issue of the type and/or duration of medical services covered by emergency Medicaid. In *Lewis V. Thompson*, 252 F. 3rd 567 (2nd. Cir. 2001,) the Second Circuit determined that the Welfare Reform Act’s denial of pre-natal care to non-qualified aliens had a rational basis and did not violate equal protection. The court also held that citizen children of non-qualified pregnant women are eligible for Medicaid on the same basis as children of citizen mother.

There is no definitive rule on when an emergency condition ends for the purposes of cutting off emergency Medicaid. In *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3rd. 91, 2003 (Ariz. 2003), five plaintiffs were treated for emergency medical conditions, and the state agency concluded that the emergency medical conditions had ceased when their conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward. The court concluded that even though a patient’s initial injury is stabilized, the emergency medical condition may not have ended. The court found that the focus must be on whether the patient’s medical condition was acute and of sufficient severity that the absence of immediate medical treatment could result in (1) placing the patient’s health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part, the three consequences set for under the statutory language. Similarly, in *Luna v. Division of Social Services*, 589 S.E.2d 917, 2004, a patient who presented to the hospital’s emergency room with weakness and numbness in the lower extremities was diagnosed with cancer and underwent surgery. All charges incurred after the initial hospitalization were denied payment on the basis that this was not treatment of an emergency medical condition. The provider argued that all treatment rendered was for an emergency medical condition, as defined by state and federal law, because the patient's cancer was rapidly progressing in a life-threatening manner. The appellate court determined that the lower court should have assessed whether the absence of the continued medical services could be expected to result in one of the three consequences outlines in the Medicaid statute. However, in *Greenery Rehabilitation Group, Inc. v. Hammon*, 2d Cir., Nos. 97-6236 97-6238, July 28, 1998, undocumented aliens who suffered serious traumatic head injuries were not entitled to payment of their expenses for the

ongoing care of chronic conditions following initial emergency treatment because such care did not qualify as an emergency medical condition. The court found that, while the patients' sudden and severe head injuries initially satisfied the plain meaning of Sec. 1902(v)(3), the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute.

What Procedures Must be Followed for Qualification?

The procedures for receiving such aid vary significantly as well. Several states require or allow individuals to be preauthorized as emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required; thereby eliminating the possibility of advance authorization. It is important that applicants check their state's rules to determine what steps must be taken in order to qualify for emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant. Note that under federal law, non-qualified aliens who are eligible for emergency Medicaid need not furnish Social Security numbers. Many states specify that no Social Security number is required. However, in *Crispin v. Croye*, 27 Cal. App. 4th 700, 34 Cal. Rptr. 2d 10 (1st Dist. 1994), a California court held that the state Department of Health could require applicants to declare whether they are US citizens or nationals, or aliens with "satisfactory immigration status."

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
Alabama	<p>"Non-qualifying aliens are eligible only for emergency services for treatment of emergency medical conditions." 560-X-25-.05(1)(d).</p> <p>The applicant for aid "is required to furnish his Social Security Number or verification that he has made application for one." 560-X-25-05(j).</p>	<p>Emergency services are "those medical services which are necessary to prevent the death or serious impairment of the health of a recipient and which, because of the threat to the life or health of the recipient, necessitates the use of the most accessible services available and equipped to furnish such services." 560-X-29-.01(5).</p>	<p>The Alabama Medicaid Agency certifies eligibility for emergency services for aliens.</p> <p>http://www.Medicaid.alabama.gov/documents/apply/2A-General/2A-1_Eligibility_Summary-11-05_LS.pdf</p> <p>Childbirth expenses can be billed directly to Medicaid by the provider. Alabama Provider Manual 28.2.11.</p> <p>http://www.Medicaid.state.al.us/billing/provider_manual.01-06.aspx</p>

² The information contained in this chart is based upon a review of the statutes and regulations of jurisdictions published before November 18, 2010, as well as interpretive advice obtained from representatives of various state agencies. State officials contacted for this survey may take the position that their views are unofficial and therefore non-binding

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>The provider manual has several provisions for dealing with applicants without social security numbers. Provider Manual, 3.1.3 (eligibility verification).</p>
Alaska	<p>“A citizenship declaration is not required for an alien applying for treatment of an emergency medical condition (Section 5600) or for a newborn child receiving newborn coverage (Section 5330). Medical Assistance Manual 5011.</p>	<p>“Emergency Medical Condition” means “the individual has, after sudden onset, a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> - placing the patient’s health in serious jeopardy; - serious impairment of bodily functions; - serious dysfunction of any bodily organ or part. <p>“Coverage is limited to the treatment of emergency medical conditions.” Manual, 5600.</p> <p>An emergency medical condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. Manual, 5600A.3.</p>	<p>A caseworker issues the recipient an identification card authorizing treatment after verifying his or her eligibility. Provider Manual, 5600D.</p> <p>The eligibility requirements considered by the caseworker are: “1. Meet the financial and non-financial eligibility requirements for the category of Medicare appropriate for the individual; 2. Be a resident of Alaska; 3. Meet the definition of alien; and 4. Have received treatment for an emergency condition. Manual, 5600B.</p> <p>There is no requirement to verify citizenship/alien status or to verify the social security number. Manual, 5600C. See also Manual, 5011-8C. (“Because they will not be issued a SSN, they are not required to provide or apply for one.”)</p> <p>“A new application is required for each separate occurrence of an emergency medical condition that requires treatment. Manual, 5600D.</p>
Arizona	<p>A.R.S. 36-3903.03 provides that a noncitizen who does not claim and provide verification of qualified alien status, but is otherwise entitled to Medicaid may receive only emergency services as provided under</p>	<p>The Arizona Health Care Cost Containment System (AHCCCS) Medical Policy Manual (Chapter 1100) provides that the term “emergency medical condition” “refers to a medical condition (including emergency labor and delivery) manifesting itself by</p>	<p>Application is by mail, with subsequent eligibility review. A social security number is not required for emergency coverage only.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Section 1903(v) of the Social Security Act.</p> <p>Undocumented immigrants may apply for coverage in the same manner as other Arizona residents and must meet income and residency requirements, but will only be entitled to coverage for emergency services.</p>	<p>acute symptoms of sufficient severity (including extreme pain) such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ol style="list-style-type: none"> 1. Placing the patient’s health in serious jeopardy 2. Serious impairment to bodily functions, or 3. Serious dysfunction of any bodily organ or part. <p>The focus must be on the person’s “current medical condition” (which must be manifesting itself by sufficiently severe, acute symptoms) and whether that condition satisfies the above criteria when service is rendered. Although an initial injury may be stabilized, such stabilization does not necessarily mark the end of the emergency medical condition.</p>	<p>For more information, the AHCCCS Policy and Eligibility Manuals are available at:</p> <p>http://www.ahcccs.state.az.us/Publications/GuidesManuals/</p>
Arkansas	<p>A non-qualified alien under the provisions of PRWORA who resides in Arkansas is eligible only for emergency medical services, and only if all other Medicaid eligibility requirements such as income and resource limits are met.</p> <p>References:</p> <p>http://www.arkansas.gov/dhs/dco/Medicaid%20Eligibility.PDF</p> <p>http://www.arkansas.gov/dhs/webpolicy/Medical%20S</p>	<p>To be eligible for emergency Medicaid, the applicant must have, or must have had within the last 3 months, an emergency medical condition.</p> <p>Emergency medical condition is defined as a medical condition, including labor and delivery, manifesting itself by acute symptoms of such severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in at least one of the following:</p> <ul style="list-style-type: none"> • Placing the patient's health in serious jeopardy • Serious impairment of bodily function 	<p>Before eligibility can be determined, the existence of an emergency medical condition must be verified by a physician's statement that the alien met the statutory conditions. Having a physician's statement that the individual will die without medical treatment does not, in and of itself, constitute an emergency. The eligibility determination must include a determination of whether the condition is acute or chronic. Verification that medical expenses were incurred for treatment of the condition must also be presented</p> <p>Payment for emergency services is limited to the day treatment was initiated and the following period of time in which the</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>ervices/MS%206700.htm</p> <p>http://www.Medicaid.state.ar.us/</p> <p>For more information on the Arkansas Department of Human Services, go to:</p> <p>http://www.state.ar.us/dhs/homepage.html</p>	<ul style="list-style-type: none"> • Serious dysfunction of any bodily part or organ <p>Emergency services are defined as services provided in a hospital, clinic, office or other facility equipped to furnish the required care after the onset of an emergency medical condition.</p> <p>To qualify as an emergency, the medical condition must be acute. It must have a sudden onset, a sharp rise and last a short time. If the individual's condition is chronic (ongoing), such as cancer, AIDS, end-stage renal disease, etc., it is not considered acute and does not meet the definition of an emergency. The worsening of a chronic condition is not considered acute, and does not qualify for emergency services. Federal policy specifically disqualifies care and services related to an organ transplant procedure.</p> <p>Labor and delivery services are covered, including normal deliveries.</p>	<p>necessity for emergency services existed. (E.g. the date of admission through the date of discharge from the hospital.) The date the alien first sought treatment is considered the first day of the emergency, regardless of the duration of the condition.</p> <p>For more Information on eligibility and enrollment, call 800-428-8988 or contact the regional DHHS (Department of Health and Human Services) office. A listing may be found at:</p> <p>http://www.arkansas.gov/dhhs/NewDHS/CountyOffice/DHSCountyOffices.htm</p>
California	<p>In California, non-qualified aliens may obtain restricted Medi-Cal benefits if they meet California income and residency requirements. Coverage includes medical care for an emergency medical condition and for long-term care.</p> <p>The income and residency requirements for emergency care are the same as those for general Medi-Cal eligibility.</p> <p>The relevant California law will provide for inpatient and outpatient emergency</p>	<p>An emergency medical condition is one with acute, severe symptoms, such as severe pain. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient's health; • seriously impair bodily functions; or • cause serious dysfunction to a body organ or body part. <p>Patients that are eligible for emergency Medi-Cal coverage can receive inpatient and</p>	<p>To receive these Medi-Cal benefits, a patient must be a resident of California. No specific period of residency is required, but the patient must have the intent to stay in California indefinitely. County welfare departments determine residency. Patients must also meet certain income requirements. See, Cal. Welf. & Inst. Code §§ 14007 and 14007.1.</p> <p>Patients can receive benefits (i.e. payment to the service provider) after the emergency treatment has been provided. Alternatively, California has a pre-approval process. Thus,</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>care and long-term care for eligible patients. See Cal. Welf. & Inst. Code §§ 14007.5(d) and 14007.65(b).</p> <p>Cancer Screening and Treatment</p> <p>California provides state funding for low-income, uninsured or underinsured women who are residents of California to receive free breast cancer screening if at least 40 years old and free cervical cancer screening if at least 25 years old. Funding is also provided for breast cancer screening for men of any age. If cancer is detected, cancer treatment is available through the Breast and Cervical Cancer Treatment Program. See Cal. Health & Safety Code §§ 104150, <i>et seq.</i></p>	<p>outpatient care by a physician or other appropriate provider necessary to treat the emergency medical condition. Inpatient/outpatient care can include pharmacy, radiology, laboratory, dialysis and dialysis-related services. See, the Medi-Cal Medical Services Provider Manual, Part 1.</p> <p>Coverage does not include continuation of services or follow-up care after the emergency is resolved.</p> <p>Medi-Cal also covers long-term care.</p> <p>Cancer Screening and Treatment</p> <p>The Breast and Cervical Cancer Treatment Program covers breast and/or cervical cancer treatment and related services for up to 18 months for breast cancer treatment and 24 months for cervical cancer treatment.</p>	<p>persons who would qualify for emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for restricted Medi-Cal coverage, which can be used for emergency treatment.</p> <p>All acute level inpatient days (except an emergency admission for labor and delivery) continue to require authorization via a <i>Treatment Authorization Request</i> (“TAR”) from the appropriate Medi-Cal field office. Admissions for labor and delivery require authorization after the first two days (for a vaginal delivery) or the first three days (for a cesarean section delivery) of the patient’s stay.</p> <p>Applicants must file a simplified application with their county. No social security number is required for emergency medical coverage under Medi-Cal.</p> <p>The application for a card to receive restricted Medi-Cal benefits may be submitted at any time. See, Cal. Welf. & Inst. Code §14011.2(c).</p> <p>Cancer Screening and Treatment</p> <p>To obtain free cancer screening, a woman (or man for breast cancer) must earn less than 200% of the federal poverty level, be over 40 for breast cancer screening or over 25 for cervical cancer screening and be either uninsured or underinsured. There is no age limit for male screening for breast cancer. A Recipient Eligibility Form must</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>be completed at the doctor's office which is signed by both the patient and the provider and maintained in the patient's medical record. The doctor submits the form electronically.</p>
Colorado	<p>Health Care Policy and Financing Staff Manual Volume 8, § 8.100.53 states that non-qualified immigrants who meet all other requirements for any category of Medicaid may receive emergency only benefits.</p>	<p>Coverage includes those services that treat conditions (including emergency labor and delivery) manifesting themselves by acute symptoms of sufficient severity (including severe pain) such that the absence of medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy; • serious impairment to bodily function; or • serious dysfunction of any bodily organ or part. 	<p><u>Emergency medical condition other than labor and delivery:</u> A non-citizen who is otherwise eligible for a category of Medicaid must submit an application for emergency medical services at the time of the emergency or thereafter. According to the rules at 8.100.53, a physician shall make a written "non-citizen emergency Medicaid statement" certifying the presence of an emergency medical condition when the services are provided. This documentation must be submitted with the application. If it is apparent to the technician that the service was provided for a condition that is not an emergency medical condition as defined in the rule, the application must be denied. As with all Medicaid applications, the date of eligibility may be backdated up to three months prior to the date of the application if the emergency medical services were provided during that period of time and they met other eligibility criteria. Emergency medical assistance must be terminated after the services were provided. Labor and delivery are considered emergency medical conditions. For labor and delivery, a different application process is required as stated below.</p> <p><u>Labor and delivery:</u> When a county technician receives an application from a non-citizen pregnant woman, the technician will need to first look at her due</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>date. If her due date is approximately within two months from the date of your review of the application, you may process her application for emergency Medicaid prior to her due date. If the due date is beyond approximately two months, you must deny her with the new denial reason code that there is no emergency. The new reason code does mention that if pregnant, she can reapply two months before her due date.</p> <p>For additional information, please contact:</p> <p>Colorado Department of Health Care Policy and Financing (303) 866-3513</p> <p>1(800) 221-3943</p>
Connecticut	An individual determined ineligible for Medicaid solely because s/he does not meet the citizenship/alienage requirement is potentially eligible for emergency medical assistance under Connecticut's emergency Medicaid program.	<p>Emergency Medicaid coverage is limited to treatment required after the sudden onset of a medical emergency. The acute symptoms of the condition must be sufficiently severe that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.</p> <p>Emergency Medicaid does NOT pay for treatment of chronic conditions, even if the condition has the potential to be life threatening. For example, a person with a heart condition that may lead to a heart attack unless it is treated cannot get Emergency Medicaid UNTIL there is a heart attack or sudden onset of a medical emergency.</p>	<p>Emergency Medicaid can never be pre-approved. Instead the medical bill for the treatment of the emergency is submitted for review by a Medical Review team at the CT Dept. of Social Services.</p> <p>Immigration status is NOT a factor for Emergency Medicaid eligibility. Any person, regardless of legal immigrant status can be eligible for Emergency Medicaid if he/she meets income and asset limits.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>Emergency Medicaid covers labor and delivery for pregnant women who do not have health insurance and who meet Medicaid income and asset limits. It does not cover prenatal care. However, if the pregnant woman has complications to her pregnancy or if the unborn baby is at risk, then Emergency Medicaid will cover the cost of care.</p> <p>Likewise, Emergency Medicaid will cover the cost of an abortion if the mother's life is in danger, but not if the abortion is an elected procedure.</p>	
Delaware	<p>Undocumented aliens are not eligible for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.</p> <p>Undocumented aliens are either aliens that were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the United States when the period of time expired.</p> <p>To be eligible for Emergency Medicaid, the individual must meet all eligibility requirements for a specific Medicaid eligibility group. The individual does NOT have to meet the requirement concerning a declaration of satisfactory immigration status and verification of that status</p> <p>Delaware's Administrative</p>	<p>An emergency is defined as:</p> <ul style="list-style-type: none"> - a sudden serious medical situation that is life threatening; OR - a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; AND - without the treatment a person's life could be threatened or the person could suffer serious long lasting disability. <p>Emergency ambulance services to transport these individuals to and from the services defined above are also covered.</p> <p>The following services are not covered:</p> <ul style="list-style-type: none"> - any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital - any service (such as pharmacy, transportation, office visit, lab or x-ray, home health) that precedes or is subsequent to a covered emergency service. The only exception is that ambulance 	<p>For Additional Information contact:</p> <p>Delaware Medical Assistance Program</p> <p>Customer Support 1-800-372-2022</p> <p>The Division of Social Services The Lewis Building 1-800-372-2022</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Code</p> <p>Title 16; 14360 Treatment of a Medical Emergency</p>	<p>transportation that is directly related to the emergency is covered under the Emergency Medicaid</p> <ul style="list-style-type: none"> - organ transplants - long term care or rehabilitation - routine prenatal and post partum care 	
<p>District of Columbia</p>	<p>Individuals who would be eligible for Medicaid but for their immigrant status are eligible for Emergency Medicaid services. To be covered, one's medical condition must be severe and acute.</p> <p>DC Healthy Families Expansion Coverage</p> <p>In addition to Emergency Medicaid services, non-qualified immigrant <u>children</u> may qualify for locally-funded medical assistance through DC Healthy Families Expansion Coverage, a funding-capped program that can serve approximately 800 children. Children eligible for "Expansion Coverage" must be ineligible for standard Medicaid because of their immigration status. They must meet all other non-financial requirements in the Medicaid program, except provision of a Social Security number. Their income must be below 200% of the Federal Poverty Level.</p> <p>A waiting list is put in place when requests for the program exceed the</p>	<p>Coverage includes those services that treat conditions (including emergency labor and delivery) manifesting themselves by acute symptoms of sufficient severity (including severe pain) such that the absence of medial attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy; • serious impairment to bodily function; or • serious dysfunction of any bodily organ or part. <p>DC Healthy Families Expansion Coverage</p> <p>DC Healthy Families provides to immigrant <u>children</u>:</p> <ul style="list-style-type: none"> • Doctor visits • Immunizations (shots) • School physicals • Emergency care • Hospital Stays • Prescription medicines • Prenatal care • Labor and delivery • Vision care and glasses • Dental care • Family planning • Transportation to doctor appointments • Home health care • Durable medical equipment 	<p>To qualify for Emergency Medicaid coverage, a person must meet all eligibility requirements for DC's Medicaid program, except the citizen/alien status and Social Security number requirements.</p> <p>To be eligible for program benefits, a person must be a resident of the District of Columbia. However, no durational residency requirement is imposed.</p> <p>Individuals must fill out the Medical Assistance Combined Application for DC. The application asks for immigrant status. Non-qualified immigrants should mark "OTHER" in the status box. The application states explicitly that this information is confidential and no further questions will be asked about the applicant's immigration status.</p> <p>The form may be found at: http://dhs.dc.gov/dhs/lib/dhs/pdfs/ima/ima_combined_app_(eng)_v24_091305.pdf</p> <p>The form should be brought to the applicant's area Service Center. To find the nearest</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>program's capacity.</p> <p>DC HealthCare Alliance</p> <p>The DC HealthCare Alliance (HCA) program is designed to provide medical assistance to needy DC residents who are not eligible for Medicaid, including both qualified and non-qualified aliens. Individuals must be residents of DC, have no health insurance and have a family income equal to or below 200% of the Federal Poverty Level.</p> <p>HCA provides comprehensive health services, including preventative, primary, acute and chronic care services such as clinic services, emergency care, immunizations, in-patient and out-patient hospital care, physician services and prescription drugs. Services are free.</p> <p><i>See also</i> D.C. Code §§ 4-201.01-4-221.01, particularly §4-20.24; 22 D.C. Municipal Regulations Chapter 33; Department of Human Services IMA Policy Manual; and DC HealthCare Alliance Manual. Additional information may be searched for at http://fast.dc.gov/match.aspx.</p>	<ul style="list-style-type: none"> • Health education services • Mental health services • Drug and alcohol treatment • Other health care needs <p>DC HealthCare Alliance</p> <p>HCA provides:</p> <ul style="list-style-type: none"> • Preventive Care (checkups, diet and nutrition) • Health screenings (tests) • Prescription drugs • Dental services (cleanings or fillings) • Family planning services (birth control) • Urgent and emergency care (emergency room) • Immunizations (shots) • Prenatal care (pregnancy) • Well child care (checkups for children) • Wellness programs (eating well and staying healthy) • Hospital care (medical, surgical, and GYN) 	<p>Service Center, call (202) 724-5506. The form may also be mailed to 645 H St., NE, Washington, DC 20002. Help can be found at (202) 724-5506. Free interpreters are available.</p> <p>If approved, the applicant may also be reimbursed for some emergency medical bills from the past three months.</p> <p>DC Healthy Families Expansion Coverage</p> <p>A child eligible for "Expansion Coverage" must enroll in managed care and be eligible for standard Medicaid services. However, the child cannot receive Medicaid services on a fee-for-service basis prior to enrolling in managed care. A child eligible for "Expansion Coverage" is not eligible for retroactive eligibility and cannot qualify for benefits by spending down income with medical bills.</p> <p>Individuals must fill out a DC Healthy Families application. Applications may be obtained by calling 1 (888) 557-1116, picking one up at Giant, Safeway, CVS, Rite Aid, or a library, or at: http://app.doh.dc.gov/services/healthy_families/healthy_families_02_26_04.shtm.</p> <p>DC HealthCare Alliance</p> <p>To be eligible for program benefits, a person must be a presently living in DC voluntarily and not for a</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>temporary purpose and have no current intention of moving out of DC. The individual does not need to be a U.S. citizen or a qualified alien. Application for and verification of Social Security numbers is not required. The individual must have no health insurance and have a family income equal to or below 200% of the Federal Poverty Level.</p> <p>The following persons are <u>not</u> eligible for HCA:</p> <ul style="list-style-type: none"> • persons eligible for Medicaid, • persons receiving Medicare Part A or Part B benefits, • fugitive felons, • probation or parole violators, • persons penalized for misrepresenting their residence to receive assistance in two or more states, • persons who refuse to provide information needed to determine their eligibility <p>Individuals must fill out an application. If approved, the applicant will receive a membership card. Once enrolled, the individual must fill out a form every 12 months to prove continued eligibility. Forms may be filled out at the following locations:</p> <ul style="list-style-type: none"> • DC General, 1900 Massachusetts Avenue SE • Greater Southeast Hospital, 1310

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p style="text-align: right;">Southern Avenue SE</p> <ul style="list-style-type: none"> • Congress Heights Clinic, 3720 M. L. King, Jr. Avenue SE • Anacostia Clinic, 1328 W Street SE • Hunt Place Clinic, 4130 Hunt Place NE • Woodridge Clinic, 2146 24th Place NE • Walker-Jones Clinic 1100 First Street NW • Southwest Community Center, 850 Delaware Avenue SW <p style="text-align: right;"><i>See also</i> Department of Human Services IMA Policy Manual, DC HealthCare Alliance Manual.</p>
Florida	Under F. S. A. § 409.904, Florida authorizes payment of medical assistance and related services for low-income individuals who meet all other requirements for Medicaid except citizenship. Eligibility begins on the first day of the emergency and is limited in duration to the period of the emergency. Florida Administrative Code, § 65A-1.702(2)(c).	<p>Florida Medicaid regulations (F. S. A. § 409.901) define an "emergency medical condition" to be:</p> <p>(a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain or other acute symptoms, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> 1. Serious jeopardy to the health of a patient, including a pregnant woman or a fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. 	<p>Service providers will provide the required documentation after services are rendered. All provider claims must be accompanied by documentation of the emergency nature of the service, except for labor and delivery, which is payable without additional documentation, provided that an emergency indicator is entered on a claim form.</p> <p>Non-qualified immigrants who receive emergency services but are subsequently billed may obtain Medicaid authorization after treatment by submitting proof from a medical professional stating that the treatment was due to an emergency condition.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>(b) With respect to a pregnant woman:</p> <ol style="list-style-type: none"> 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery. 2. That a transfer may pose a threat to the health and safety of the patient or fetus. 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes. <p>Florida’s Medicaid Provider General Handbook includes a section under “Emergency Medicaid for Aliens” which explains that the program “reimburses for emergency services provided to aliens who meet all Medicaid eligibility requirements except for citizenship or alien status.” The Handbook defines “emergency” using the same text as the first paragraph of Florida’s Medicaid regulations (F. S. A. § 409.901(a), without including § 409.901(b)).</p> <p>The Handbook further provides that “[e]ligibility can be authorized only for the duration of the emergency. Medicaid will not pay for continuous or episodic services after the emergency has been alleviated.”</p>	
Georgia	An individual determined ineligible for Medicaid solely because s/he does not meet the citizenship/alienage requirement is potentially eligible for emergency medical assistance under	Coverage for emergency Medicaid is limited to “emergency medical conditions” as defined in federal law 1903(v) of the Social Security Act and 42 CFR 440.255.	To receive emergency Medicaid a physician must determine the need for an emergency medical service and verify that the service has been rendered. The physician must verify the emergency medical services by completing DMA Form 526.

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>PRWORA.</p> <p>References:</p> <p>http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MANUALS/2215.doc</p> <p>http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MANUALS/2054.doc</p>		<p>“Physician’s Statement for Emergency Medical Assistance,” or another written statement.</p>
Guam	<p>Guam does not have any state regulations relating to the provision of emergency Medicaid.</p> <p>Guam Regulations provide that no funds appropriated from the General Fund of the government of Guam, or any fund where the revenues deposited therein are of local origin, may be used to provide public assistance to any person who is not a U.S. citizen or a permanent resident alien of the United States and registered as such with the United States Immigration and Naturalization Service. For the purposes of this section only, the term “public assistance” is defined as assistance provided through one or more of the following programs administered by the Department of Public Health and Social Services:</p> <p>(a) General Assistance</p> <p>(b) Aid to Families with Dependent Children</p> <p>(c) Medically Indigent</p>		

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Program (d) Medicaid</p> <p>Funds appropriated from the General Fund, or from other funds collected locally, shall be used in support of the provision of services to individuals who are not U.S. Citizens or permanent resident aliens of the United States, but are citizens of a state in Free Association with the United States, only upon the event that the Governor of Guam enters into a valid contract with either an instrumentality of the government of the United States or the governments of the Freely Associated States (being the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands). The terms of said contract must, at a minimum, establish the immediate reimbursement to Guam of all costs associated with the financial impact of the Compacts of Free Association of the various Freely Associated States listed herein, such impact to be defined and quantified by the government of Guam.</p> <p>See 10 Guam Admin. R. & Regs. § 2201.1 (2006).</p>		
Hawaii	<p>Hawaii’s Med-quest program makes special provision for emergency medical assistance to “illegal aliens” if all other categorical and financial eligibility requirements are met. Hi. A.D.C. § 17-1723-1, 3.</p>	<p>Coverage is limited to the care necessary to address the emergency condition as defined in the previous column.</p> <p>Such individuals may receive emergency services if there is a “medical condition, including emergency labor and delivery,</p>	<p>Applicants for emergency care may receive a temporary Hawaii Med-Quest identification card. Hi. A.D.C. § 17-1711-17.</p> <p>Information may be obtained through the Med-Quest Division of the Department of Human Services. The most convenient</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>The purpose of this program is to provide emergency coverage to “aliens who do not qualify for non-emergency related medical assistance[.]” Hi. A.D.C. § 17-1723-1, 3.</p> <p>The only criteria waived under the provisions of this section is that an individual be either a U.S. citizen or legal permanent resident alien.</p>	<p>manifesting itself in acute symptoms of sufficient severity such that the absence of immediate medical attention could be expected to result in</p> <p>(1) Placing the patient's health in serious jeopardy.</p> <p>(2) Serious impairment to bodily functions.</p> <p>(3) Serious dysfunction to any bodily organ or part.”</p> <p>Hi. A.D.C. § 17-1723-5(b).</p> <p>Organ transplants are specifically excluded. Otherwise, medical care is provided through the existing fee-for-service program. Hi. A.D.C. § 17-1723-6.</p>	<p>way to obtain this information is at http://www.hawaii.gov/dhs/health/medquest or http://www.medquest.us/.</p> <p>No social security number is required to receive emergency services. Hi. A.D.C. §17-1723-5(b)(4).</p>
Idaho	<p>Individuals who are not U.S. citizens or qualified non-citizens are eligible for emergency medical services if they meet all other conditions of eligibility for a Title XIX or XXI Medicaid program (Idaho Administrative Code 16.03.01.240 (Eligibility for Health Care Assistance for Families and Children – Individuals Who Do Not Meet the Citizenship or Qualified Non-Citizen Requirements)) and are residents of Idaho. Idaho Administrative Code 16.03.01.210 (Eligibility for Health Care Assistance for Families and Children – Residency)</p> <p>The usual requirement that a</p>	<p>The Idaho Administrative Code does not define either “emergency medical assistance” or “emergency medical services.” Idaho Administrative Code 16.03.09.010.20 (Medicaid Basic Plan Benefits – Definitions – Emergency Medical Condition) defines “emergency medical condition” as “a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:</p> <ul style="list-style-type: none"> - Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy; - Serious impairment to 	<p>The State of Idaho does not publish details relating to the eligibility determinations or applying for emergency medical assistance. Idaho Administrative Code 16.03.01.110 provides that a person seeking coverage must complete and sign an application for healthcare assistance and certify that the information provided on the form is truthful. In addition, a Health Questionnaire must be submitted together with the application. The application and Health Questionnaire are available on the website of the Idaho Department of Health and Welfare at: http://www.healthandwelfare.idaho.gov. The application contains some general instructions and statements. An applicant should contact the Idaho Department of Health and Welfare prior to concluding that coverage is unavailable based on</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>person have a social security number in order to receive benefits is waived in the case of an emergency medical condition suffered by a non-qualified alien due to the inability of a non-qualified alien to be issued a social security number. Idaho Administrative Code 16.03.01.250. (Eligibility for Health Care Assistance for Families and Children – Emergency Medical Condition)</p>	<p>bodily functions; or</p> <ul style="list-style-type: none"> - Serious dysfunction of any bodily organ or part. <p>The Department of Health and Welfare determines if a condition meets the criteria of an “emergency condition.” (Idaho Administrative Code 16.03.01.205)</p> <p>An emergency medical condition is deemed to include labor and delivery, but not pre-natal care or post-partum care. (Idaho Administrative Code 16.03.01.250 (Eligibility for Health Care Assistance for Families and Children – Emergency Medical Condition) and Idaho Health and Welfare Department Manual – Health Coverage (Medicaid) for Families and Children)</p> <p>The eligibility of non-qualified non-citizens to receive emergency medical assistance is limited to the date(s) of the emergency condition. Idaho Administrative Code 16.03.01.240.01 (Individuals Who Do Not Meet the Citizenship or Qualified Non-Citizen Requirements – Limited Eligibility and Emergency Medical Condition)</p>	<p>the general information in the application. An applicant should call the Department to find out where to submit the application and questionnaire at 1-800-926-2588.</p> <p>When a person has (or believes he or she has) an emergency medical condition and goes to the hospital or other licensed health care facility, the hospital or health care facility should help the person to complete the application and other required paperwork and should submit it to the Idaho Department of Health and Welfare. (Telephone call with the Idaho Department of Health and Welfare, August 9, 2006) A determination as to coverage will be made by the Bureau of Medicaid Policy and Reimbursement.</p>
Illinois	<p>Illinois provides for emergency medical care for any individual, regardless of immigration status, so long as the income standards and eligibility standards are met. 89 Ill. A.C. § 120.310(b).</p> <p>The Illinois Department of Human Service's 'Cash, Food Stamp, and Medical</p>	<p>Emergency services may be provided if they are “required after the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> A placing the non-citizen’s health in serious jeopardy; B. serious impairments to bodily 	<p>Under the Department of Human Services Medical Assistance Programs, the Department pays participating providers for treatment for emergency medical conditions.</p> <p>Coverage for an emergency medical condition can only be authorized after the services are provided. Eligibility cannot be authorized for a future period.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Manual,' section PM I-03-04, titled Emergency Medical for Non-citizens' provides that non-citizens with an emergency medical need may qualify for Assist or AABD Medical. They do not have to be lawfully admitted for permanent residency or reside in the U.S. with the knowledge and approval of the Bureau of Citizenship and Immigration Services (BCIS). They also do not need a Social Security Number. They must meet all income, asset, and other rules of the AABD Medical or Assist programs.</p> <p>Section PM 06-05-00, titled Emergency Medical for Ineligible Non-citizens provides that individuals who are not eligible for medical benefits because they do not meet the citizenship requirement, may qualify for medical for emergencies. They must meet all the program requirements for Parent Assist, KidCare Assist, KidCare Moms and Babies, or AABD Medical, except for a Social Security Number and verification of immigration status. People who meet these requirements are called ineligible non-citizens and, unless pregnant, are only eligible for short-term medical coverage for emergency care. Ineligible non-citizens are ineligible for cash and regular medical benefits, including organ transplants.</p>	<p>functions; or</p> <p>C. series dysfunction of any organ or part.</p> <p>89 Ill. A.C. § 120.310(b)(3).</p> <p>Illinois generally provides coverage for medical services related to the emergency medical condition. <u>See</u> 89 Ill. A.C. § 140.3-7. However, organ transplants are not covered. 89 Ill. A.C. § 140.2(a)(7).</p> <p>The Illinois Department of Human Service's 'Cash, Food Stamp, and Medical Manual,' section PM 06-05-00 provides that medical coverage is given only to the person with the emergency medical condition.</p> <p>Chronic conditions and terminal illness do not meet the requirement for emergency medical coverage. Need for long term care services does not qualify the person for emergency medical coverage. The person must also have an emergency medical condition as defined above.</p> <p>Coverage for an emergency medical condition is very limited. Only medical care that is strictly of an emergency nature, such as treatment in an emergency room, or treatment in a critical care unit or intensive care unit, meets this requirement.</p> <p>Eligibility for payment of services lasts only until the emergency condition is stabilized. The period of time for which services are</p>	<p>The person applying for emergency medical benefits must need, or have received, emergency medical services in the month of application or during the 3 months before the month of application. An ineligible noncitizen who comes to Illinois solely to receive medical care does not qualify. Medical coverage is given only to the person with the emergency medical condition; other family members are not eligible.</p> <p>Non-citizens who are lawfully admitted for permanent residency may receive emergency medical during the 5-year period that they are disqualified from receiving ongoing benefits. The following 2 groups of children age 18 and younger are eligible for KidCare Assist, KidCare Share, and KidCare Premium: children lawfully admitted for permanent residence on or after 08/22/96; and children who are permanently residing under color of law (PRUCOL).</p> <p>A pregnant ineligible noncitizen who does not meet the Parent Assist or KidCare Assist eligibility requirements, may still be eligible for KidCare Moms and Babies (see PM 06-09-00).</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>authorized cannot be more than 30 consecutive days.</p> <p>In those rare situations where the emergency medical condition extends beyond 30 consecutive days, contact the Illinois Department of Public Aid, Bureau of Medical Eligibility Policy, at 217-557-7158 for guidance.</p> <p>For more information see: http://www.dhs.state.il.us/ts/cfsmm/onenet.aspx?item=19608</p>	
Indiana	<p>Indiana makes provision for emergency care to “nonresidents” if the “onset” of the medical condition occurred in Indiana and the individual meets the other standards of the ordinarily applicable assistance plan. This coverage is provided through package E of the Hoosier Healthwise Plan.</p> <p>Under the state’s Hospital Care for the Indigent Program (Ind. Code §§ 12-16-7.5-1.2, et seq.) which applies to payments for health service other than Medicaid, the state of Indiana “is not responsible under the hospital care for the indigent program for the payment of any part of the costs of providing care in a hospital to an individual who is not either . . . a citizen of the United States [or] a lawfully admitted alien.</p>	<p>An emergency condition is defined as a “medical condition that was manifested by symptoms of sufficient severity that the absence of immediate medical attention would probably result in any of the following:</p> <ul style="list-style-type: none"> (1) Placing the individual’s life in jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction of any bodily organ or part. <p>Ind. Code §§ 12-16-3.5-1, 5.2.</p> <p>The Indiana Health Coverage Programs Provider Manual explains that claim forms must specifically designate the services as rendered in an emergency situation.</p> <p>“Labor and delivery services are . . . considered emergency medical conditions.” IHCPPM chap. 2 § 3.</p>	<p>The Hoosier Health Care member identification card and enrollment information may be obtained through regional enrollment centers or from the Hoosier Healthwise website. The instructions at this site are quite clear.</p> <p>The most efficient way to obtain information is the Hoosier Healthwise help line at 1-800-889-9949.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
Iowa	<p>Under Iowa Administrative Code/Human Resources Department §§ 441-75.11(2), (4), non-qualified immigrants who meet general Medicaid income and residency requirements are eligible for care and services that are necessary for the treatment of an emergency medical condition. Non-qualified immigrants are those who are not lawfully residing in the United States, as well as those who entered the United States after 8/22/1996 and have not overcome PRWORA’s five year bar.</p> <p>As defined in § 441-75.11(1) and expanded in the Iowa Medicaid Enterprise manual, “care and services necessary for the treatment of an emergency medical condition” means “services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of an emergency medical condition.”</p> <p>To receive Medicaid benefits, an applicant must be a resident of Iowa and meet certain income requirements. County welfare departments determine residency. No period of residency is required as a condition of eligibility, however the applicant (an adult over 21) must be living in Iowa with the intent to remain permanently or indefinitely</p>	<p>As defined in § 441-75.11(1) the term "emergency medical condition" means “a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ul style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part.” <p>Payment for treatment of an emergency medical condition is limited to: (1) inpatient or outpatient hospital services, (2) physicians services, and (3) services of an independent diagnostic laboratory or x-ray facility. Medicaid only pays for the 3 days of care beginning with the date the patient presented for treatment of the emergency condition, regardless of the length of time the emergency condition exists.</p>	<p>If a provider believes that an individual may be eligible for Medicaid emergency benefits, the provider refers him or her to the local Department of Human Services office. The local office will verify the emergency through the use of Form 470-4299, <i>Verification of Emergency Health Care Services</i>, which is submitted by the applicant, but also includes a section to be completed and signed by the provider wherein the emergency care is described.</p> <p>Once the Department determines that the person is eligible for emergency services, it issues a special <i>Medical Assistance Eligibility Card (Limited Benefits)</i>, Form 470-2188, to the person. The person has to present this card to the providers of emergency care, and the providers can then submit a claim for Medicaid payment. This card, which is violet, is issued monthly to each eligible member.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>in Iowa, or living in Iowa with a job commitment or seeking employment (whether or not currently employed).</p>		
Kansas	<p>The Kansas Department of Social and Rehabilitation Services (SRS) provides emergency medical assistance to unqualified non-citizens and undocumented aliens under the “SOBRA” program established under the Kansas Economic and Employment Support Manual (KEESM) §2691.</p> <p>The Policy Memo “EES Policy No. 00-12-03,” states that SOBRA entitles otherwise eligible individuals who are non-qualifying legal immigrants, as well as undocumented aliens, to emergency medical services that are necessary for the treatment of the emergency medical conditions in accordance with federal requirements under PRWORA.</p>	<p>The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part. <p>Emergency Medicaid services are limited to emergency services and subsequent inpatient hospital services related to the emergency until the patient is stabilized, including any related physician services. No other services are to be covered. (KEESM §2691)</p> <p>The coverage is for approved emergency medical conditions, determined based on analysis of the individual’s medical condition as well as the location in which treatment of the condition was provided. Only the SOBRA program manager in the Health Care Policy Division, Medical/Medicaid (HCP) or designated fiscal agent staff may determine whether a condition constitutes an emergency.</p>	<p>To receive SOBRA benefits, an applicant must meet the general eligibility requirements of KEESM §2100 except for the SSN requirements of KEESM §2130 and the alienage provisions of KEESM §2140.</p> <p>A medical form (Form MS-2156) is used to capture the information regarding the condition. The completed MS-2156 form and required supporting documentation obtained from the medical provider shall be set to the fiscal agent for decision. The MS-2156 form is required for each emergent episode, except for labor and delivery.</p> <p>Episodes regarding women who have recently delivered may be analyzed for eligibility without the MS-2145 form. However, any payment for services other than routine labor and delivery will require an MS-2156 form to establish emergency, including the requirement of a live or still birth verification.</p> <p>A medical card is issued locally covering the month(s) in which the emergency service was rendered and specifically designated “for emergency services only.”</p> <p>Although no residency requirement appears in KEESM §2100, Kansas Family Medical</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>Assistance Manual (KFMAM) §2051 requires that a client for medical programs be a resident of the state. A resident is defined as one who is living in the state voluntarily and not for a temporary purpose. However, residence can be established for persons who are living in the state with a job commitment or who are seeking employment in the state, including temporary stays such as migrant works, and for family members living with them.</p> <p>See following link for more information:</p> <p>http://www.da.ks.gov/hpf/medicalpolicy/MedicalAssistance/BasicEligibilityRequirementHealthBenefitPrograms.htm</p>
Kentucky	<p>According to the Department for Community Based Services, Division of Family Support Operation Manual, Volume 1, MS 2075, any alien who does not meet the qualified alien requirements for ongoing medical assistance, may be eligible for time-limited medical assistance due to an “emergency medical condition.” (See also 907 Ky. Admin. Regs. 1:011 §5(12)(b))</p> <p>To receive the emergency medical assistance benefits, the applicant must be a resident of Kentucky and meet certain income requirements. Aliens currently in this country on a temporary visa, including students and tourists, may also be eligible for time-</p>	<p>The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part. <p>Eligible individuals are entitled to medical care and services, including limited follow up, necessary for the treatment of the emergency medical condition as certified by the attending physician or other appropriate</p>	<p>To apply, a social security number may be provided but is not required. If the applicant does not have a social security number, a pseudo-number will be assigned by the Kentucky Automated Management Eligibility System (KAMES).</p> <p>The emergency medical condition must be verified by a written statement from the medical provider containing information about the details of the condition and whether the medical provider considers the condition to be an emergency medical condition. (Operation Manual, Vol. 1, MS 2075)</p> <p>The emergency medical condition must have occurred in the month of the application or within the 3 months prior to the application. (907 Ky. Admin.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>limited emergency Medicaid coverage, if technical and financial eligibility requirements are met. (Operation Manual, Vol. 1, MS 2075)</p>	<p>provider. (907 Ky. Admin. Regs. 1:011 §5(12)(b))</p> <p>Normal delivery of a baby is considered an emergency and is covered. Coverage period includes the month of delivery and the following month; however, the individual is not eligible for postpartum coverage. (Operation Manual, Vol. 1, MS 2075)</p>	<p>Regs. 1:011 §5(12)(b)(3))</p> <p>Time-limited emergency Medicaid coverage includes the first day of the month in which the emergency medical condition begins and continues through the following month. (907 Ky. Admin. Regs. 1:011 §5(12)(b)(4))</p> <p>The Division of Family Support Operation Manual is available at:</p> <p>http://manuals.chfs.ky.gov/dcbs_manuals/DFS/index_dfs.asp</p>
Louisiana	<p>Undocumented immigrants are eligible for “emergency services” if they, apart from citizenship and lack of Social Security Number, would qualify for Medicaid.</p> <p>No officer, employee, or member of the medical staff of a hospital licensed by the Department of Health and Hospitals shall deny emergency services available at the hospital to a person diagnosed by a licensed physician as requiring emergency services because the person is unable to establish his ability to pay for the services or because of race, religion, or national ancestry.</p> <p>For more information:</p>	<p>An “emergency medical condition” is after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. Emergency Medical Services do not include any organ transplant procedure or routine prenatal or postpartum care.</p> <p>“Emergency Services” are services that are usually and customarily available at the respective hospital and that must be provided immediately to stabilize a medical condition which, if not stabilized, could reasonably be expected to result in the loss of the person's life, serious permanent disfigurement or loss or impairment of the function of a bodily member or</p>	<p>Louisiana DHH’s interpretation has been that aliens qualify emergency hospital services, which requires an after-the-fact Medicaid for application and review for “emergency.”</p> <p>For more information: Medicaid in Louisiana</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>24 LR 601</p> <p>La. R.S. 40:2113.4</p> <p>La. R.S. 40:2113.6</p>	<p>organ, or which is necessary to provide for the care of a woman in active labor if the hospital is so equipped and, if the hospital is not so equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.</p> <p>Pharmacists can release a 72 hour supply of a drug without prior approval if they or the prescriber determine and endorse that an emergency situation exists.</p>	
Maine	<p>MaineCare: The Social Security Act provides Medicaid coverage for emergency medical care for ineligible aliens who meet all eligibility requirements for a federally funded Medicaid program except citizenship/alien status. Coverage is for the specific emergency only.</p> <p>MaineCare Benefits Manual: http://www.maine.gov/sos/cec/rules/10/ch101.htm</p> <p>MaineCare Member Handbook: http://mainegov-images.informe.org/bms/pdfs_doc/mainecare%20member%20handbook/summer_06_rev4.pdf</p>	<p>MaineCare coverage for emergency services for undocumented non-citizens extends only to those services necessary to stabilize the emergency condition. MaineCare does not cover any further treatment or rehabilitation resulting from the emergency even though such treatment may be necessary.</p> <p>An emergency medical condition is defined as follows:</p> <p>After sudden onset, the medical condition (including emergency labor and delivery) manifests itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • Placing the patient’s health in serious jeopardy; or • Serious impairment to bodily functions; or • Serious dysfunction of any bodily organ or part. <p>All labor and delivery is considered an emergency for</p>	<p>Providers should contact the local Family Support Division office and identify the services and the nature of the emergency. State staff identify the emergency nature of the claim and add or deny coverage for the period of the emergency only. Claims are reimbursed only for the eligibility period identified on the recipient's eligibility file.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		purposes of this eligibility provision.	
Maryland	<p>In Maryland, undocumented immigrants may obtain emergency services if they meet income and residency requirements. Md. Code Regs. 10.09.24.05.</p> <p>The income and residency requirements are the same as those general requirements for Medicaid eligibility. No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Maryland. Md. Code Regs. 10.09.24.05.</p>	<p>Emergency services are services provided by a licensed medical practitioner after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected by a prudent layperson, possessing average knowledge of health and medicine, to result in: (1) placing health in serious jeopardy; (2) serious impairment to bodily functions; (3) serious dysfunction of any bodily organ or part; (4) or development or continuance of severe pain. Md. Code Regs. 10.09.24.02. Emergency services include labor and delivery.</p> <p>Typically applicants receive retroactive coverage; however, in limited circumstances (e.g., cancer, dialysis, and end stage renal disease) there may be coverage for limited ongoing treatment.</p>	<p>Applicants must file an application with the Local Department of Social Services (“LDSS”) in the city or county where they live. No social security number is required for emergency medical coverage.</p> <p>A card is not issued because coverage is generally limited to payment for emergency medical services that have already been received. The Department of Health and Mental Hygiene (DHMH) determines if the services received were emergency in nature.</p> <p>To locate an LDSS see: http://www.dhmh.state.md.us/ma/dss/index.html</p>
Massachusetts	<p>In Massachusetts, undocumented immigrants may obtain MassHealth Limited benefits if they meet the requirements for MassHealth Standard (e.g., classification, income, and residency requirements, but not citizenship) and have an emergency medical condition.</p> <p>No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Massachusetts. 130</p>	<p>MassHealth Limited only provides services for treatment of a medical condition (including labor and delivery) that manifests itself by acute symptoms of sufficient severity that the absence of immediate medical attention reasonably could be expected to result in: (1) placing the member’s health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of any bodily organ or part. 130 Mass. Code Regs. 450.105(G). Organ transplants are not covered services. 130 Mass. Code Regs. 450.105(G).</p>	<p>To receive MassHealth Limited benefits, an applicant must submit a Medical Benefit Request (“MBR”) to any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site. 130 Mass. Code Regs. 502.001. No social security number is required for medical coverage under MassHealth Limited.</p> <p>Coverage begins on the 10th day before the date the MBR is received. 130 Mass. Code Regs. 505.008. Thus, patients can receive benefits (i.e. payment to the service provider) after the</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	Mass. Code Regs. 503.002.		emergency treatment has been provided. Alternatively, Massachusetts has a pre-approval process. Persons who would qualify for emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for restricted MassHealth Limited, which can be used for emergency treatment.
Michigan	In Michigan, undocumented immigrants may obtain emergency Medicaid benefits if they meet Michigan income and residency requirements that are identical to those for general Medicaid eligibility. <i>See Mich. Comp. Laws § 400.06</i>	<p>An emergency medical condition means the sudden occurrence of serious symptoms, such as severe pain or mental disorientation. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient’s health; • seriously impair bodily functions; or • cause serious dysfunction to a body organ or body part. <p>Patients that are eligible for coverage can receive inpatient and outpatient care from a physician or other appropriate provider that is necessary to treat the emergency medical condition.</p> <p>Inpatient/outpatient care can include laboratory and x-ray services, medical supplies, mental health stabilization, pharmacy, and medical detoxification for substance abuse only if life-threatening. Coverage does not include continuation of services or follow-up care after the emergency is resolved.</p> <p>For more information see:</p>	<p>To receive these Medicaid benefits, an individual must be a resident of Michigan. No specific period of residency is required, but the patient must have the intent to stay in Michigan indefinitely or entered with a job commitment or to look for work. The Michigan Department of Human Services (“MDHS”) determines eligibility for Medicaid benefits.</p> <p>For more information see:</p> <p>http://www.michiganlegalaid.org/MPLP/Issues/mplpissue.2006-04-13.5315793175</p> <p>Patients can receive benefits (i.e. payment to the service provider) after the emergency treatment has been provided. Alternatively, Michigan has a pre-approval process. Thus, persons who would qualify for emergency medical treatment can apply in advance and obtain a card to indicate they are eligible for Emergency Services Only coverage, which can be used for emergency treatment.</p> <p>Applicants must file a simplified application with their county. No social security number is required for emergency medical</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>http://www.michigan.gov/documents/MSA_05-61_142996_7.pdf</p> <p>Michigan Medicaid Provider Manual, Emergency Services Only Medicaid Program, at http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf</p>	<p>coverage under Medicaid.</p> <p>The application for a card to receive Emergency Services Only Medicaid benefits may be submitted at any time.</p> <p>See Michigan Medicaid Provider Manual, Beneficiary Eligibility, at http://www.mdch.state.mi.us/dch-medicaid/manuals/MedicaidProviderManual.pdf</p>
Minnesota	<p>In Minnesota, undocumented immigrants may obtain Medicaid benefits through the Medical Assistance program if they meet Minnesota income and residency requirements, and have an emergency medical condition. See Min. Stat. § 256B.06, Subd. 4(g).</p> <p>The income and residency requirements are the same as those general requirements for Medicaid eligibility.</p> <p>The relevant Minnesota law will provide for inpatient and outpatient care for eligible patients. See Min. Stat. § 256B.0625; Minnesota Health Care Provider Manual, <i>Emergency Medical Assistance</i> at http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000094.hcsp</p>	<p>Patients that are eligible for coverage can receive inpatient and outpatient care, by a physician or other appropriate provider, that is necessary to treat an “emergency medical condition.” See Min. Stat. § 256B.06, Subd. 4(h).</p> <p>A qualifying emergency medical condition may be either a short-term, acute condition (including labor and delivery) or an ongoing chronic condition. For short-term emergencies, eligibility exists for the duration of the emergency only and may begin or end mid-month. Emergency medical assistance for services related to chronic conditions meeting the emergency definition may continue indefinitely.</p> <p>For more information see:</p> <p>http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/dhs_id_008922.hcsp#ema</p> <p>Emergency medical services may include inpatient and outpatient hospital care, emergency</p>	<p>To receive these Medicaid benefits, an individual must be a Minnesota resident and meet the income and asset eligibility requirements; however, non-resident immigrants may receive certain benefits under state-funded medical assistance. See Min. Stat. § 256B.06.</p> <p>Applicants must file a simplified application with their county. Applications are reviewed and a notice will be sent to the applicant within 45 days of filing, unless the applicant is pregnant in which case notice will be provided within 15 days. See Min. Stat. § 256B.08.</p> <p>Medical assistance may pay for medical bills going back up to three months before an application is filed.</p> <p>For more information and the application see:</p> <p>http://dhs.state.mn.us/main/groups/healthcare/documents/pub/dhs_id_006918.hcsp</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>transportation, laboratory services, medical equipment and supplies, rehabilitative therapy, mental health services.</p> <p>For more information see:</p> <p><i>See Min. Stat. § 256B.0625; Minnesota Health Care Provider Manual, Emergency Medical Assistance</i> at http://www.dhs.state.mn.us/main/groups/business_partners/documents/pub/DHS_id_000094.hcsp</p>	
Mississippi	<p>An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) is not eligible for Medicaid <i>except</i> emergency services. Nonqualified aliens must otherwise meet eligibility requirements, <i>i.e.</i>, federally mandated income and resource standards.</p> <p>http://www.dom.state.ms.us/CHIP/chip.html</p>	<p>The term "emergency medical condition" means the sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy; (2) Serious impairment to bodily functions; or (3) Serious dysfunction to any bodily organ; or part. <p>Specifically excepted from this definition are care and services related to either an organ transplant procedure or routine prenatal or post-partum care.</p> <p>Labor and delivery are the only</p>	<p>Inquiries regarding eligibility for coverage of emergency services under Medicaid may be by contacting the regional Medicaid office. A listing may be found at:</p> <p>http://www.dom.state.ms.us/CHIP/chip.html</p> <p>Unqualified aliens need not be verified through SAVE (Systematic Alien Verification for Entitlements) Program.</p> <p>Questions regarding eligibility may also be directed to:</p> <p>Mississippi Division of Medicaid Eligibility Division 1-800-421-2408</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>emergency services predetermined to be covered by Medicaid. All other conditions must be submitted to the Eligibility Department of the Mississippi Medicaid office for case-by-case review and approval.</p>	
Missouri	<p>The Social Security Act provides Medicaid coverage for emergency medical care for ineligible aliens, who meet all eligibility requirements for a federally funded Medicaid program except citizenship/alien status. Coverage is for the specific emergency only.</p>	<p>An emergency medical condition is defined as follows:</p> <p>After sudden onset, the medical condition (including emergency labor and delivery) manifests itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • Placing the patient’s health in serious jeopardy; or • Serious impairment to bodily functions; or • Serious dysfunction of any bodily organ or part. <p>Labor and delivery is considered an emergency for purposes of this eligibility provision.</p>	<p>Providers should contact the local Family Support Division office and identify the services and the nature of the emergency. State staff identifies the emergency nature of the claim and approves or denies coverage for the period of the emergency only. Claims are reimbursed only for the eligibility period identified on the recipient’s eligibility file.</p>
Montana	<p>For additional information contact, Public Information Officer, Montana Department of Health & Human Services 406.444.2596</p>	<p>Emergency Medicaid covers persons who experience an emergency including life threatening illness or extreme pain and covers such person until they are stable. Emergency Medicaid covers labor and delivery; in addition, it covers prenatal care if a doctor determines that the pregnancy is high risk.</p>	<p>A person can apply at the local office of public assistance. If a person is hospitalized with an emergency condition, a hospital social worker will aid that person in applying for emergency Medicaid coverage.</p>
Nebraska	<p>Nebraska provides medical assistance to qualified immigrants, regardless of their date of entry, though deeming applies. This decision requires the state to pay the full cost of the</p>	<p>All emergency services are covered regardless of immigration status.</p> <p>Medical condition with acute symptoms that could lead to</p>	<p>Nebraska has a presumption of Medicaid eligibility for all pregnant women. Thus a woman need only demonstrate that she is pregnant and be 185% below the federal poverty line.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Medicaid for those individuals who arrived after August 22, 1996.</p> <p>Under some circumstances undocumented immigrant women and children can become qualified for benefits if they are the victims of abuse and:</p> <ol style="list-style-type: none"> 1. The abused woman/parent is married to a Lawful Permanent Resident or she is married to a U.S. citizen, or the abused child is the child or step-child or a U.S. citizen or Lawful Permanent Resident, AND 2. She and/or the child is battered by a <i>member of the household</i>, not necessarily by the U.S. citizen or LPR spouse/parent, AND 3. She and/or the child has a <i>pending</i> or <i>approved</i> self-petition or family based petition filed by her husband or the abused child's father or step-father, AND 4. She and/or the child need benefits because of the abuse, AND 5. She and/or the child either no longer live with the batterer or plan to leave when they get benefits. <p>Emergency services include labor and delivery and any emergency. This covers all pregnant women regardless</p>	<p>serious injury or health risks are covered.</p> <p>The SCHIP program covers all pre-natal care for the unborn child. Nebraska considers unborn children citizens for the purposes of Medicaid coverage. Thus, medical care for the child and mother are covered, at least as relating to the pregnancy.</p> <p>There is no monetary cap on prenatal services.</p>	<p>A pregnant woman can be treated, and then apply with Nebraska's Department of Health and Human Services.</p> <p>For other emergencies, application may be made after receipt of treatment.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>of status, provided the woman is below 185% of the federal poverty level. Coverage also includes prenatal care regardless of status.</p> <p>http://www.neappleseed.org/oldsite/nac/PFP/WDPP/WeIfBrochures/ImmigrantWelfRights.htm</p>		
Nevada	<p>Nevada provides only emergency services to undocumented aliens.</p> <p>Adults must be NV residents. Income cannot exceed 133% of Federal Poverty Level. Resources cannot exceed \$2000.</p> <p>Different standards apply for families and children. See: http://www.hrsa.gov/reimbursement/states/Nevada-Eligibility.htm</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Nevada’s emergency care only provides emergency room treatment.</p>	<p>Applicants must apply for emergency Medicaid after emergency services are provided.</p>
New Hampshire	<p>There are limited emergency medical services available for some non-qualified aliens, and a Department of Health and Human Services District Office should be contacted for specific cases.</p> <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/medical-general-financial.htm</p> <p>Under the MCPW program: qualifications:</p> <ul style="list-style-type: none"> - Income cannot exceed 185% of the federal poverty 	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. 	<p>An applicant for Medical Assistance should</p> <ol style="list-style-type: none"> 1) Visit a DHHS District Office and speak with a DHHS worker who will assist the applicant through the application interview process; and 2) Provide copies of any information that may be needed <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm</p> <p>Applicants, including pregnant women already receiving services at certain community agencies, such as hospitals, well</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>income limits. - No resource limit.</p> <p>Contact the Medicaid Program by phone:</p> <p>Description Phone Number Hours</p> <p>Main Number 603-271-5254 8-4:30 M-F</p> <p>Toll Free Number 800-852-3345 x5254 8-4:30 M-F</p> <p>TDD Number 800-735-2964 8-4:30 M-F</p> <p>Street Address: 97 Pleasant Street Concord, NH 03301</p> <p>Mailing Address: NH DHHS Office of Medicaid Business & Policy Medicaid Program 129 Pleasant Street Concord, NH 03301-3857</p>		<p>child or prenatal clinics or Women Infant & Children clinics may apply at those sites for Healthy Kids or Medical Coverage for Pregnant Women. Applications for Healthy Kids and Medical Coverage for Pregnant Women (MCPW) may also be filed by mail.</p> <p>http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm</p> <p>The DHHS district office contact information can be found at http://www.dhhs.nh.gov/DHHS/Contact+Directory/default.htm.</p> <p>Medicaid applicants, pregnant women and non-citizens are assessed by the Division of Family Assistance, Office of Program Operations, Dept. of Health and Human Services for their financial eligibility and all non-financial eligibility.</p> <p>http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p> <p>If you disagree with any decision the Division of Family Assistance makes on your case, you may request an Administrative Appeals hearing.</p> <p>http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p> <p>- procedures for the administrative appeal can be found at http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>Pregnant women applying at Department of Health and Human Services district offices as well as to pregnant women applying at non-district office sites shall be given a "presumptive eligibility period" as provided in 42 U.S.C. 1396r-1. (RSA. TITLE XII.167.68.II.(c))</p> <p>If the pregnant woman is eligible for and receiving medical assistance on the day her pregnancy ends, continue her medical assistance for 60 days post-partum without regard to any other eligibility criteria. Terminate 60 day post-partum medical assistance on the last day of the month in which the 60th day falls.</p> <p>If the pregnant woman is eligible for and receiving medical assistance on the day her child is born, continue medical assistance for the newborn for up to 1 year, as long as the child lives with the mother and one of the following applies:</p> <ul style="list-style-type: none"> · the mother remains eligible for medical assistance, or · the mother would be eligible if she were pregnant. <p>(http://www.hrsa.gov/reimbursement/states/New-Hampshire-Eligibility.htm)</p>
New Jersey	An alien who meets all Medicaid eligibility requirements (residency, income, resources) except citizenship/alien status may be eligible for Medicaid coverage for the treatment of an emergency medical	<p>“Emergency medical condition” is defined as:</p> <p>1. one of sudden onset that manifests itself by acute symptoms of sufficient severity (including severe pain) such that</p>	<p>Application process for the Medical Emergency Payment Program for undocumented residents:</p> <p>1. Inform the hospital office staff that you wish to apply for this program.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>condition only. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>A “Resident” is defined as “a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.” (Medicaid Only Manual. N.J.A.C. 10:71-3.5.(a). p.20)</p>	<p>the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> i. Placing the patient's health in serious jeopardy; ii. Serious impairment to bodily functions; or iii. Serious dysfunction of any bodily organ or part. <p>2. An emergency medical condition includes all labor and delivery for a pregnant woman. It does not include routine prenatal or post-partum care.</p> <p>3. Services related to an organ transplant procedure are not covered under services available for treatment of an emergency medical condition. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>NJ FamilyCare</p> <p>Any applicant in a “qualified” immigrant status is able to apply for NJ FamilyCare, regardless of the date that they entered the United States. They do not have to wait five years to be eligible. “Qualified” status includes:</p> <ul style="list-style-type: none"> - An applicant under the Violence Against Women Act <p>(http://www.njfamilycare.org/pages/rest_who.html)</p>	<p>2. If an application form is available, you will be asked to fill it out immediately.</p> <p>3. If an application is not available, the staff member will notify the County Board of Social Services that you are interested in applying.</p> <p>4. After the emergency medical treatment, the applicant must call the County Board of Social Services to schedule an interview.</p> <p>5. Bring any bills that you received for emergency treatment with you to the County Board interview.</p> <p>6. For emergency services to be covered, an application must be completed with 3 months of the date services were provided. (http://www.njfamilycare.org/pages/rest_who.html)</p> <p>Medicaid: How to Apply - Medicaid hotline Monday through Friday, 8:30 to 4:30 (800) 356-1561</p> <p>A list of the County Board of Social Services: http://www.state.nj.us/humanservices/CWALIST.pdf</p>
New Mexico	The State’s Medicaid program will pay for necessary emergency services provided to undocumented aliens who reside in the State and meet the requirements for Medicaid eligibility.	Medicaid requires that the individual have, after sudden onset, a medical condition (including emergency labor and delivery) that involves acute symptoms that are so severe that if immediate medical attention is not provided: (1) the individual’s health will be placed in serious	The individual must complete an application at the local county income support division office (ISD) and provide information that proves that he or she meets the eligibility requirements. The ISD will determine the individual’s eligibility after the individual has received

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>The State’s definition of “emergency” includes the Medicaid eligibility requirements outlined above as well as any condition that if left untreated would lead to the individual’s death.</p> <p>A determination of coverage is made by the Medical Assistance Division or its designee.</p> <p>For more information, see: 8.325.10.9, 8.325.10.13, 8.325.10.14, and 8.325.10.16 NMAC (2006); 42 CFR 440.255(c).</p> <p>For information regarding eligibility categories, see: http://www.state.nm.us/hsd/mad/pdf_files/GeneralInfo/Eligpamphlet.pdf</p>	<p>jeopardy; (2) the individual will suffer serious impairment to his or her bodily functions; or (3) the individual will suffer serious dysfunction to a bodily organ or part.</p> <p>Medicaid will cover medical services that are necessary to treat and/or evaluate an “emergency.” Only emergency medical services provided in the State are covered. Services that are not covered include:</p> <ul style="list-style-type: none"> • long term care; • organ transplants; • rehabilitation services; • surgical procedures, including scheduled cesarean section, other than unscheduled emergency procedures; • psychiatric or psychological services; • durable medical equipment or supplies; • eyeglasses; • hearing aids; • outpatient prescriptions; • podiatry services; • prenatal care; • well child care; • routine dental care; • routine dialysis services; • medical service provided by a border or out-of-state provider; • non-emergency transportation; and • preventive care. <p>For more information, see: 8.325.10.15 NMAC (2006)</p>	<p>emergency services.</p> <p>The individual must apply for Medicaid coverage at the ISD office no later than the last day of the third month following the month in which he or she received emergency medical services.</p> <p>The individual must notify the provider regarding whether or not their Medicaid coverage was approved or denied.</p> <p>If the individual misses the deadline to apply for Medicaid coverage, or if coverage is denied, the individual must pay the provider’s bill.</p> <p>For more information, see: 8.325.10.12 and 8.325.10.16 NMAC (2006)</p>
New York	An undocumented immigrant may receive medical assistance for care and services needed to treat an emergency medical condition.	An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to	An undocumented immigrant must meet all eligibility requirements, including state residency. However, no specific term of residency is required.

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>For more information, see: NY Social Services Law § 122(1)(e) (2006)</p>	<p>get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Coverage may vary based on the local district where services are sought and that district’s interpretation of “emergency medical condition.”</p> <p>Coverage does not include care or services related to organ transplants.</p> <p>For additional information, see the following Administrative Directive:</p> <p>http://www.health.state.ny.us/health_care/Medicaid/publications/docs/adm/04adm-7.pdf</p>	<p>To apply for coverage, undocumented immigrants must submit the following form to their Local Department of Social Services:</p> <p>http://www.health.state.ny.us/health_care/Medicaid/publications/docs/adm/04adm-7atte1.pdf</p>
North Carolina	<p>Under NC Family and Children’s Medicaid MA-3330, a non-qualified alien who meets the N.C. residency requirement (living in N.C. with the intent to remain) as well as the financial eligibility requirement for Medicaid (i.e. for a family of 3, within 185% of the Federal Poverty Level) can receive Medicaid for emergency medical services if she is a caretaker for a child who is eligible for Medicaid or (under NC Adult Medicaid) has a permanent disability,</p>	<p>The NC Adult Medicaid Manual, MA-330 (B), defines the term “emergency medical services,” as inclusive of labor and delivery, (including by Caesarean section) and treatment after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in the following:</p> <ol style="list-style-type: none"> (1) Placing the patient’s health in serious jeopardy, or (2) Serious impairment to bodily 	<p>The North Carolina Division of Medical Assistance (DMA) is the state agency responsible for the NC Medicaid program and for providing authorization for Medicaid-covered services; however, the North Carolina Department of Social Services (DSS) county-level offices are responsible for determining applicant’s eligibility and maintaining recipient eligibility and managed care files.</p> <p>A non-qualified or qualified alien can receive emergency medical services through MAF, assuming she meets the</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>deemed as such by the North Carolina Department of Social Services (DSS).</p> <p>The 2 main ways in which a non-qualified alien can receive Medicaid coverage for emergency medical services include Adult Medicaid and Medicaid Assistance for Families (MAF).</p> <p>Medicaid Assistance for Families covers those who are the caretaker for a Medicaid eligible child. A non-qualified alien can qualify to receive emergency medical services through MAF, assuming she meets the residency and income requirements, if she was the caretaker of a child that was eligible for Medicaid (usually meaning that he/she was born in the U.S.) during the time when she needed emergency medical services.</p> <p>Adult Medicaid provides coverage for emergency medical services only to those who meet the income and residency requirements as well as have a permanent disability as deemed as such by DSS. Adult Medicaid is available to both qualified and non-qualified aliens.</p> <p>The 5-year disqualification period does not apply to qualified aliens applying only for emergency Medicaid.</p> <p>Under NC Adult Medicaid Manual, MA- 2504(IV)(E), refugees and asylees, Cuban and Haitian Entrants, trafficking victims, and</p>	<p>functions, or (3) Serious dysfunction of any bodily organ or part.</p> <p>As a general rule, once the emergency medical condition is stabilized, even if it remains serious or results in death, it is no longer deemed to be an emergency and thus a basis for continued emergency Medicaid coverage. For this reason, emergency labor and delivery services, for example, do not include postpartum care.</p>	<p>residency and income requirements, if she was the "caretaker" of a child that was eligible for one of the Medicaid programs during the time when she needed emergency medical services. The child does not need to have been receiving Medicaid but would need to have been eligible for Medicaid in order for the caretaker to be eligible for the emergency Medicaid.</p> <p>In order to be eligible to receive coverage for emergency medical services through Adult Medicaid, one must meet the income and residency requirements as well as have a permanent disability as deemed as such by DSS. Adult Medicaid is available to both qualified and non-qualified aliens.</p> <p>At some hospitals in North Carolina, there are social workers or Medicaid workers able to assist qualified or non-qualified aliens with the process of completing paperwork and applying for emergency Medicaid coverage. Thus, patients seeking such coverage should ask a hospital staff member if there are any social workers or Medicaid workers who could assist them.</p> <p>In order to apply for MAF or Adult Medicaid, a patient should visit the DSS office in her county and ask to speak to a case worker about filling out an application.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>aliens whose deportation is being withheld are exempt from the 5-year mandatory disqualification period and may receive <u>full Medicaid</u> if otherwise eligible.</p>		
North Dakota	<p>Undocumented immigrants may obtain North Dakota Medicaid benefits if they meet income and residency requirements, and have an emergency medical condition not related to an organ transplant.</p> <p>Income and residency requirements mirror those for general Medicaid eligibility.</p> <p>Undocumented aliens are exempt from the requirement to furnish social security numbers and verify alien status.</p> <p>Certain aliens lawfully admitted for a short period of time are ineligible for coverage, presumably because they do not meet the residency requirement. These include:</p> <ul style="list-style-type: none"> • Foreign government representatives on official business, • Visitors, • Foreign students, and • Temporary workers including agricultural 	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or <p>serious dysfunction of a bodily organ or body part.</p> <p>Inpatient and outpatient care is covered for eligible patients. N.D. Admin. Code § 75-02-02.</p>	<p>North Dakota residency is necessary, though no term is specified. The patient must have the intent to stay in North Dakota permanently or indefinitely or must have entered the state with a job commitment or seeking employment. Patients must also meet certain income and asset requirements. County social service agencies determine eligibility. See N.D. Admin. Code § 75-02-02.1.</p> <p>Patients may seek benefits, such as payment to the service provider, after emergency treatment is provided.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	workers. See N.D. Admin. Code § 75-02-02.1-18.		
Ohio	<p>Alien Emergency Medical Assistance</p> <p>Provides coverage for treatment of an emergency medical condition for certain individuals who do not meet the Medicaid citizenship requirements. Ohio Administrative Code 5101:1-41-20. http://www.uhcanohio.org/newsletter/reports/fact_immigrant.html</p> <p>The individual must be a non-qualified alien, optional qualified alien, or a qualified alien within the five year period of ineligibility for Medicaid. Ohio Administrative Code 5101:1-41-20.</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Labor and delivery are covered.</p>	<p>Individual that received treatment must submit an application for medical assistance for each emergency medical assistance episode. However, the individual is not required to participate in a face-to-face interview, submit verification of a social security number, or submit verification of immigration/alien status.</p>
Oklahoma	<p>Provides coverage for treatment of an emergency medical condition for certain individuals who do not meet the Medicaid citizenship requirements. Oklahoma Administrative Code § 317:35-5-25.</p> <p>Non-qualified aliens and illegal aliens are eligible for emergency Medicaid. Ineligible aliens (foreign students, visitors, temporary workers) are not eligible for emergency Medicaid. Oklahoma Administrative Code § 317:35-5-25(a).</p> <p>For additional information,</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person’s health in serious jeopardy; • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. <p>Labor and delivery are covered.</p>	<p>Preauthorization is required for payment of emergency medical services rendered to non-qualified and illegal aliens.</p> <p>The care provider must indicate on the Notification of Needed Medical Services form whether the care provided was an emergency. Oklahoma Administrative Code § 317:35-3-3.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>contact Oklahoma Healthcare Authority, Legal Division, Howard Pallotta, General Counsel at (405) 522-7300.</p>		
Oregon	<p>Under Oregon Administrative Rule 410-120-1210(2)(f), non-qualified aliens that are not eligible for other Medicaid programs due to their immigration status are eligible for Citizen Alien-Waived Emergency Medical Assistance (CAWEM). CAWEM coverage is limited to emergency services, including labor and delivery.</p>	<p>CAWEM clients are only eligible for emergency medical care, including childbirth. Diagnostic services and on-going medical treatment, including prenatal and postnatal care, are not covered.</p> <p>Under Oregon Administrative Rule 410-120-1210(3)(f), the CAWEM Benefit Package provides emergency medical services and labor and delivery services as follows:</p> <p>(A) A CAWEM client is eligible for services only after sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;</p> <p>(B) The following services are not covered for CAWEM clients, even if they are seeking emergency services:</p> <ul style="list-style-type: none"> (i) Prenatal or postpartum care; (ii) Sterilization; (iii) Family Planning; (iv) Preventive care; (v) Organ transplants and 	<p>To qualify for CAWEM coverage, a person must meet all the non-financial and financial eligibility requirements for Oregon's medical assistance programs (excluding the Children's Health Insurance Program (CHIP), which has a higher income standard), except the citizen/alien status and Social Security number requirements.</p> <p>The individual must be a resident of Oregon with the intent to remain in Oregon. There is no minimum amount of time a person must live in Oregon to be a resident. CAWEM clients do not need a Social Security number or verification that they have applied for one.</p> <p>Individuals can apply at any time, not just when they have an emergent need. Once eligibility is determined and the case is opened, the client is eligible for six months. The client will get a Medical Care Identification (ID) good for emergency services. The ID contains the following statement, "CAWEM-Emergency Services Coverage is limited to emergency medical services. Labor and delivery for pregnant women are considered an emergency." The client should reapply for the ID card every six months to maintain eligibility. A new application is required.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>transplant-related services;</p> <p>(vi) Chemotherapy;</p> <p>(vii) Hospice;</p> <p>(viii) Home Health;</p> <p>(ix) Private Duty Nursing;</p> <p>(x) Dialysis;</p> <p>(xi) Dental Services provided outside of an Emergency Department Hospital setting;</p> <p>(xii) Outpatient drugs or over-the-counter products;</p> <p>(xiii) Non-emergency Medical Transportation;</p> <p>(xiv) Therapy services;</p> <p>(xv) Durable Medical Equipment and medical supplies;</p> <p>(xvi) Rehabilitation services.</p> <p><i>See also Oregon Department of Human Services CAWEM Program Manual and Oregon Administrative Rule 461-135-1070.</i></p>	<p>The client's ID is confirmation of eligibility for medical services, subject to the limitations contained in Oregon Administrative Rules and appropriate individual medical provider rules.</p> <p>Under Oregon Administrative Rule 410-120-1140, there are three different types of IDs by which eligibility can be confirmed:</p> <p>(a) Form OMAP 1417 - Office of Medical Assistance Programs (OMAP) ID. This is a computer-generated notice that is mailed to the client once a month or anytime there is a change to the case (e. g., address change);</p> <p>(b) Form OMAP 1086 - Temporary ID. The responsible branch office issues this handwritten form;</p> <p>(c) Form WMMIDIC-A - Temporary ID. This is a computer-generated form that is signed by an authorized person in the responsible branch office.</p> <p>It is the responsibility of the medical provider to verify that the individual receiving medical services is, in fact, an eligible individual on the date of service for the service provided and whether OMAP is responsible for reimbursement. The provider assumes full financial risk in serving a person not identified as eligible or not confirmed by OMAP as eligible for the service provided on the date(s) of</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			<p>service.</p> <p>The ID is not transferable, and is valid only for the individual(s) listed on the card.</p> <p>Eligibility is verified either:</p> <p>(a) From the ID, which shows the dates on which the client is eligible and indicates each client’s benefit package; or</p> <p>(b) If a patient identifies him or herself as eligible, but does not have a valid ID, the provider may either:</p> <p>(A) Contact the OMAP Automated Information System (AIS), which is available on the Internet or via telephone;</p> <p>(B) Providers who have contracted with an Electronic Eligibility Verification Service (EEVS) vendor can access client eligibility data 24 hours a day, 7 days a week; or</p> <p>(C) Providers may contact the local Department of Human Services (DHS) branch office during regular working hours to confirm eligibility if the information is not available electronically.</p> <p><i>See also Oregon Department of Human Services CAWEM Program Manual and Oregon Administrative Rule 461-135-1070.</i></p>
Pennsylvania	A lawful temporary alien, undocumented alien or illegal alien may receive	An “Emergency Medical Condition” is a medical condition with acute symptoms of such	To receive Medical Assistance benefits, an individual, or a third-party authorized by power

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>Pennsylvania Medical Assistance to cover an Emergency Medical Condition if he or she meets all other requirements for Medical Assistance. 55 Pa. Code § 150.11; Pennsylvania Department of Public Welfare (DPW) <i>Medical Assistance Bulletin</i> 99-88-05 (April 13, 1988); <i>Pennsylvania Medicaid Eligibility Handbook</i>, Section 322.32 (available at www.dpw.state.pa.us/policymanuals/manuals/bop/ma.) See also <i>A Guide For Determining Your Eligibility For Free Health Care Coverage Through Medical Assistance (MA)</i>, published by the Pennsylvania Health Law Project (available at www.phlp.org/healthprograms.asp) (hereafter <i>PaHLP Guide</i>).</p>	<p>severity, including severe pain, that, without immediate attention, the result will be: (i) the patient's health is in serious jeopardy; (ii) serious impairment to bodily functions; or (iii) serious dysfunction of any body organ or part. An Emergency Medical Condition includes labor and delivery services but does not include care and services related to organ transplant procedures. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32. See also 55 Pa. Code § 1101.21.</p> <p>Coverage extends only to Emergency Medical Conditions, as defined by regulation. See Relevant State Laws, <i>supra</i>.</p> <p>For labor and delivery services, the County Assistance office will authorize Medical assistance beginning the date active labor begins and ending the date delivery is complete and the mother and child are stabilized. There is no post-partum coverage.</p> <p>A child born to an alien mother whose delivery and labor were covered by Medical Assistance is eligible for Medical Assistance for one year from the date of birth under the same conditions as a child born to a citizen. <i>Medicaid Eligibility Handbook</i>, Sections 322.32 and 338.41.</p>	<p>of attorney to act on the individual's behalf (e.g. a hospital or medical provider), must submit an application to the County Assistance Office. 55 Pa. Code §§ 123.72 and 123.82; <i>Medicaid Eligibility Handbook</i>, Section 304.1. Application can be made on-line at www.compass.state.pa. The alien must verify that an emergency medical condition exists by providing a written statement from a medical provider. The written statement must: (i) identify the Emergency Medical Condition; (ii) specify that the medical treatment was necessary because of the medical condition; and (iii) provide a date on which the emergency is expected to end. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32.</p> <p>The applicant must be a resident of Pennsylvania and meet needs based (income) criteria. 62 P.S. §§ 432.2 and 432.4; 55 Pa. Code § 148.1; <i>Medicaid Eligibility Handbook</i>, Sections 323.1, <i>et seq</i>. An alien in need of Emergency Medical Services is not required to: (i) sign a Citizenship/Alienage Declaration form; (ii) verify alien status; or (iii) verify his/her Social Security number. 55 Pa. Code § 150.11; <i>Medicaid Eligibility Handbook</i>, Section 322.32. See <i>PaHLP Guide</i>, p. 5 ("Undocumented aliens have been able to obtain Emergency Medical Care with no INS problems.")</p> <p>The County Assistance office determines whether or not an applicant is eligible for Medical Assistance Services. If the applicant is determined eligible, DPW issues a Medical Services Eligibility card. 55 Pa. §</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			1101.33.
Puerto Rico	Research has revealed no emergency Medicaid program for non-qualified aliens in Puerto Rico.		
Rhode Island	<p>Section 12-25-19 (2006) of the General Laws of Rhode Island provides that every health care facility that has an emergency medical care unit shall provide to every person prompt life saving medical care treatment in an emergency, and a sexual assault examination for victims of sexual assault without discrimination on account of economic status or source of payment, and without delaying treatment for the purpose of a prior discussion of the source of payment unless the delay can be imposed without material risk to the health of the person. R.I. Gen. Laws § 23-17-26 (2006).</p> <p>Section 42-12.3-4 of the General Laws of Rhode Island establishes a payor of last resort program for comprehensive health care for children until they reach nineteen (19) years of age, to be known as "RIte track". This expands Medicaid coverage through expanded family income disregards for children, until they reach nineteen (19) years of age, whose family income levels are up to two hundred fifty percent (250%) of the federal poverty level; provided, however, that health care coverage under this section shall also be</p>		<p>A person can go to a local DHS office to apply or can print a copy of the application and apply by mail. (www.dhs.ri.gov) The applications are in English and Spanish.</p> <p>If one is applying for RIte Care and you is not a U.S. citizen, information about one's immigration status will be necessary.</p> <ul style="list-style-type: none"> • The receipt of RIte Care will not affect your immigration papers, your ability to become a citizen, or your ability to become a legal permanent resident.

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>provided without regard to the availability of federal financial participation to a noncitizen child lawfully residing in the United States and to a noncitizen child residing in Rhode Island, provided that the child satisfies all other eligibility requirements, and (effective January 1, 2007) is receiving medical assistance on or before December 31, 2006.</p>		
<p>South Carolina</p>	<p>Undocumented immigrants receive emergency service in South Carolina only under the federal regulations.</p> <p>See, http://www.scjustice.org/Brochures%20for%20Web%202009/Health/Emergency%20Medicaid%20for%20Immigrants%202009.pdf</p>	<p>Emergency Medicaid only covers very serious emergencies that put one's health or body in danger. The Department of Health & Human Services determines whether an emergency is serious enough to be covered by Emergency Medicaid on a case-by-case basis.</p> <p>Labor and delivery of a baby would be covered by Emergency Medicaid, but prenatal care is not.</p> <p>A heart attack or stroke would probably be covered, but a black eye or a broken ankle would likely not.</p> <p>Emergency Medicaid does not cover organ transplants.</p>	<p>Applicants must meet with a DHHS caseworker to fill out the formal application. Neither the service provider nor DHHS must inquire about immigration status. A Social Security Number is not required.</p>
<p>South Dakota</p>	<p>Pub. L. No. 104-193 requires emergency medical treatment coverage for non-qualified aliens.</p> <p>South Dakota Statute 26-6-1 authorizes the Department of Social Services to provide medical services on behalf of persons having</p>	<p>An emergency medical condition is one with acute and severe symptoms, including severe pain. It includes emergency labor and delivery. An emergency medical condition exists if the failure to get immediate medical attention would result in:</p> <ul style="list-style-type: none"> • putting the person's health in serious jeopardy; 	<p>South Dakota Administrative Rule 67:46:01:11 provides that, subject to certain exceptions (none of which relate to aliens), "an individual desiring medical assistance under this article or someone acting on that individual's behalf, must submit a completed, written, and signed application for assistance to the department."</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>insufficient income and resources to meet the necessary costs thereof. . . in accordance with rules which the secretary of social services shall promulgate . . . and may include (6) Such other requirements as may be necessary to obtain federal financial participation in the medical assistance program.”</p> <p>Since Pub. L. No. 104-193 requires emergency coverage for aliens, S.D. Stat. 26-6-1 authorizes the Department of Social Services to implement rules allowing emergency treatment of undocumented aliens, although no specific rules on that topic have been promulgated.</p> <p>Emergency medical assistance may be available regardless of citizenship, immigration status, or having a social security number.”</p> <p>http://dss.sd.gov/formspubs/docs/</p>	<ul style="list-style-type: none"> • serious impairment of bodily functions; or • serious dysfunction of a bodily organ or body part. 	
Tennessee	<p>TennCare</p> <p>An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) is not eligible for Medicaid <i>except</i> emergency services. Nonqualified aliens must otherwise meet eligibility requirements, <i>i.e.</i>, income</p>	<p>The term "emergency medical condition" means the sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <p>(1) Placing the patient's health in</p>	<p>The Department of Human Services (DHS) takes applications from nonqualified aliens requiring emergency services. Due to the emergency nature of the services available to nonqualified aliens, it is expected that most applications will be made after the services are rendered. DHS contacts the TennCare Office of the Medical Director if there is a question about whether the service needed by the nonqualified alien</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	and resource standards.	<p>serious jeopardy;</p> <p>(2) Serious impairment to bodily functions; or</p> <p>(3) Serious dysfunction to any bodily organ; or part.</p> <p><i>Quick Guide to TennCare Services,</i> http://state.tn.us/sos/rules/1200/1200-13/1200-13-13.20100903.pdf</p>	<p>qualifies as an emergency. DHS is responsible for making eligibility determinations, providing eligibility notice and appeal rights. TennCare Office of the Medical Director is responsible for determining the presence/absence of an emergency. TennCare Division of Information Services is responsible for the enrollment of nonqualified aliens into the system.</p> <p><i>DHS Office Locator,</i> http://www.state.tn.us/humanser/v/st_map.htm</p>
Texas	<p>In Texas, undocumented immigrants may obtain Medicaid benefits if they meet Texas income, asset and certain other eligibility requirements, and also have an “emergency medical condition.” <i>See</i> 1 Tex. Admin. Code § 354.2101.</p> <p>Applicants for emergency medical condition Medicaid benefits must meet requirements established for the <i>Medically Needy and Children and Pregnant Women Programs</i>, except for the citizenship and residence requirement. <i>See</i> 1 Tex. Admin. Code § 354.2103. This means that applicants must be (1) pregnant women who meet certain income and asset eligibility limits, (2) children under age 19 who meet certain income and asset eligibility limits or (3) adult caretakers of dependent children meeting the requirements for Temporary Assistance for Needy Families (TANF) who also meet certain</p>	<p>An emergency medical condition is one with acute, severe symptoms, such as severe pain. It is considered an emergency medical condition if failure to get immediate medical attention would:</p> <ul style="list-style-type: none"> • endanger the patient’s health; • seriously impair bodily functions; or <p>cause serious dysfunction to a body organ or body part. <i>See</i> 1 Tex. Admin. Code § 354.2103.</p> <p>Patients that are eligible for coverage can receive inpatient and outpatient care, by a physician or other appropriate provider, that is necessary to treat the emergency medical condition. Inpatient/outpatient care may include pharmacy, laboratory, radiology, pathology, labor, delivery and newborn care.</p> <p>Coverage does not include continuation of services or follow-up care after the emergency medical condition is</p>	<p>To receive these Medicaid benefits, an individual is not required to be a U.S. citizen or a resident of Texas, but must meet the other Medicaid eligibility requirements for <i>Medically Needy and Children and Pregnant Women Programs</i>. <i>See</i> 1 Tex. Admin. Code § 354.2103.</p> <p>Applicants must file a simplified application with their local office of the Texas Health and Human Services Commission. <i>See</i> 1 Tex. Admin. Code §§ 354.1556, 75.</p> <p>For more information and an application see:</p> <p>http://www.dads.state.tx.us/forms/h1010-b/h1010-b.pdf</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>income and asset eligibility limits. <i>See</i> 1 Tex. Admin. Code §§ 354.1555–58, 354.1574-77.</p>	<p>stabilized.</p> <p>For more information see:</p> <p>Texas Medicaid Provider Procedures Manual, <i>Texas Medicaid Services</i> at http://www.tmhp.com/TMHP_File_Library/Provider_Manuals/TMPPM/Archive%202006%20TMPM/2006%20TMPPM.pdf</p>	
Utah	<p>The Utah Medicaid Agency administers the emergency Medicaid program for alien residents who would qualify for another Medicaid program except for the requirement to be either a U.S. citizen or legal, permanent resident.</p> <p>Persons who may be eligible include: temporary entrants such as students, visitors, exchange visitors, and aliens granted legal temporary residence and undocumented aliens.</p> <p>Income and asset limits are based on the program the person would otherwise be eligible for if the person was a U.S. citizen or legal, permanent resident.</p> <p><i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>Emergency shall mean a medical condition for which the absence of immediate medical attention could reasonably be expected to result in death or permanent disability to the person, or in the case of a pregnant woman, to the unborn child. Emergency services shall be those rendered from the moment of onset of the emergency condition, to the time the person’s condition is stabilized at an appropriate medical facility, or death results. The definition of emergency services shall include labor and delivery services, but not prenatal or post-partum services. Emergency services shall not include prolonged medical support, medical equipment, or prescribed drugs which are required beyond the point at which the emergency condition has been resolved. Emergency services also shall not include long term care or organ transplants.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p>	<p>Individuals who qualify only for Emergency Services have a special card issued by Medicaid which states “EMERGENCY SERVICES”. The client is eligible only for the restricted scope of emergency service defined by the Social Security Act and Medicaid’s definition of emergency as noted above. These services are covered only until the condition is stabilized. A condition is stabilized when the severity of illness and the intensity of service is such that the patient can leave the facility. Services rendered subsequent to the patient leaving the facility, such as follow-up visits, follow-up treatment or visits scheduled in the future, are not covered by this program.</p> <p>Only labor and delivery services are paid for the Emergency Services client without documentation and review. Prenatal and post-partum services ARE NOT covered for a non-citizen. Physicians and certified nurse midwives may use only the non-global delivery codes specified in SECTION 2 of the Utah Medicaid Provider Manual for Physician Services and for Certified Nurse Midwife Services.</p> <p><i>See</i> Utah Medicaid Provider</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>Coverage is limited to the month in which the emergency occurred. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Medicaid does not report undocumented aliens who apply for Emergency Medicaid to immigration authorities. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>
Vermont	<p>In Vermont, an individual who does not meet the citizenship requirement is eligible for emergency services, provided such care and services are not related to either an organ transplant procedure or routine prenatal or post-partum care, if both of the following conditions are met:</p> <p>1. The non-citizen has, after sudden onset, a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious:</p> <ul style="list-style-type: none"> . jeopardy to the patient's health, . impairment of bodily functions, or . dysfunction of any bodily organ or part. 	<p>“Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition. <i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(14). “Emergency medical condition” means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> a. placing the member's physical or mental health in serious jeopardy; or b. serious impairment to bodily functions; or c. serious dysfunction of any bodily organ or part. 	<p>Any individual who wants Medicaid must file a Medicaid application with the Department for Children and Families:</p> <p>Vermont Department for Children and Families 103 South Main Street Waterbury, VT 05676-1201</p> <p>1-800-287-0589 or 1-802-241-2100</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>2. The non-citizen must meet all other eligibility requirements for Medicaid except verification of alien status and, for illegal non-citizens, verification of a social security number. <i>See</i> Vt. Admin. Code 12-3-211:4177.</p>	<p><i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(13).</p>	
Virginia	<p>In Virginia, unqualified aliens are eligible for Medicaid coverage of emergency medical care only. This care must be provided in a hospital emergency room or as an inpatient in a hospital. The Virginia Department of Medical Assistance Services or a local department of social service determines both whether services are considered emergency services and the period of coverage.</p> <p>Emergency services are defined as emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in: 1. Placing the patient's health in serious jeopardy; 2. Serious impairment of bodily functions; or 3. Serious dysfunction of any bodily organ or part. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p> <p>For purposes of this definition, emergency treatment of a medical</p>	<p>If the applicant is found eligible and is certified for emergency services, eligibility exists only for the period of coverage certified by Virginia Department of Medical Assistance Services or a local department of social services staff on the Emergency Medical Certification form, # 032-03-628.</p> <p>Once an eligibility period is established, additional requests for coverage of emergency services within 6 months will not require a new Medicaid application. However, each request for Medicaid coverage of an emergency service or treatment requires a new, separate certification and a review of the alien's income and resources and any change in situation that the alien reports. An emergency services alien must file a new Medicaid application after the 6-month eligibility period is over if he/she receives an emergency service and wants Medicaid coverage for that service. <i>See</i> Va. Dep't Social Serv., Medical Assistance Manual, Vol. XIII TN#75, § M0220.700, <i>available at</i> http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf.</p>	<p>Submit application to local department of social services</p> <p>For contact information for local departments of social services, see http://www.dss.virginia.gov/localagency/</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).		
Washington	<p>In Washington, undocumented immigrants who have a condition that meets the definition of emergency medical condition may obtain Alien Emergency Medical (AEM) benefits if they would be eligible for other state Medicaid programs except for the citizenship or alien status requirements. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p> <p>A person is not eligible for the AEM program if they entered the state specifically to obtain medical care. Wash. Admin. Code § 388-438-0110.</p> <p>For more information see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/aliemergencymedical.asp</p>	<p>"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part. Wash. Admin. Code § 388-500-0005.</p> <p>Covered services under the AEM are limited to those necessary for treatment of the person's emergent medical condition. AEM does not cover: organ transplants; prenatal care (except for labor and delivery); school-based services; personal care services; waiver services; or nursing facility services. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>Under this program, certification is only valid for the period of time the person is receiving services under the established criteria. <i>See</i> Wash. Admin. Code § 388-438-0115.</p> <p>A person can apply for AEM benefits at the local community services office or online.</p> <p>To locate a local community services office see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/findservice.asp</p> <p>For more information on the online application: https://fortress.wa.gov/dshs/f2ws03esaapps/onlineapp/introduction_1.asp</p> <p>For more information on the application process: http://www1.dshs.wa.gov/esa/ezmanual/Sections/AppsFiling.htm</p>
West Virginia	In West Virginia, illegal/ineligible aliens who meet the residence and other Medicaid eligibility criteria will be eligible for Medicaid only for treatment of an emergency medical	An emergency medical condition is defined as a situation where the illegal/ineligible alien has, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity	Applications from or on behalf of these aliens must be made within 30 days of the need for emergency medical care. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H)), <i>available at</i>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>condition.</p> <p>To be eligible for emergency services, an illegal/ineligible alien must meet the income, asset and deprivation considerations (except for alien status) of either AFDC Medicaid or SSI and diagnosed as having a emergency medical condition. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p>	<p>(including severe pain) such that the absence of reasonable medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient’s health in serious jeopardy • serious impairment to bodily functions or • serious dysfunction of any bodily organ or part <p>Coverage may not be related to either an organ transplant procedure or routine prenatal or postpartum care.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 18, § 18.9, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_18/ch18_9.pdf.</p> <p>Eligibility for emergency Medicaid coverage ends on the day that the medical emergency ends.</p>	<p>http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p> <p>In order to obtain benefits, an application form on OFS-2 is required. The application may be signed by the illegal/ineligible alien or his or her representative. The illegal/ineligible alien or his or her representative must also submit to an interview. This must be submitted within a reasonable period of time as agreed upon with the case worker. When the verification is received and the illegal/ineligible alien is eligible for benefits, medical coverage is retroactive to the date of the medical emergency.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 1, § 1.17, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_01/ch1_17.pdf.</p>
Wisconsin	<p>In Wisconsin, ineligible aliens may be eligible for emergency services if other Medicaid eligibility requirements are met. <i>See</i> Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>An emergency means a medical condition where lack of immediate medical attention results in:</p> <ul style="list-style-type: none"> • Serious risk to the patient’s health; or • Serious harm to bodily functions; or • Serious dysfunction of a bodily organ or part. <p><i>See</i> Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>For most emergency services, application for reimbursement is made after-the-fact. The applicant may get a form from the medical provider stating that emergency treatment was given. This form may be included with one’s application, but is not strictly necessary.</p> <p>Applications are received at the local county/tribal human or social services agency.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>Emergency Medicaid begins on the first day medical care is received, and ends when one's condition is no longer an emergency. <i>See</i> Badgercare Plus and Wisconsin Medicaid — Emergency Services, <i>available at</i> http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>	<p>Non-citizens are not required to provide a SSN or information about their immigration status to receive emergency Medicaid.</p> <p>Pregnant women may apply for emergency Medicaid one month before their due date. Coverage continues until 60 days after the delivery date.</p> <p>Pregnant women who qualify for emergency Medicaid are also likely to qualify for BadgerCare Prenatal care. For more information on BadgerCare see: http://www.badgercareplus.org/.</p> <p><i>See</i> Badgercare Plus and Wisconsin Medicaid — Emergency Services, <i>available at</i> http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>
Wyoming	<p>EqualityCare</p> <p>EqualityCare is a state public health insurance program designed to help pay for certain health care services and is available to both qualified and non-qualified aliens.</p> <p>Individuals who are non citizens and meet all eligibility requirements under an EqualityCare group, except for citizenship, identity and social security number, may be eligible for Emergency Services. <i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/</p>	<p>“Emergency” means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <p>(i) Placing the patient's health in serious jeopardy;</p> <p>(ii) Serious impairment to bodily functions; or</p> <p>(iii) Serious dysfunction of any bodily organ or part.</p> <p><i>See</i> Wy. Medicaid Rules, ch. 26, § 4 (tt), <i>available at</i> http://soswy.state.wy.us/RULES/6252.pdf.</p>	<p>EqualityCare</p> <p>Applicants obtain an application and submit it to their local Department of Family Services (DFS) office. Applications can be obtained through a DFS office or at a Public Health office, Women, Infants and Children office, or various doctors' offices. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applications will be reviewed by a benefit specialist who will determine eligibility. Applicants who are eligible for EqualityCare will receive a letter explaining the coverage. Applicants who are determined to be ineligible will receive a</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>WYECWhoiseligible.html Emergency hospital services are those necessary to prevent the death of serious impairment of an individual. <i>See</i> 42 C.F.R. § 440.170(e); Wy. Medicaid Rules, ch. 26, § 4 (vv), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p>	<p>Benefits are limited to emergency services such as labor and delivery. Other emergency services may be covered from the time treatment is first given for a condition until that same condition is no longer considered an emergency. These services must be determined as an emergency by EqualityCare's fiscal agent. A co-payment may be required for adults 21 years of age or older on EqualityCare's Emergency Services program.</p> <p><i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/EmergencyServices.html.</p> <p>Coverage questions may be answered by calling the EqualityCare Client Help Line at 1-800-251-1269. For emergency services coverage, the emergency center would need to diagnose the situation an emergency in over for the medical bills to be covered.</p>	<p>letter explaining the reason for the denial. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applicants may appeal a denial, change or termination of EqualityCare benefits by requesting an administrative hearing within 30 days of being notified of the denial, change or termination. The request for an administrative hearing should be made on the back of the notice and mailed or hand delivered to the applicant's local DFS office. <i>See generally</i> Wy. Stat. Ann. § 42-4-108.</p> <p>If a request for medical services was denied by the Office of Medicaid, a request for an administrative hearing must be made in writing and include the individual's name, address and the reason for the hearing request. The hearing request should be mailed to: Office of Medicaid, 2300 Capitol Avenue, Cheyenne, WY 82002.</p> <p>Requests for administrative hearings will be reviewed, and if a hearing is granted, notice will be sent regarding the date and time of the hearing.</p>
Utah	<p>The Utah Medicaid Agency administers the emergency Medicaid program for alien residents who would qualify for another Medicaid program except for the requirement to be either a U.S. citizen or legal, permanent resident.</p> <p>Persons who may be eligible include: temporary entrants</p>	<p>Emergency shall mean a medical condition for which the absence of immediate medical attention could reasonably be expected to result in death or permanent disability to the person, or in the case of a pregnant woman, to the unborn child. Emergency services shall be those rendered from the moment of onset of the emergency condition, to the time the person's condition is stabilized at an appropriate</p>	<p>Individuals who qualify only for Emergency Services have a special card issued by Medicaid which states "EMERGENCY SERVICES". The client is eligible only for the restricted scope of emergency service defined by the Social Security Act and Medicaid's definition of emergency as noted above. These services are covered only until the condition is stabilized. A condition is stabilized when</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>such as students, visitors, exchange visitors, and aliens granted legal temporary residence and undocumented aliens.</p> <p>Income and asset limits are based on the program the person would otherwise be eligible for if the person was a U.S. citizen or legal, permanent resident.</p> <p><i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>medical facility, or death results. The definition of emergency services shall include labor and delivery services, but not prenatal or post-partum services. Emergency services shall not include prolonged medical support, medical equipment, or prescribed drugs which are required beyond the point at which the emergency condition has been resolved. Emergency services also shall not include long term care or organ transplants.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Coverage is limited to the month in which the emergency occurred. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>	<p>the severity of illness and the intensity of service is such that the patient can leave the facility. Services rendered subsequent to the patient leaving the facility, such as follow-up visits, follow-up treatment or visits scheduled in the future, are not covered by this program.</p> <p>Only labor and delivery services are paid for the Emergency Services client without documentation and review. Prenatal and post-partum services ARE NOT covered for a non-citizen. Physicians and certified nurse midwives may use only the non-global delivery codes specified in SECTION 2 of the Utah Medicaid Provider Manual for Physician Services and for Certified Nurse Midwife Services.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), available at http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Medicaid does not report undocumented aliens who apply for Emergency Medicaid to immigration authorities. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, available at http://health.utah.gov/medicaid/provhtml/emergency_medical.html.</p>
Vermont	In Vermont, an individual who does not meet the citizenship requirement is eligible for emergency services, provided such care and services are not related	“Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition. <i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49,	Any individual who wants Medicaid must file a Medicaid application with the Department for Children and Families:

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>to either an organ transplant procedure or routine prenatal or post-partum care, if both of the following conditions are met:</p> <p>1. The non-citizen has, after sudden onset, a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious:</p> <ul style="list-style-type: none"> . jeopardy to the patient's health, . impairment of bodily functions, or . dysfunction of any bodily organ or part. <p>2. The non-citizen must meet all other eligibility requirements for Medicaid except verification of alien status and, for illegal non-citizens, verification of a social security number. <i>See</i> Vt. Admin. Code 12-3-211:4177.</p>	<p>§ M103.3(A)(14). “Emergency medical condition” means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> a. placing the member's physical or mental health in serious jeopardy; or b. serious impairment to bodily functions; or c. serious dysfunction of any bodily organ or part. <p><i>See</i> Vt. Medicaid Regulations, Soc. Welfare 95-49, § M103.3(A)(13).</p>	<p>Vermont Department for Children and Families 103 South Main Street Waterbury, VT 05676-1201</p> <p>1-800-287-0589 or 1-802-241-2100</p>
Virginia	<p>In Virginia, unqualified aliens are eligible for Medicaid coverage of emergency medical care only. This care must be provided in a hospital emergency room or as an inpatient in a hospital. The Virginia Department of Medical Assistance Services or a local department of social service determines both whether services are considered emergency services and the period of</p>	<p>If the applicant is found eligible and is certified for emergency services, eligibility exists only for the period of coverage certified by Virginia Department of Medical Assistance Services or a local department of social services staff on the Emergency Medical Certification form, # 032-03-628.</p> <p>Once an eligibility period is established, additional requests for coverage of emergency</p>	<p>Submit application to local department of social services</p> <p>For contact information for local departments of social services, see</p> <p>http://www.dss.virginia.gov/localagency/</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>coverage.</p> <p>Emergency services are defined as emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in: 1. Placing the patient's health in serious jeopardy; 2. Serious impairment of bodily functions; or 3. Serious dysfunction of any bodily organ or part. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p> <p>For purposes of this definition, emergency treatment of a medical condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care. <i>See</i> 12 Va. Admin. Code § 30-50-310(B).</p>	<p>services within 6 months will not require a new Medicaid application. However, each request for Medicaid coverage of an emergency service or treatment requires a new, separate certification and a review of the alien's income and resources and any change in situation that the alien reports. An emergency services alien must file a new Medicaid application after the 6-month eligibility period is over if he/she receives an emergency service and wants Medicaid coverage for that service. <i>See</i> Va. Dep't Social Serv., Medical Assistance Manual, Vol. XIII TN#75, § M0220.700, available at http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/m02.pdf.</p>	
Washington	<p>In Washington, undocumented immigrants who have a condition that meets the definition of emergency medical condition may obtain Alien Emergency Medical (AEM) benefits if they would be eligible for other state Medicaid programs except for the citizenship or alien status requirements. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the patient's health in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part. Wash. Admin. Code § 388-500-0005.</p> <p>Covered services under the AEM</p>	<p>Under this program, certification is only valid for the period of time the person is receiving services under the established criteria. <i>See</i> Wash. Admin. Code § 388-438-0115.</p> <p>A person can apply for AEM benefits at the local community services office or online.</p> <p>To locate a local community services office see: https://fortress.wa.gov/dshs/f2ws03esaapps/</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
	<p>A person is not eligible for the AEM program if they entered the state specifically to obtain medical care. Wash. Admin. Code § 388-438-0110.</p> <p>For more information see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/alienemergencymedical.asp</p>	<p>are limited to those necessary for treatment of the person's emergent medical condition. AEM does not cover: organ transplants; prenatal care (except for labor and delivery); school-based services; personal care services; waiver services; or nursing facility services. <i>See</i> Wash. Admin. Code § 388-438-0110; Wash. Admin. Code § 388-438-0115.</p>	<p>onlinecso/findservice.asp</p> <p>For more information on the online application: https://fortress.wa.gov/dshs/f2ws03esaapps/onlineapp/introduction_1.asp</p> <p>For more information on the application process: http://www1.dshs.wa.gov/esa/ezmanual/Sections/AppsFiling.htm</p>
West Virginia	<p>In West Virginia, illegal/ineligible aliens who meet the residence and other Medicaid eligibility criteria will be eligible for Medicaid only for treatment of an emergency medical condition.</p> <p>To be eligible for emergency services, an illegal/ineligible alien must meet the income, asset and deprivation considerations (except for alien status) of either AFDC Medicaid or SSI and diagnosed as having a emergency medical condition. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p>	<p>An emergency medical condition is defined as a situation where the illegal/ineligible alien has, after sudden onset, a medical condition (including emergency labor and delivery) showing acute symptoms of sufficient severity (including severe pain) such that the absence of reasonable medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> • placing the patient's health in serious jeopardy • serious impairment to bodily functions or • serious dysfunction of any bodily organ or part <p>Coverage may not be related to either an organ transplant procedure or routine prenatal or postpartum care.</p> <p><i>See</i> W.Va. Income Maintenance Manual, ch. 18, § 18.9, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_18/ch18_9.pdf.</p>	<p>Applications from or on behalf of these aliens must be made within 30 days of the need for emergency medical care. <i>See</i> W.Va. Income Maintenance Manual, ch. 16, § 16.6(H), available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_16/ch16_6.pdf.</p> <p>In order to obtain benefits, an application form on OFS-2 is required. The application may be signed by the illegal/ineligible alien or his or her representative. The illegal/ineligible alien or his or her representative must also submit to an interview. This must be submitted within a reasonable period of time as agreed upon with the case worker. When the verification is received and the illegal/ineligible alien is eligible for benefits, medical coverage is retroactive to the date of the medical emergency.</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>8_9.pdf.</p> <p>Eligibility for emergency Medicaid coverage ends on the day that the medical emergency ends.</p>	<p>See W.Va. Income Maintenance Manual, ch. 1, § 1.17, available at http://www.wvdhhr.org/bcf/policy/imm/new_manual/IMManual/Manual_PDF_Files/Chapter_01/ch1_17.pdf.</p>
Wisconsin	<p>In Wisconsin, ineligible aliens may be eligible for emergency services if other Medicaid eligibility requirements are met. See Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p>	<p>An emergency means a medical condition where lack of immediate medical attention results in:</p> <ul style="list-style-type: none"> • Serious risk to the patient’s health; or • Serious harm to bodily functions; or • Serious dysfunction of a bodily organ or part. <p>See Wis. Medicaid Fact Sheet, available at http://www.dhs.wisconsin.gov/Medicaid/Publications/p-10055.pdf.</p> <p>Emergency Medicaid begins on the first day medical care is received, and ends when one’s condition is no longer an emergency. See Badgercare Plus and Wisconsin Medicaid — Emergency Services, available at http://www.dhs.wisconsin.gov/medicaid/Publications/p-10072.pdf.</p>	<p>For most emergency services, application for reimbursement is made after-the-fact. The applicant may get a form from the medical provider stating that emergency treatment was given. This form may be included with one’s application, but is not strictly necessary.</p> <p>Applications are received at the local county/tribal human or social services agency.</p> <p>Non-citizens are not required to provide a SSN or information about their immigration status to receive emergency Medicaid.</p> <p>Pregnant women may apply for emergency Medicaid one month before their due date. Coverage continues until 60 days after the delivery date.</p> <p>Pregnant women who qualify for emergency Medicaid are also likely to qualify for BadgerCare Prenatal care. For more information on BadgerCare see: http://www.badgercareplus.org/.</p> <p>See Badgercare Plus and Wisconsin Medicaid — Emergency Services, available at http://www.dhs.wisconsin.gov/m</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
			edicaid/Publications/p-10072.pdf .
Wyoming	<p>EqualityCare</p> <p>EqualityCare is a state public health insurance program designed to help pay for certain health care services and is available to both qualified and non-qualified aliens.</p> <p>Individuals who are non citizens and meet all eligibility requirements under an EqualityCare group, except for citizenship, identity and social security number, may be eligible for Emergency Services. <i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/WYECWhoiseligible.html</p> <p>Emergency hospital services are those necessary to prevent the death of serious impairment of an individual. <i>See</i> 42 C.F.R. § 440.170(e); Wy. Medicaid Rules, ch. 26, § 4 (vv), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p>	<p>“Emergency” means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:</p> <p>(i) Placing the patient's health in serious jeopardy;</p> <p>(ii) Serious impairment to bodily functions; or</p> <p>(iii) Serious dysfunction of any bodily organ or part.</p> <p><i>See</i> Wy. Medicaid Rules, ch. 26, § 4 (tt), <i>available at</i> http://soswy.state.wy.us/Rules/RULES/6252.pdf.</p> <p>Benefits are limited to emergency services such as labor and delivery. Other emergency services may be covered from the time treatment is first given for a condition until that same condition is no longer considered an emergency. These services must be determined as an emergency by EqualityCare's fiscal agent. A co-payment may be required for adults 21 years of age or older on EqualityCare's Emergency Services program.</p> <p><i>See</i> http://health.wyo.gov/healthcarefin/medicaideligibility/EmergencyServices.html.</p> <p>Coverage questions may be answered by calling the</p>	<p>EqualityCare</p> <p>Applicants obtain an application and submit it to their local Department of Family Services (DFS) office. Applications can be obtained through a DFS office or at a Public Health office, Women, Infants and Children office, or various doctors' offices. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applications will be reviewed by a benefit specialist who will determine eligibility. Applicants who are eligible for EqualityCare will receive a letter explaining the coverage. Applicants who are determined to be ineligible will receive a letter explaining the reason for the denial. <i>See generally</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applicants may appeal a denial, change or termination of EqualityCare benefits by requesting an administrative hearing within 30 days of being notified of the denial, change or termination. The request for an administrative hearing should be made on the back of the notice and mailed or hand delivered to the applicant's local DFS office. <i>See generally</i> Wy. Stat. Ann. § 42-4-108.</p> <p>If a request for medical services was denied by the Office of Medicaid, a request for an administrative hearing must be made in writing and include the individual's name, address and</p>

State ²	State Laws Concerning Emergency Medicaid	Coverage	Application Process
		<p>EqualityCare Client Help Line at 1-800-251-1269. For emergency services coverage, the emergency center would need to diagnose the situation an emergency in over for the medical bills to be covered.</p>	<p>the reason for the hearing request. The hearing request should be mailed to: Office of Medicaid, 2300 Capitol Avenue, Cheyenne, WY 82002.</p> <p>Requests for administrative hearings will be reviewed, and if a hearing is granted, notice will be sent regarding the date and time of the hearing.</p>

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

17.4

Pre-Natal Care For Qualified And Non-Qualified Immigrants¹

By Legal Momentum and Morgan Lewis, LLP

Introduction and General Guidelines

This information is current as of November 18, 2010. It is intended to provide an overview regarding health benefits and emergency Medicaid for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Generally speaking, there is a distinction drawn between qualified immigrants and non-qualified immigrants as to pre-natal care, although there are important exceptions on a state-by-state basis. Consequently, emergency medical care is the only route in many states for non-qualified immigrants to receive pre-natal care or services. Necessarily, therefore, while emergency medical services include labor and delivery, “emergency services” generally do not include any non-emergency pre-natal services, as discussed below in the section dealing with “Emergency Pre-Natal Care.”

For qualified immigrants who satisfy Medicaid and other state-specific eligibility requirements, a package of services that includes pre-natal care is generally available, including early risk assessment, health promotion and medical monitoring.

For a definition of “qualified” and “non-qualified” immigrants, reference the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which has certain exceptions of importance for pre-natal care. The operative definitions of this Act are discussed below.

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Notable exceptions to the general principles outlined above include California, which provides for pre-natal care for both “qualified” and “non-qualified” immigrants, including undocumented immigrants. All immigrants may receive pre-natal care under Medi-Cal regardless of immigration status, assuming Medi-Cal’s standard income and residency requirements are met (see below).

The District of Columbia also provides pre-natal care for non-qualified immigrants enrolled in the DC HealthCare Alliance, which is designed to provide medical assistance to needy DC residents not eligible for Medicaid. Individuals must be DC residents, have no health insurance and have family income no greater than 200% of the Federal Poverty Level.

Guam provides a full range of pre-natal care and nutritional education, screening and counseling through Maternal Child Health Program (“MCHP”). In order to qualify for the MCHP, a woman must be resident of Guam who meets income eligibility requirements.

Massachusetts also provides pre-natal care for non-qualified immigrants through the Healthy Start Program. Pregnant women and unborn children are eligible if they meet income requirements, do not have other MassHealth coverage, are residents of Massachusetts and are not otherwise insured. Free Care is also available to Massachusetts residents meeting certain income requirements, regardless of immigration status.

Georgia, Indiana, Michigan, Minnesota, Nebraska, New York, North Carolina, Rhode Island and the State of Washington also currently provide some form of pre-natal care and/or nutritional education and similar pregnancy-related support regardless of immigration status.

Pre-natal care is generally available in all states (except where noted below) for “qualified” immigrants, as defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (discussed below). In addition to immigrants legally residing in the United States, “qualified alien” is defined to include:

- Refugees and asylees;
- Cuban or Haitian entrants;
- Battered immigrants and victims of trafficking as defined by the Trafficking Victims Prosecution Act of 2000; and
- Immigrants granted conditional entry, whose deportation is being withheld, or granted parole for at least one year, as defined by §§ 203, 212, 241 and 243 of the federal Immigration and Naturalization Act.

Certain states have included other groups, such as veterans and Native Americans as “qualified” immigrants. Please refer to the information below and referenced legal attributes.

South Carolina does not provide for pre-natal care, even on an emergency basis, including for undocumented immigrants.

Below are relevant discussions of emergency medical care provisions that are relevant in circumstances where non-qualified immigrants fit within the requirements for emergency treatment for pre-natal care.

Emergency Pre-Natal Care

Most states not providing pre-natal care for all immigrants, regardless of immigration status, do provide some coverage for emergency medical services. While program features and restrictions vary somewhat across the states, most have borrowed essential definitions and restrictions from federal law. Thus, there is some degree of conceptual uniformity. For example, because the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) allow the provision of only emergency benefits to nonqualified immigrants, most states have borrowed the federal definition of “emergency medical condition” in order to ensure their compliance.

The condition for which treatment is sought must generally be severe and acute, such that the absence of immediate attention may lead to either placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part. This standard will preclude most pre-natal services for most non-qualified immigrants, except in those states that do not regard immigration status as a bar to receipt of pre-natal services. In addition, nearly every state requires the non-qualified immigrant to meet all other criteria for the state’s general Medicaid enrollment. These restrictions are generally designed to ensure that the recipient of the public benefit is truly in financial need, and that has a legitimate connection to the state that will bear the cost. Such restrictions often include residency, income, and resource limitations. Applicants must research these provisions carefully, however, as there is substantial variance in these requirements from state to state.

The procedures for receiving such aid vary significantly by state. Several states require or allow individuals to be preauthorized as emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required; thereby eliminating the possibility of advance authorization. It is important that applicants check their state’s rules to determine what steps must be taken in order to qualify for emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant.

Relevant Federal Law

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), P.L. 104-193, provides that only “qualified aliens” are permitted access to federal and state public benefits. Under the PRWORA, non-qualified immigrants (including undocumented immigrants) can only receive limited federal and state public benefits, including medical care under Medicaid, for care and services necessary for treatment of an emergency medical condition (except organ transplants) if the non-qualified immigrant otherwise meets Medicaid eligibility requirements. “Emergency medical condition” is defined at §1903(v)(3) of the Social Security Act (“SSA”) (42 U.S.C. §1396b(v)(3)) as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the patient’s health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part. Although the PRWORA severely limits what public benefits a state can provide to non-

qualified immigrants, it allows states to provide additional state funded benefits if state laws enacted after August 22, 1996 affirmatively provide for such eligibility. In addition to emergency medical services covering those services necessary to protect life and safety, federally funded Community Health Centers and Migrant Health Centers provide services to underserved populations, which may include undocumented immigrants.

In addition, Chapter XXI of the SSA created the State Children’s Health Insurance Program (“SCHIP”) (42 U.S.C. §§1397aa, et seq.) Under SCHIP, the Federal Government provides funding to the states to expand health care services for low-income children through stand alone SCHIP plans, Medicaid plans or a combination of both. In 2002, the Dept. of Health and Human Services issued a final regulation (67 Fed. Reg. 61955 (Oct. 2, 2002)) that stated that the definition of the term “children” includes the period from conception to birth and that SCHIP funds may be used by states to provide pre-natal services for the benefit of the child, regardless of the mother’s immigration status. As stated in the final rule “requiring exclusion of unborn children on the basis of immigration status is neither legally mandated nor desirable” and “it does not make sense to try to impute an immigration status to an unborn child based on the status of the mother.” (See 67 Fed. Reg. 61955, 61967).

SCHIP state plan information can be obtained at:

<http://www.cms.hhs.gov/LowCostHealthInsFamChild/SCHIPASPI/list.asp#TopOfPage>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
Alabama	All Kids is Alabama’s SCHIP program. It offers insurance to children under the age of 19. Pregnant women are covered under SOBRA Medicaid.	Only citizens or qualified immigrants are covered. Alabama Administrative Code, Rule 560-X-25-.14 “Pregnant Women and Young Children With Income Equal To or Below 133% of the Federal Poverty Level and Children With Income Equal To or Below 100% of the Federal Poverty Level.” states “The person to be covered must be living in Alabama and must be a United States citizen or meet alienage requirements.” Id. at 560-X-25-.14(1)(d). See: http://www.medicaid.alabama.gov/ADMIN_Code/5A-AdmCode.Ch25-Eligibility_5-16-06.pdf .	Application for SOBRA Medicaid is available on-line at http://www.medicaid.alabama.gov/documents/apply/2C-Forms/2-C_SOBRA_AppForm219_4-05.pdf Eligibility for SOBRA Medicaid is limited to U.S. citizens or non-citizens in a “satisfactory immigration status.” See also, http://www.medicaid.alabama.gov/documents/apply/2B-Qualifying/2-B_Sobra_MLIF_handout_2-1-06_b.pdf
Alaska	Denali KidCare is Alaska’s SCHIP program.	Alaska used its SCHIP fund to expand its Medicaid-based Denali KidCare Program. As such, it has the same rules as	Application is available on-line. http://www.hss.state.ak.us/dhcs/DenaliKidCare/PDF/printapp.pdf

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
		<p>Medicaid eligibility (only qualified aliens are eligible).</p> <p>It provides full medical insurance, including checkups, screenings, visual, and dental. It is available to children and pregnant women. Alaska Medical Assistance Manual, § 5300.</p> <p>This manual specifically notes that “An emergency medical condition does not include care and services related to either an organ transplant procedure or routine prenatal or postpartum care.” Manual, § 5600A(3)</p> <p><i>See also, The Emergency Medicaid Chart for Alaska.</i></p>	<p>A social security number, or verification that one has been applied for, is required. See application instructions, above link.</p> <p>Income guidelines apply and are available on-line.</p> <p>http://www.hss.state.ak.us/dhcs/DenaliKidCare/PDF/DKC_2006_Income_Standards.pdf</p>
Arizona	<p>A.R.S. 36-3903.03 provides that a noncitizen who does not claim and provide verification of qualified immigrant status but is otherwise entitled to Medicaid may only receive emergency services as provided under Section 1903(v) of the Social Security Act.</p> <p>Undocumented immigrants may apply for coverage in the same manner as other Arizona residents and must meet income and residency requirements, but will only be entitled to coverage for emergency services</p>	<p>The Arizona Health Care Cost Containment System (AHCCCS) Medical Policy Manual (Chapter 1100) provides that the term “emergency medical condition” “refers to a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including extreme pain) such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ol style="list-style-type: none"> 1. Placing the patient’s health in serious jeopardy 2. Serious impairment to bodily functions, or 3. Serious dysfunction of any bodily organ or part. <p>The focus must be on the person’s “current medical condition” (which must be manifesting itself by sufficiently severe, acute symptoms) and whether that condition satisfies the above criteria when service is rendered. Although an initial</p>	<p>Application is by mail, with subsequent eligibility review. A social security number is not required for emergency coverage only.</p> <p>For more information, the AHCCCS Policy and Eligibility Manuals are available at:</p> <p>http://www.ahcccs.state.az.us/Publications/GuidesManuals/</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
		injury may be stabilized, such stabilization does not necessarily mark the end of the emergency medical condition.	
Arkansas	<p>Prenatal services are available under the State Children's Health Insurance Program (SCHIP). Pregnant women who have family incomes of up to 200 percent of the federal poverty level and who are not eligible for Medicaid, most often because of their immigration status are eligible for benefits under the program.</p> <p>Pregnant women with income up to 200% of Federal Poverty Level may be eligible for limited coverage if they meet certain income, resource and other criteria, including prenatal, delivery, postpartum and conditions which may complicate the pregnancy. Coverage continues through the pregnancy and until the end of the month that the 60th day postpartum falls.</p> <p>NOTE: Pregnant women eligible for coverage as non-qualified immigrants or qualified immigrants who have not met the five-year residency requirement are not required to meet the social security enumeration requirement.</p> <p>http://www.arkansas.gov/dhhs/webpolicy/Medical%20Services/MS%2012100.htm</p>	Presumptive eligibility: Arkansas' Medicaid program provides for presumptive eligibility for pregnant qualified aliens. Presumptive eligibility allows uninsured pregnant women to obtain immediate prenatal care while their Medicaid eligibility is being processed. Qualified aliens not meeting the five-year residency requirement and unqualified aliens will not be eligible for presumptive eligibility.	<p>For information on Medicaid eligibility and enrollment, call 1-800-482-8988.</p> <p>Applications are handled by the Dept of Health and Human Services (DHHS) office in each county.</p>
California	Medi-Cal	Medi-Cal	Medi-Cal

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>All aliens may receive pre-natal care under Medi-Cal regardless of immigration status (lawfully present in the U.S. or not). To receive these Medi-Cal benefits, a patient must meet Medi-Cal's standard income and residency requirements. If these requirements are met, the patient may receive medically necessary "pregnancy-related services." Cal. Welf. & Inst. Code §14007.7 (signed into law on July 22, 1999, to meet federal requirement that state funded benefits may be provided to non-qualified aliens if a state law is enacted after August 22, 1996.)</p> <p>Full Medi-Cal benefits are available to qualified aliens who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status of qualified alien for five (5) years. However, the five (5) year limitation does not apply to certain aliens including refugees and asylees.</p> <p>Access for Infants and Mothers ("AIM")</p> <p>Women who do not qualify to receive Medi-Cal may enroll in the AIM program and receive health services during pregnancy. There do not appear to be any restrictions on receiving AIM benefits based on the immigration status of the applicant. Cal. Ins. Code</p>	<p>"Pregnancy-related services" means those services that are required to assure the health of the pregnant woman and the fetus. These services include pre-natal care, services for complications of pregnancy, labor, delivery, postpartum care and family planning services. Pregnancy-related services may be provided pre-natally from the day that pregnancy is medically established.</p> <p>Drug coverage prescribed for pregnancy-related services and dispensed within this eligibility time period includes the full scope of Medi-Cal pharmaceutical benefits.</p> <p>Any woman who believes that she is pregnant and whose income is below the Medi-Cal eligibility threshold may receive immediate, temporary pre-natal care under the Presumptive Eligibility program until the formal Medi-Cal application is processed. Medical Services Provider Manual Part 1.</p> <p>Medi-Cal provides pregnancy related and post-partum care services for an additional 60 days beginning on the last day of pregnancy. "Postpartum services" means those services provided after childbirth, child delivery, or miscarriage. Cal. Welf. & Inst. Code §14005.18.</p> <p>Family planning services may be provided beyond the 60-day postpartum period if the recipient presents the provider with a Medi-Cal card valid for the month of service.</p> <p>Access for Infants and</p>	<p>To receive Medi-Cal, an applicant must meet residency and income requirements. County welfare departments determine residency. No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in California. Cal. Welf. & Inst. Code §§14007 & 14007.1.</p> <p>An applicant for Medi-Cal benefits is required to file a simplified application with the county. No social security number is required to receive medically necessary pregnancy related services. See Cal. Welf. & Inst. Code §14011.2(c) and §14011.15.</p> <p>Medi-Cal benefits are available to pregnant women and infants if the family income is less than 200% of the federal poverty level. Cal. Welf. & Inst. Code §14148 and §14048.5.</p> <p>The application process is handled at the county level, so the appropriate county must be contacted. The following link has the websites for all California Counties:</p> <p>http://www.dhs.ca.gov/mcs/med-calhome/CountyListing1.htm</p> <p><i>Presumptive Eligibility</i></p> <p>Presumptive Eligibility ("PE") for Pregnant Women is a Medi-Cal program designed to provide immediate, temporary coverage for prenatal care pending a formal Medi-Cal application. Any woman who thinks she is pregnant and whose family income is under a certain amount is eligible for PE. A patient must</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>§12698.</p>	<p>Mothers (AIM)</p> <p>AIM provides health care coverage for at least one pregnancy, and for 60 days following the pregnancy.</p> <p>Coverage includes physician services, outpatient services, inpatient hospital services, diagnostic tests, preventive health services and medically necessary prescription drugs. Cal. Ins. Code §12698.30.</p> <p>(AIM also provides healthcare care to children under two years old if the child’s mother was enrolled in AIM before July 1, 2004. If children do not qualify for AIM benefits, they automatically receive benefits under Healthy Families, which is the California SCHIP program.)</p>	<p>seek this care through a participating provider who will determine eligibility for this program.</p> <p>The PE provider will request the applicant to complete a Statement of California Residency and a “<i>Presumptive Eligibility for Pregnancy Only</i>” application. If the application indicates that the woman is eligible for PE, the provider will conduct a pregnancy test. If the pregnancy test is negative, the applicant will not be eligible for PE. If the test is positive, the applicant will be issued a temporary Medi-Cal card (paper) for specific PE services up to 2 months.</p> <p>A formal application for Medi-Cal must be submitted to the County Department of Social Services and proof of application must be provided to the PE provider before the expiration date on the temporary Medi-Cal card (paper). The county will determine if the applicant is eligible to receive Medi-Cal. If determined to be eligible for Medi-Cal, the applicant will then be mailed a Medi-Cal Beneficiary Identification Card.</p> <p>More information is available from the PE Support Unit at 1-800-824-0088</p> <p>Access for Infants and Mothers</p> <p>An applicant for AIM must be a resident of California for at least six (6) continuous months prior to the application and have a household income that does not exceed 300% of the federal poverty level. Cal. Ins. Code §12698.</p> <p>See the following link for more</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
			<p>details:</p> <p>http://www.aim.ca.gov/english/AI/MHome.asp</p>
Colorado	<p>Prenatal State Program Colorado offers prenatal care for documented aliens who are not eligible for Medicaid because they have not resided in the state for the last five years.</p> <p><u>Eligibility</u> The individual's income cannot exceed her proportionate share of 133% of the federal poverty level and her total family income cannot exceed 133% of the federal poverty level.</p> <p><u>Coverage</u> Covered benefits include those related to pregnancy including prenatal, labor and delivery, and post-partum care.</p> <p>The individual will be covered beginning on the date of her application for medical assistance through 60 days after the date her pregnancy ends.</p> <p>(Col. Dep't. of Health Care Policy, 8.101.1K)</p> <p>CHP+ Prenatal Care</p> <p><u>Eligibility</u> Pregnant women who are 19 years old or older who are not eligible for Medicaid. They must be Colorado residents and either a U.S. citizen or a permanent U.S. resident for the last 5 years. The applicant cannot be</p>		<p>Prenatal State Program The applicant must get her pregnancy medically verified in writing by a medical professional (a certified medical assistant or higher level position supervised by a registered nurse or doctor), if her pregnancy is not observable.</p> <p>For additional information, please contact: Colorado Department of Health Care Policy and Financing (303) 866-3513 1(800) 221-3943</p> <p>Colorado Dep't of Public Health and Environment Primary Care Office PSD, A-4 4300 Cherry Creek Drive South Denver, CO 80246 303-692-2229 800-688-7777</p> <p>CHP+ Prenatal Care The applicant can enroll by calling CHP+ Customer Service, Monday through Friday, 8 a.m. to 6 p.m. at 1-800-359-1991.</p> <p>For additional information, contact Child Health Plan Plus P.O. Box 929 Denver, CO 80211 800-359-1991</p> <p>Emergency Medicaid The applicant can apply for emergency medical services based on her pregnancy within two months of her due date. The application will be denied if it is filed more than two months prior</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>covered by health insurance.</p> <p><u>Coverage:</u> Covered benefits include all prenatal care, labor and delivery, post-delivery care, physicals, other doctor visits and hospital services.</p> <p>If found eligible, the pregnant woman will be covered from the date of the application until 60 days after the last day of the month in which her pregnancy ends</p> <p>Emergency Medicaid If the applicant is not a legal immigrant, she can receive healthcare for her labor and delivery expenses only through Colorado's Emergency Medicaid.</p>		<p>to the due date because it is not considered a medical emergency.</p>
Connecticut	<p>Both qualified and non-qualified immigrants are eligible to receive Emergency Medicaid benefits, as long as they meet the other requirements for Medicaid, which include the costs associated with labor and delivery for pregnant women.</p> <p>Emergency Medicaid does not cover prenatal or post partum care.</p> <p>If the pregnant woman has complications due to her pregnancy or if the unborn baby is at risk, then the Emergency Medicaid will cover the medical expenses associated with the complications.</p> <p>Emergency Medicaid will also cover the cost of an abortion if the mother's life is in danger, but not if it is</p>		<p>A pregnant woman is not required to apply for Emergency Medicaid. It is not a pre-approval type of service. Rather, a Medical Review Team at the Connecticut Department of Social Services reviews the medical bill submitted by the hospital or healthcare provider to determine whether it qualifies as an emergency.</p> <p>For additional information, please contact: Connecticut Department of Social Services 25 Sigourney Street Hartford, CT 06105 1-800-842-1508 (860) 424-4926</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	an elected procedure.		
Delaware	<p>Undocumented aliens can only receive healthcare for labor and delivery expenses through Delaware’s Emergency Medicaid. Prenatal and post partum care are not available.</p> <p>An emergency is defined as: - a sudden serious medical situation that is life threatening; OR - a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; AND - without the treatment a person’s life could be threatened or the person could suffer serious long lasting disability.</p> <p>This includes labor and delivery services but routine prenatal and post partum care are not covered.</p> <p>Emergency ambulance services to transport the individuals to and from the services defined above are also covered.</p> <p>Delaware’s Administrative Code Title 16; 14360 Treatment of a Medical Emergency</p>		<p>To be eligible for Emergency Medicaid, the individual must meet all eligibility requirements for a specific Medicaid eligibility group. The individual does NOT have to meet the requirement concerning a declaration of satisfactory immigration status and verification of that status</p> <p>For Additional Information contact: Delaware Medical Assistance Program Customer Support 1-800-372-2022</p> <p>The Division of Social Services The Lewis Building 1-800-372-2022</p>
District of Columbia	<p>Emergency Medicaid Non-qualified aliens are eligible for Emergency Medicaid services. Emergency Medicaid is limited to emergency services, including labor and delivery.</p> <p>Emergency Medicaid does</p>	<p>Emergency Medicaid Emergency Medicaid does not cover pre-natal care.</p> <p>DC Healthy Families DCHF covers pregnancy related services, including:</p> <ul style="list-style-type: none"> • Doctor visits 	<p>Emergency Medicaid N/A</p> <p>DC Healthy Families Pregnant qualified aliens are eligible for DCHF. To qualify for DCHF coverage, a person must meet all the non-financial and financial eligibility requirements</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p><u>not</u> cover pre-natal care. Non-qualified aliens are eligible for the DC HealthCare Alliance (see below).</p> <p>DC Healthy Families Pregnant qualified aliens are eligible for DC Healthy Families (DCHF). To receive DCHF benefits, a patient must meet DCHF's income requirements and be a resident of DC.</p> <p>DCHF benefits are available to a qualified alien who</p> <ul style="list-style-type: none"> • entered the country before August 22, 1996; • meets the veteran exemption; • meets the Native American exception; • entered the country on or after August 22, 1996 and has been in the U.S. in a 'qualified status' for more than 5 years, or • is a refugee, asylee, or other member of a specific category. <p>DC HealthCare Alliance The DC HealthCare Alliance (HCA) program is designed to provide medical assistance to needy DC residents who are not eligible for Medicaid, including both qualified and non-qualified aliens. Individuals must be residents of DC, have no health insurance and have a family income equal to or</p>	<ul style="list-style-type: none"> • Immunizations • Emergency care • Hospital Stays • Prescription medicines • Prenatal care • Labor and delivery • Family planning • Transportation to doctor appointments • Home health care • Durable medical equipment • Health education services • Mental health services • Drug and alcohol treatment • Other health care needs <p>DC HealthCare Alliance Pregnant qualified and non-qualified aliens enrolled in HCA will receive comprehensive health care, including pregnancy related services such as:</p> <ul style="list-style-type: none"> • Pre-natal care, exams, tests and education • Care and services for a miscarriage • Nurse midwife services • Post-partum care 	<p>for the program.</p> <p>To be eligible for program benefits, a person must be a resident of the District of Columbia. However, no durational residency requirement is imposed.</p> <p>Individuals must fill out a DC Healthy Families application. Applications may be obtained by calling 1 (888) 557-1116, picking one up at Giant, Safeway, CVS, Rite Aid, or a library, or at: http://app.doh.dc.gov/services/healthy_families/healthy_families_02_26_04.shtm.</p> <p>DC HealthCare Alliance</p> <p>To be eligible for program benefits, a person must be a presently living in DC voluntarily and not for a temporary purpose and have no current intention of moving out of DC. The individual does not need to be a U.S. citizen or a qualified alien. Application for and verification of Social Security numbers is not required. The individual must have no health insurance and have a family income equal to or below 200% of the Federal Poverty Level.</p> <p>The following persons are not eligible for HCA:</p> <ul style="list-style-type: none"> • persons eligible for Medicaid, • persons receiving Medicare Part A or Part B benefits, • fugitive felons, • probation or parole violators, • persons penalized for

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>below 200% of the Federal Poverty Level.</p> <p>HCA provides comprehensive pregnancy health services, including preventative, primary, acute and chronic care services such as clinic services, emergency care, immunizations, in-patient and out-patient hospital care, physician services, prescription drugs, and pre-natal care. Services are free.</p> <p>Note: Medicaid has requested federal approval to make unborn children of pregnant immigrant women eligible for Medicaid. If this happens, such Medicaid eligible individuals would no longer be eligible for HCA.</p> <p><i>See also</i> D.C. Code §§ 4-201.01-4-221.01, particularly §4-20.24; 22 D.C. Municipal Regulations Chapter 33; Department of Human Services IMA Policy Manual; and DC HealthCare Alliance Manual. Additional information may be searched for at http://fast.dc.gov/match.aspx.</p>		<p>misrepresenting their residence to receive assistance in two or more states,</p> <ul style="list-style-type: none"> • persons who refuse to provide information needed to determine their eligibility <p>Individuals must fill out an application. If approved, the applicant will receive a membership card. Once enrolled, the individual must fill out a form every 12 months to prove continued eligibility. Forms may be filled out at the following locations:</p> <ul style="list-style-type: none"> • DC General, 1900 Massachusetts Avenue SE • Greater Southeast Hospital, 1310 Southern Avenue SE • Congress Heights Clinic, 3720 M.L. King, Jr. Avenue SE • Anacostia Clinic, 1328 W Street SE • Hunt Place Clinic, 4130 Hunt Place NE • Woodridge Clinic, 2146 24th Place NE • Walker-Jones Clinic, 1100 First Street NW • Southwest Community Center, 850 Delaware Avenue SW <p><i>See also</i> Department of Human Services IMA Policy Manual, DC HealthCare Alliance Manual.</p>
Florida	Under F. S. A. § 419.095, Florida imposes federal standards for qualified aliens which must be satisfied in order to receive Florida Medicaid benefits. In addition, the Department	For qualified aliens under Florida's Medicaid program, Florida's Medicaid Provider Physician Services Handbook describes available prenatal services as part of general obstetrical services (which	Qualified aliens may apply for Medicaid benefits in the same manner as other Florida residents. However, the immigration status of all non-US citizens applying for Medicaid must be confirmed by eligibility specialists at the

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>of Children and Family Services, which makes Medicaid eligibility determinations, is required to participate in the federal Systematic Alien Verification for Entitlements (SAVE) program. § 419.095(3); Florida Administrative Code 65A-1.301.</p> <p>Under F. S. A. § 409.904, Florida authorized payment for emergency medical assistance to low-income individuals who meet all other requirements for Medicaid except citizenship. Eligibility is limited to the period of the emergency, in accordance with federal regulations. As set forth under “Coverage,” labor and delivery may be considered an emergency and covered for non-qualified aliens.</p>	<p>include prenatal, delivery and postpartum care). Prenatal visits are limited to a maximum of 10 for low-medical risk recipients, and 14 for high-medical risk recipients (a high-medical risk pregnancy is “one in which the medical history and diagnosis indicate that, without consideration of a cesarean section, a normal uncomplicated pregnancy or delivery will not occur”). Two postpartum visits within 90 days may be reimbursed when medically necessary.</p> <p>Prenatal care includes administration of Florida’s Healthy Start Prenatal Risk Screening, used to identify those at risk of poor birth, health and developmental outcomes.</p> <p>Florida has implemented the Presumptively Eligible Pregnant Women (PEPW) program, permitting qualified providers to make a presumptive determination of Medicaid eligibility for low-income pregnant women. The program allows a woman to access prenatal care while the Department of Children and Families’ eligibility staff makes a regular determination of eligibility. PEPW services are limited to outpatient or office services and do not include inpatient, labor, delivery, or postpartum services.</p> <p>Note: Florida’s Medicaid Provider Physician Services Handbook specifies that labor and delivery are considered emergency medical services and will be payable when an emergency is indicated on provider claim forms. However, routine prenatal and postpartum</p>	<p>Department of Children and Family Services using the SAVE program. Noncitizens who would experience hardship or those with a medical disability will be considered for benefits resolution of verification issues, but those individuals will be subject to recoupment if benefits are paid and the individual is determined to be ineligible.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
		services are not emergencies and no reimbursement is available for those services.	
Georgia	<p>Georgia Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”)</p> <p>The WIC Program provides supplemental foods, nutrition education and referrals to health care, at no cost, to low-income pregnant, breastfeeding and postpartum women, infants, and children up to age 5 who are determined to be at nutritional risk. WIC does not distinguish between the eligibility of qualified and non-qualified immigrants.</p> <p>Nutrition risk is any medical or health problem which can be corrected or lessened by proper amounts and types of food intake. Examples of nutrition risk are: (i) low iron levels; (ii) insufficient growth, i.e. low weight for age, low weight for height; (iii) premature delivery; and (iv) inadequate dietary intake (types or amounts of food)</p> <p>Link to website: http://health.state.ga.us/programs/wic/</p>	<p>WIC provides these services: nutrition assessment, health screening, medical history, body measurement (weight and height), hemoglobin check, nutrition education, breastfeeding support and education, and vouchers for food supplements.</p>	<p>In order to qualify for this benefit program, you must be a resident of the State of Georgia, pregnant, breastfeeding and postpartum woman, infant or child up to 5 years of age and: (1) are individually determined by a health professional to be at nutrition risk; and, (2) meet an income standard, or are determined automatically income eligible.</p> <p>Women may apply for WIC through their local health department.</p> <p>Local health departments may be found at: http://health.state.ga.us/regional/</p> <p>Georgia also provides for presumptive eligibility for pregnant women who meet certain financial requirements. Presumptive eligibility continues while a formal determination of eligibility for Medicaid is pending.</p> <p>All Medicaid services given by any participating Medicaid provider are covered during the presumptive eligibility period with exceptions of inpatient hospital and delivery services. The presumptive eligibility period begins the first day of the month in which the qualified provider determines the woman is eligible and ends the last day of the month in which the Medicaid application is either approved or denied.</p> <p>See</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
			http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MAN3480.doc
Guam	<p>Maternal Child Health Program (“MCHP”) provides a plan for the development, implementation and evaluation of services related to improving the health status of women and children in Guam. The primary responsibility of MCHP is to assure access to quality health care for all mothers and children of Guam. The provision of MCHP services does not exclude or distinction between qualified and non-qualified aliens.</p> <p>See 26 Guam Admin. R. & Regs. § 1401 et. seq.</p>	<p>MCHP provides prenatal, natal and postpartum care, as well as family planning services, continuing health care maintenance and supervision of children from birth through infancy, childhood and adolescence. The target population are the low-income, high-risk, women and children.</p> <p>The services include: (i) prenatal interview, including risk assessment to determine high-risk pregnancy; (ii) prenatal laboratory tests; (iii) diagnostic procedures, x-rays, and other special lab tests ordered by attending physician and authorized by MCH based on availability of funds; (iv) vitamins and iron supply at a public health pharmacy or public health clinic; (v) referral to a medical social worker for screening and assistance identifying financial options for prenatal care coverage/service; (vi) early prenatal counseling classes and prepared childbirth classes; (vii) physicians’ fees for prenatal clinic visits, hospital delivery and postpartum visit, routine hospital newborn care and 6 weeks post-partum clinic visit will be authorized by the MCHP based on availability of funds; and (viii) community health nursing follow-up during the prenatal and post partum period.</p>	<p>To be eligible for coverage under the MCHP, a person must be a resident of Guam who and must meet the financial eligibility requirements of MCHP. A woman may apply anytime during her pregnancy. She is required to complete the information and data sheet as required by the MCHP.</p> <p>The eligibility period covers the first prenatal visit to postpartum (six weeks after delivery).</p>
Hawaii	Section § 321-331 (2006) of Hawaii’s Revised Statutes provides that the department of health may adopt rules to ensure that all	The Med-Quest program provides prenatal care and pregnancy-related services at no charge. This coverage extends sixty days past delivery.	Med-Quest’s website states that to receive services an applicant must be a U.S. citizen or qualified alien and provide a Social Security Number.

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>pregnant women in this State are offered appropriate information, quality testing, diagnostic services, and follow-up services concerning neural tube defects and other disorders amenable to prenatal diagnosis. The purpose of prenatal screening and diagnosis is to obtain vital information for the pregnant woman and her family as well as for the providers of her health care. It can be used to provide appropriate care and to assist the woman and her family to achieve optimal health outcomes. Nothing in this section shall be construed to mean that prenatal screening and testing are mandatory. Haw. Rev. Stat. § 321-331 (2006)</p> <p>The department of health may, among other things: (1) Provide educational resources to all women in the State before and early in pregnancy about the availability of prenatal tests, including non-directive counseling and impartial information on the benefits, risks, and limitations of prenatal tests; (2) Make available prenatal screening and diagnosis tests to all pregnant women in this State who choose to be so screened; Hawaii’s Rev. Stat. § 321-331 (2006)</p> <p>Hawaii provides prenatal services and pregnancy-related care to Hawaiian residents through its Med-Quest program. Pregnant women with an income level between 186-200% of</p>		<p>Information may be obtained through the Med-Quest Division of the Department of Human Services. The most convenient way to obtain this information is at http://www.hawaii.gov/dhs/health/medquest or http://www.medquest.us/.</p> <p>The website for the Med-Quest program is quite user friendly, and the application specifically notes that an unborn child qualifies even though a mother may not herself meet qualifications; it also states that applying for benefits will not affect immigration status.</p> <p>Additional information may be obtained through the Mothers’ Care telephone number, 808-535-7988.</p> <p>Med-Quest’s website states that to receive services an applicant must be a U.S. citizen or qualified alien and provide a Social Security Number.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>the federal poverty level may participate.</p> <p>Med-Quest’s website states that to receive services an applicant must be a U.S. citizen or qualified alien and provide a Social Security Number.</p> <p>Various healthcare providers are participants in a Perinatal Support Clinic system. Also, a service called “Mother’s Care” links pregnant women with organizations providing prenatal care and support services.</p>		
Idaho	<p>Medicaid Pre-natal care under Idaho medicaid is available only to U.S. citizens and qualified non-citizens who are residents of Idaho.</p> <p>Emergency Medicaid</p> <ul style="list-style-type: none"> - Pre-natal care is not covered under Idaho’s emergency medicare provisions. Normal delivery of a baby is considered an emergency medical condition and is covered by Idaho’s emergency medicare provisions. (Section 16.03.01.250 (Emergency Medical Condition) Idaho Health and Welfare Department Provider Manual – Health Coverage (Medicaid) for 	<p>Medicaid Qualified non-citizens resident in Idaho who qualify for Idaho medicaid are entitled to limited pregnancy-related services beginning after confirmation of pregnancy and extending through the end of the month in which the 60th day after delivery occurs. These services are limited to:</p> <ul style="list-style-type: none"> - Two individual or family social services visits; - “Maternity Nursing Visit” services for women unable to obtain private pre-natal care. A maximum of nine visits with a registered nurse for the purpose of checking the progress of the pregnancy are permitted and coverage ends when the woman finds private medical services; - Two nursing visits at the pregnant woman’s home to assess her living situation and provide appropriate 	<p>The State of Idaho does not publish details relating to the eligibility determinations or medicaid application processes. Idaho Administrative Code 16.03.01.110 provides that a person seeking coverage must complete and sign an application for healthcare assistance and certify that the information provided on the form is truthful. In addition, a Health Questionnaire must be submitted together with the application. The application and Health Questionnaire are available on the website of the Idaho Department of Health and Welfare at: http://www.healthandwelfare.idaho.gov. The application contains some general instructions and statements. An applicant should contact the Idaho Department of Health and Welfare prior to concluding that coverage is unavailable based on the general information in the application. An applicant should call the Department to find out where to submit the application and questionnaire at 1-800-926-2588.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p style="text-align: center;">Families and Children)</p> <p>Presumptive Eligibility A pregnant woman can get “limited ambulatory” pre-natal care as a presumptively eligible (PE) pregnant woman through the end of the month after the month the health care provider completes the PE determination. A pregnant woman is eligible for only one period of PE coverage during each pregnancy. Idaho Administrative Code 16.03.01.502 (Eligibility for Health Care Assistance for Families and Children – Presumptive Eligibility for Pregnant Women)</p>	<p>education and referrals; and</p> <ul style="list-style-type: none"> - Certain nutritional services. (Idaho Administrative Code 16.03.09.890 and 892) <p>To qualify for pre-natal care under Idaho medicaid, a pregnant woman must reside in Idaho and be a U.S. citizen or a qualified non-citizen. She must also have counted income of no greater than 133% of the federal poverty guidelines (Idaho Administrative Code 16.03.01.500.01; see also 16.03.01.500 - 502) and meet other income coverage eligibility guidelines, which depend on family size and other factors and are set forth in Idaho Administrative Code 16.03.01.315 – 342, 345 – 388, 395, and 400 – 424 pursuant to 16.03.01.301.</p>	<p>Idaho Administrative Code 16.03.09.125 states that when a applies for person is determined eligible for medical assistance, the Idaho Department of Health and Welfare will issue a Medicaid identification card to the participant and will provide information to medical service providers so that medical services may be provided.</p>

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Illinois	<p>Through the program previously known as KidCare Moms and Babies (now apparently called “Allkids” or “Allkids Moms and Babies”), Illinois provides prenatal care for all resident pregnant women with a family income below a certain level. This program was put into effect on July 1, 2006. See 215 Ill. Code § 170/1 et seq. .</p> <p>“Resident” for these purposes means individuals who are in the state for “other than a temporary or transitory purpose.” 215 Ill. Code § 170/10.</p> <p>The program does not contain any immigration provisions, and the application form specifically provides that pregnant women without an alien registration number are eligible for insurance. It also states in bold letters that information about participants without alien registration numbers will not be conveyed to the INS.</p> <p>An attorney with the Illinois Department of Healthcare and Family Services confirmed that prenatal care is provided regardless of immigration status.</p> <p>In addition, the Family Case Management program provides outreach information through local agencies to help inform pregnant women of prenatal services.</p>	<p>This plan includes “health care benefits” provided under the Illinois Public Aid Code. 215 Ill. Code § 170/10. Prenatal and perinatal care are specifically discussed in the Public Aid Code as including “all prenatal and perinatal health care services that are provided for the purpose of preventing low-birthweight infants.” 305 Ill. Code 5/5.23. Services extend for sixty days following the last day of pregnancy. 305 Ill. Code § 5/5.2(5)(a).</p> <p>The attorney with whom I spoke confirmed that this was the coverage period and that essentially all pregnancy-related services were included.</p>	<p>The implementing statute requires the Department to provide assistance in enrolling in the program and to engage in “outreach and marketing.” 215 Ill. Code §§ 170.25, 30.</p> <p>The website, http://www.allkidscovered.com, includes application forms and provides some information about the program, but it is difficult to ascertain that there is coverage for pregnant women, as it is folded within the children’s health coverage form and not specifically identified as applying to pregnant women. The application itself, however, is straightforward. Information may also be obtained at 1-866-ALLKIDS. Attorneys are asked to call 217-782-1233.</p> <p>The Family Case Management Program uses local organizations to assist pregnant women in enrolling in the KidCare program.</p>
Indiana	Indiana’s Hoosier Healthwise Packages A and	Coverage includes prenatal and pregnancy-related services. <u>See,</u>	The Hoosier Health Care member identification card and enrollment

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>B provides coverage for prenatal care and care for conditions that may complicate the pregnancy. Pregnant women with incomes at or below certain levels; depending on the asset levels may participate. A woman may qualify for package A (full coverage) or B (pregnancy coverage) depending on income level. 407 In. A.D.C. § 2-2-2; http://www.healthcareforhoosiers.com (plan summaries and costs).</p> <p>The Hoosier Healthcare website states that immigration information may be collected. However, the same website (and the application instructions) explains that undocumented immigrants are not reported. In addition, a representative at the help line (1-800-889-9949) confirmed that undocumented immigrants may participate in the pregnancy package.</p> <p>Besides the Hoosier Healthcare program, the Prenatal Healthcare Services program allocates grants to local providers to cover prenatal services.</p>	<p>e.g., 407 In. A.D.C. § 3-3-1.</p> <p>The Indiana Health Coverage Programs Provider Manual details items covered under the “pregnancy package.” IHCPPM chap. 2 § 3 and table 2.4. Covered items include case management as well as all other services “related to pregnancy.”</p> <p>In addition, the Prenatal Healthcare Services program prenatal projects provide “preventive health services to pregnant women including physical exams, nutrition, social services, dental and health screening, education, counseling, interventions, and referral service as appropriate.” See http://www.in.gov/isdh/programs/s/mch</p>	<p>information may be obtained through regional enrollment centers or from the Hoosier Healthwise website. The instructions at this site are quite clear.</p> <p>In addition, women seeking prenatal care can obtain information through the Family Help Line, 1-800-433-0746, or the Hoosier Healthwise help line, 1-800-889-9949. Both provide information on local providers of prenatal services. Efforts to call the Family Help Line resulted in long hold times with no assistance. The Hoosier Healthwise help line was promptly answered, however.</p> <p>Some information is also available at www.indianamedicaid.com and http://www.in.gov/isdh/programs/mch. These websites are not particularly user friendly. A more useful website is http://www.healthcareforhoosiers.com/Member/MemberPage.html. The Hoosier Healthcare website has an application form and clear instructions for completing it.</p>
Iowa	Iowa Medicaid provides pre-natal services to qualified immigrants, which are legal immigrants who otherwise meet the residency and income requirements for Medicaid and, if they entered the United States after August 22, 1996, have overcome the five year bar under the Personal Responsibility and Work Opportunity	<p>Under Iowa Medicaid, all medical services provided to a pregnant woman, including dental and vision, are considered pre-natal care. But, labor and delivery services are not considered pre-natal care.</p> <p>Iowa Medicaid provides for “presumptive eligibility for pregnant women.” See Iowa Administrative Code/Human Services Department §</p>	A woman who is determined to be presumptively eligible for Medicaid is eligible for Medicaid services beginning with the date of the eligibility determination. Eligibility continues up to the last day of the month following the month of the presumptive eligibility determination. If the woman files a Medicaid application within this period, Medicaid coverage continues until a decision is made on the

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>Reconciliation Act of 1996 (“PRWORA”). See Iowa Administrative Code/Human Services Department § 441-75.11(2). Qualified immigrants also are eligible for the “presumptive eligibility for pregnant women” program. See Iowa Administrative Code/Human Services Department § 441.75.1(30).</p> <p>Teenagers who are qualified immigrants may receive pre-natal care under the Hawk-I program, which is the state program that provides medical services to children in families with limited incomes. Children who are unqualified immigrants are not eligible for Hawk-I benefits.</p> <p>Under Iowa Medicaid, unqualified immigrants (those who are illegal or have not passed the 5 year bar) generally are only eligible for “care and services necessary for the treatment of an emergency medical condition,” as described in the Emergency Medicaid for Undocumented Immigrants Chart. That coverage includes labor and delivery, but not prenatal services.</p> <p>However, unqualified immigrants may receive care under Iowa Medicaid’s “presumptive eligibility for pregnant women” program. See Iowa Administrative Code/Human Services Department § 441.75.1(30). But, this Medicaid benefit will only cover the woman until she is denied Medicaid</p>	<p>441.75.1(30). This means that a qualified health care provider may determine that a pregnant woman is presumptively eligible for Medicaid based only on her statements about her family income. Proof of citizenship is not required for presumptive eligibility, and thus, it is available to qualified and unqualified immigrants.</p> <p>Coverage for presumptively pregnant women extends only to Medicaid-covered ambulatory prenatal care. Ambulatory prenatal care includes all Medicaid-covered services except inpatient hospital care and charges associated with miscarriage or delivery of the baby.</p>	<p>application. The period of presumptive eligibility ends when the Department approves or denies the Medicaid application. As such, if a pregnant woman files a Medicaid application by the last day of the month following the month of the presumptive eligibility determination, Medicaid will continue until a decision of ineligibility is made on the application.</p> <p>Medicaid will pay medical expenses for ambulatory prenatal care obtained during the presumptive eligibility period, even if the woman is later denied Medicaid coverage.</p> <p>The pregnant woman is required to complete Form 470-2927, Health Services Application, in order for the qualified provider to make the presumptive eligibility determination. The qualified provider has to complete Form 470-2629, Presumptive Medicaid Income Calculation, in order to establish that the pregnant woman’s family is within the prescribed limits of the Medicaid program.</p> <p>For unqualified immigrants, this means that they may receive Medicaid pre-natal care from the time they are deemed presumptively eligible until their Medicaid application is denied due to their immigration status. Once they are denied Medicaid, their pre-natal services will cease to be covered, and they will only be eligible for emergency services.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>coverage due to her immigration status. Once that happens, the woman will only be eligible for emergency services.</p> <p>Iowa has not adopted the definition of child that would permit it to provide pre-natal services through the State Children’s Health Insurance Program (“SCHIP”).</p>		
Kansas	<p>Healthwave 19 Pre-natal care under Medicaid in Kansas is available only to <u>U.S. citizens</u> and <u>qualified non-citizens</u> that meet standard income and residency requirements (i.e., lawfully present in the U.S. who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status for 5 years).</p> <p>Healthwave 21 Healthwave 21 is the SHCIP program in Kansas and is also available only to <u>U.S. citizens</u> and <u>qualified non-citizens</u>. Qualified non-citizen women under 20 years old who do not meet Medicaid poverty levels to be eligible for Healthwave 19 may still be covered under Healthwave 21.</p> <p>SOBRA (Emergency Medicaid) Labor and delivery services are available to non-qualified aliens under SOBRA. However, SOBRA <u>does not</u> provide for pre-natal care (i.e.,</p>	Pre-natal care under Medicaid in Kansas covers all necessarily pre-natal medical services, including pre-natal physician visits, ultrasound or fetal non-stress tests, delivery, and post-natal care up to 60 days. (Kan. Family Med. Assistance Man. §2302)	<p>To receive any medical assistance in Kansas (except for SOBRA), an applicant must meet residency, citizenship or immigration status, and income requirements. While no period of residency is required as a condition of eligibility, the applicant must have the intent to remain indefinitely in Kansas. (Kan. Family Med. Assistance Man. §§2041, 2051, Kan. Econ. & Employment Support Man. §2140)</p> <p>A pregnant woman is eligible for medical assistance based on income level that does not exceed 150% of the federal poverty level. (Kan. Family Med. Assistance Man. §2211)</p> <p>Income is based on earned and unearned income of the pregnant woman and the father of the unborn child if the father lives with the pregnant woman. A monthly countable income level is based on family size. Family size is determined by counting the pregnant woman, the unborn child, and the father of the unborn child if the father lives with the pregnant woman. If the pregnant woman lives with her parents, then the parents are included. If the income is below the standard income level of the following</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process												
	<p>medical care before birth). (Kan. Econ. & Employment Support Man. §2690)</p>		<p>chart, the pregnant woman qualifies for Medicaid:</p> <table border="1" data-bbox="1143 411 1511 621"> <thead> <tr> <th data-bbox="1143 411 1273 464">Family Size</th> <th data-bbox="1333 411 1430 464">Monthly Income Standard</th> </tr> </thead> <tbody> <tr> <td data-bbox="1175 470 1192 491">2</td> <td data-bbox="1430 470 1511 491">\$1,650</td> </tr> <tr> <td data-bbox="1175 499 1192 520">3</td> <td data-bbox="1430 499 1511 520">\$2,075</td> </tr> <tr> <td data-bbox="1175 529 1192 550">4</td> <td data-bbox="1430 529 1511 550">\$2,500</td> </tr> <tr> <td data-bbox="1175 558 1192 579">5</td> <td data-bbox="1430 558 1511 579">\$2,925</td> </tr> <tr> <td data-bbox="1175 588 1192 609">6</td> <td data-bbox="1430 588 1511 609">\$3,350</td> </tr> </tbody> </table> <p>(http://www.srskansas.org/services/medical_assistance.htm)</p> <p>Expedited Approval Applications for pregnant women who meet income level requirements are expedited to issue a medical card within 10 days from the date of the application to provide immediate, temporary coverage for prenatal care pending a formal application review process. Verification of whether the applicant meets the other eligibility requirements are postponed to meet the 10-day requirement.</p> <p>See following link for additional information: http://www.da.ks.gov/hpf/medical_policy/MedicalAssistance/medassist_pregnant_women.htm</p>	Family Size	Monthly Income Standard	2	\$1,650	3	\$2,075	4	\$2,500	5	\$2,925	6	\$3,350
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Kentucky	<p>KenPAC Pre-natal care under Medicaid is available only to <u>U.S. citizens</u> and <u>qualified non-citizens</u> that meet standard income and residency requirements. (i.e., lawfully present in the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status for 5 years).</p> <p>Emergency Medicaid</p>	<p>Pre-natal care under full Medicaid benefits cover all medically necessary services related to pregnancy, maternity, and newborn care.</p> <p>See the following link for more details: http://chfs.ky.gov/dms/services.htm</p> <p>Presumptive Eligibility Pre-natal coverage under PE is limited to ambulatory outpatient pre-natal care services including</p>	<p>To receive KenPAC, an applicant must meet residency and income requirements. No period of residency is required as a condition of eligibility. Conditions for determining state residency is based on 42 C.F.R. §435.403. (907 Ky. Admin. Regs. 1:011(12))</p> <p>Presumptive Eligibility Presumptive Eligibility (“PE”) is a program designed to provide immediate, temporary coverage for prenatal care pending a formal application for full Medicaid</p>												

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	<p>Normal delivery of a baby is considered an emergency and is covered by the emergency Medicaid provisions for unqualified non-citizens. While coverage period includes the month of delivery and the following month, pre-natal or postpartum care are <u>not</u> covered. (Operation Manual, Vol. 1, MS 2075).</p> <p>Presumptive Eligibility Limited pre-natal care may be available to unqualified non-citizens through the presumptive eligibility program, which allows pregnant women to get <u>temporary</u> medical coverage while applying for full Medicaid benefits.</p>	<p>services from primary care provider, laboratory services, x-ray services, dental services, emergency room services, emergency and non-emergency transportation, and pharmacy services. (907 Ky. Admin. Regs. 1:810 §6)</p>	<p>benefits. Any woman who thinks she is pregnant and whose family income is under a certain amount is eligible for PE.</p> <p>To be eligible for PE, the woman:</p> <ul style="list-style-type: none"> - must be pregnant; - is a resident of Kentucky; - have not yet applied for Medicaid; - has not been previously granted PE for the same pregnancy; and - income is less than the amount below. <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Family Size</u></th> <th style="text-align: left;"><u>Monthly Income*</u></th> </tr> </thead> <tbody> <tr> <td>2</td> <td>no more than \$1,978</td> </tr> <tr> <td>3</td> <td>no more than \$2,481</td> </tr> <tr> <td>4</td> <td>no more than \$2,984</td> </tr> <tr> <td>5</td> <td>no more than \$3,486</td> </tr> <tr> <td>6</td> <td>no more than \$3,989</td> </tr> </tbody> </table> <p>* changes every year.</p>	<u>Family Size</u>	<u>Monthly Income*</u>	2	no more than \$1,978	3	no more than \$2,481	4	no more than \$2,984	5	no more than \$3,486	6	no more than \$3,989
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Louisiana	<p>Medicaid</p> <p>Female Medicaid Recipients of child bearing age are eligible for Medicaid. To receive these Medicaid benefits, the pregnant woman's family income must not be greater than 200 percent of the federal poverty level. Eligibility criteria for pregnant adolescents are based on the income of the pregnant adolescent and not on the income of her parents.</p> <p>Full Medicaid benefits are available to qualified aliens who entered the U.S. before August 22, 1996 or to those</p>	<p>Medicaid</p> <p>Covered services include office visits, lab services and "other pre and post natal care" and delivery.</p> <p>Medicaid recipients are eligible for prescription drug benefits.</p> <p>Undocumented immigrants and qualified aliens who are otherwise ineligible for Medicaid are eligible for emergency services and/or emergency labor and delivery services. Routine prenatal care is not included in this category.</p> <p>Nurse Family Partnership ("NFP")</p>	<p>Medicaid</p> <p>To receive Medicaid, an applicant must meet residency and income requirements. The applicant must fill an application form and apply via mail or personally at a local Medicaid office or application center. No face-to-face interview is required. Each Parish maintains a Medicaid office. Starting July 1, 2006, all Medicaid applicants and enrollees will have to provide original documents to prove citizenship and identity.</p> <p>A decision will be made and the applicant will be notified within 45 days (with some exceptions) after application. If the</p>												

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>who entered on or after August 22, 1996 and who have maintained the status of qualified alien for five (5) years. However, the five (5) year limitation does not apply to certain aliens including refugees, asylees and “battered immigrants.”</p> <p>Louisiana has presumptive Medicaid eligibility for pregnant women.</p> <p>A Medicaid eligibility representative said that undocumented immigrants could receive services at charity hospitals or federally-funded clinics.</p> <p>24 Louisiana Register 601</p> <p>Nurse Family Partnership (“NFP”)</p> <p>First-time mothers under the age of 21 that are eligible for Medicaid and are less than 28 weeks of gestation qualify for the NFP Program provided that their income is less than 200 percent of the federal poverty level. Legal documents and/or birth certificate are required to prove eligibility for this program.</p> <p>For more information, see link Nurse Family Partnership Program</p> <p>LaMOMS</p> <p>LaMOMS is no-cost health coverage for any pregnant women, married or single, who fall into new expanded</p>	<p>The NFP nurses are scheduled to visit families once a week for the first month after registration and then every other week through delivery. After delivery, the nurses are scheduled to visit once a week for the first six weeks and then every other week until the 21st month postpartum. From 21 to 24 months postpartum, the nurses visit once a month.</p> <p>LaMOMS</p> <p>LaMOMS pays for pre-natal pregnancy-related services, delivery and care up to 60 days after pregnancy ends including doctor visits, lab work/tests, prescription medicines and hospital care.</p>	<p>application is based on disability, it may take up to 90 days. Coverage may start as early as 3 months before the month of application. The applicant may be reimbursed for services incurred between application and registration provided the service provider is an eligible Medicaid provider and the applicant was eligible on the date that the service was rendered.</p> <p>There is no program to provide pregnant women with interim care while waiting for their application status to be resolved.</p> <p>Nurse Family Partnerships (“NFP”)</p> <p>NFP requires a physician’s statement, medical records and legal documents and/or birth certificates to prove eligibility for the program.</p> <p>Only eligible Medicaid recipients can qualify for the NFP program.</p> <p>LaMOMS</p> <p>Applicants must fill out an application form. If needed, someone can assist in completing the form. You can get an application form from the Medicaid office in the parish of residence, at any of the participating Medicaid Application Centers, from the Web site by clicking: http://www.dhh.louisiana.gov/offices/publications.asp?ID=137&Detail=99 or by calling 1-888-342-6207. The application form with the applicant’s information can be mailed to the local Medicaid office.</p> <p>Pregnant women may get</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>income guidelines. Eligibility for LaMOMS is based on eligibility for Medicaid. Undocumented immigrants otherwise ineligible for Medicaid may be eligible for emergency services and labor and delivery services.</p> <p>For More Information, see links Frequently Asked Questions LaMOMS Fact Sheet</p>		<p>coverage while waiting for their eligibility to be decided.</p>
Maine	<p>Maine’s Medicaid program is called MaineCare. Under MaineCare, an alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) are not eligible for prenatal care except as provided by Medicaid as a qualifying “emergency service.” Nonqualified aliens must otherwise meet income eligibility requirements. Income must not exceed 200% of Federal Poverty Level (FPL):</p> <ul style="list-style-type: none"> • Single with annual income of \$19,140 or less • Married with annual combined income of \$25,660 or less <p>There is no resource limit.</p> <p>http://www.latinainstitute.org/pdf/PrenatalCare-2.pdf</p> <p>Family Planning Services - qualify for this benefit program</p>	<p>Presumptive eligibility: Maine’s Medicaid program provides for presumptive eligibility for all pregnant women. Presumptive eligibility allows uninsured pregnant women to obtain immediate prenatal care while their Medicaid eligibility is being processed. Undocumented women receive important care during the processing period while their Medicaid eligibility is being processed.</p>	<p>At a minimum, labor and delivery are considered emergency services and available to all aliens, qualified or otherwise.</p> <p>Documented Aliens are eligible for the following early prenatal services:</p> <p>Early prenatal services is a visit which provides a recipient with a start in her prenatal care and counseling on the importance of continued, regular prenatal care. The continuation of prenatal care is established during this visit with a confirmed appointment to a prenatal provider. A prenatal provider is a professional providing services within the scope of practice of his or her profession as defined by State Law and licensed under State Law to practice medicine or osteopathy, or a professional who is currently licensed to practice in the State as a registered professional nurse and is legally authorized under State law or regulations to practice as a nurse-midwife in collaboration with a licensed physician.</p> <p>The family planning agency will maintain a list of at least three prenatal providers who will</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>characterize your financial situation as very low income , you or your family/household member must be pregnant, or you must be a parent or primary caregiver responsible for children under the age of 19 years.</p> <p>Description The purpose of the Family Planning Services Program is to assist in the establishment and operation of voluntary family planning projects which consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.</p> <p>Managing Organization U.S. Department of Health and Human Services http://www.hhs.gov/</p> <p>Program contact information & web resources For more information please visit: http://opa.osophs.dhhs.gov/titles/ofp.html</p>		<p>accept clients for continued care from which the client may choose. Family planning agencies may only provide early prenatal visits under a written physician's protocol. The prenatal provider must agree to accept results of any laboratory tests completed at the early prenatal visit, and the family planning agency must transfer copies of client records to the prenatal provider. To ensure continuity of care, the family planning agency will use the medical chart of the prenatal provider receiving the referral.</p>
Maryland	<p>Children's Health Program</p> <p>Children's Health Program benefits are available to qualified aliens who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status of qualified alien for 5 years who meet income (up to 25% of FPL) and residency requirements. However, the 5 year limitation does not apply to certain aliens including refugees and asylees.</p> <p>Qualified aliens that have not been in the country for five years and are not refugees or asylees, and non-qualified aliens are not eligible for prenatal benefits</p>	<p>Children's Health Program</p> <p>Children's Health Program benefits for qualified aliens and refugees and asylees include prenatal and post-partum doctor visits; hospital delivery; doctor visits not related to pregnancy; lab work and tests; dental care; vision care; prescription medicines (including vitamins); transportation to medical appointments; mental health services; substance abuse services; and after delivery, family planning services.</p> <p>Coverage continues for the postpartum period until the end of the 2nd month following the end of the pregnancy.</p> <p>Emergency Medicaid</p> <p>Coverage is for limited to emergency services including</p>	<p>Children's Health Program</p> <p>Applicants must file an application with the Local Department of Social Services ("LDSS") in the city or county where they live.</p> <p>For more information on Maryland's MCHP program: http://www.dhmd.state.md.us/mm/mchp/</p> <p>To locate an LDSS: http://www.dhmd.state.md.us/mm/dss/index.html</p> <p>Emergency Medicaid</p> <p>Applicants must file an application with the Local</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>(due to budget constraints).</p> <p>Emergency Medicaid</p> <p>Qualified aliens that have not been in the country for five year and are not refugees or asylees, and non-qualified aliens may obtain emergency services (including labor and delivery) if they meet income and residency requirements. Md. Code Regs. 10.09.24.05. The income and residency requirements are the same as those general requirements for Medicaid eligibility. No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Maryland. Md. Code Regs. 10.09.24.05.</p>	<p>labor and delivery.</p>	<p>Department of Social Services in the city or county where they live. No social security number is required for emergency medical coverage.</p> <p>To locate an LDSS: http://www.dhmd.state.md.us/mm/dss/index.html</p>
Massachusetts	<p>MassHealth Standard</p> <p>Full MassHealth Standard benefits are available to qualified aliens who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status of qualified alien for 5 years. However, the 5 year limitation does not apply to certain aliens including refugees and asylees. Qualified aliens must also meet the category, income, and residency requirements for MassHealth Standard.</p> <p>MassHealth Prenatal</p> <p>MassHealth Prenatal</p>	<p>MassHealth Standard</p> <p>MassHealth Standard provides a full range of coverage for hospital services; doctor visits; laboratory tests; prescription drugs; mental health services; durable medical equipment; including benefits during pregnancy.</p> <p>MassHealth Prenatal</p> <p>MassHealth Prenatal provides for ambulatory prenatal care (i.e., routine doctor visits) provided by a MassHealth provider. MassHealth Prenatal does not cover labor or delivery</p>	<p>MassHealth Standard</p> <p>To receive any MassHealth benefits, an applicant must submit a Medical Benefit Request (“MBR”) to any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site. 130 Mass. Code Regs. 502.001. A social security number is required for MassHealth Standard benefits. Coverage begins on the 10th day before the date the MBR is received. 130 Mass. Code Regs. 505.008.</p> <p>MassHealth Prenatal</p> <p>To receive any MassHealth benefit, an applicant must submit a Medical Benefit Request</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>benefits are available to qualified aliens who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status of qualified alien for 5 years. However, the 5 year limitation does not apply to certain aliens including refugees and asylees. Qualified aliens must also meet the category and residency requirements for MassHealth Standard, and an income limitation (but it is more lenient than MassHealth Standard)</p> <p>MassHealth Limited</p> <p>In Massachusetts, non-qualified aliens may obtain MassHealth Limited benefits if they meet the requirements for MassHealth Standard (e.g., classification, income, and residency requirements, but not citizenship) and have an emergency medical condition.</p> <p>No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Massachusetts. 130 Mass. Code Regs. 503.002.</p> <p>Healthy Start Program (“HSP”)</p> <p>Pregnant women who are</p>	<p>services.</p> <p>MassHealth Limited</p> <p>MassHealth Limited only provides services for treatment of a medical condition (including labor and delivery) that manifests itself by acute symptoms of sufficient severity that the absence of immediate medical attention reasonably could be expected to result in: (1) placing the member’s health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of any bodily organ or part. 130 Mass. Code Regs. 450.105(G). Organ transplants are not covered services. 130 Mass. Code Regs. 450.105(G).</p> <p>Healthy Start Program</p> <p>HSP covers prenatal care and 60 days of postpartum care. Benefits provided include all medical care necessary to maintain health during the course of the pregnancy and delivery including: primary and specialty visits; outpatient behavioral visits; radiology and laboratory visits; amniocentesis; durable medical equipment and supplies; home nursing visits; office visits; inpatient delivery and services (covered by MassHealth Limited); postpartum obstetric and</p>	<p>(“MBR”) to any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site. 130 Mass. Code Regs. 502.001. A social security number is required for MassHealth Prenatal benefits. Coverage begins on the 10th day before the date the MBR is received. 130 Mass. Code Regs. 505.008.</p> <p>Proof of income is not required for MassHealth Prenatal. Thus, people may be eligible for coverage before their eligibility for other MassHealth coverage can be determined. MassHealth Prenatal is intended to cover individuals for a 60 day period.</p> <p>MassHealth Limited</p> <p>To receive any MassHealth benefit, an applicant must submit a Medical Benefit Request (“MBR”) to any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site. 130 Mass. Code Regs. 502.001. No social security number is required for MassHealth Limited benefits. Coverage begins on the 10th day before the date the MBR is received. 130 Mass. Code Regs. 505.008.</p> <p>Healthy Start Program</p> <p>An applicant should apply for MassHealth. MassHealth will refer names of pregnant women who do not qualify for MassHealth and those who solely qualify for MassHealth Limited to the Healthy Start Program.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>non-qualified aliens and their unborn child are eligible for HSP if they (1) meet certain income limits; (2) are a resident of Massachusetts; (3) are not eligible for any other MassHealth coverage type (except MassHealth Limited); and (4) are not otherwise insured for medically necessary pregnancy related care. Mass. Gen. Laws ch. 118E, § 10E; 130 Mass. Code Regs. 522.005.</p> <p>No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain indefinitely in Massachusetts. Gen. Laws ch. 118E, § 10E; 130 Mass. Code Regs. 503.002.</p> <p>Free Care (Uncompensated Care Pool)</p> <p>Free Care is available to Massachusetts residents meeting certain income limits. Immigration status is not relevant.</p>	<p>gynecological care; newborn hospital and outpatient care; prescription drugs; and emergency services (covered by MassHealth Limited). Mass. Gen. Laws ch. 118E, § 10E; 130 Mass. Code Regs. 522.005.</p> <p>Free Care</p> <p>Free Care covers many service provided at a hospital.</p>	<p>Free Care</p> <p>An applicant must apply for MassHealth at any MassHealth Enrollment Center or MassHealth Outreach worker at a designated outreach site</p> <p>For more information visit www.mass.gov/dhcfp</p>
Michigan	<p>Maternity Outpatient Medical Services (MOMS)</p> <p>Pursuant to SCHIP and the 2002 HHS opinion, Michigan has applied for and received federal approval to expand prenatal care to the unborn children of low-income pregnant women.</p> <p>HHS Approval Press</p>	<p>MOMS</p> <p>The MOMS coverage period is from the beginning of pregnancy through two calendar months following the month the pregnancy ends, regardless of the reason.</p> <p>Coverage is limited to the following outpatient pregnancy and postpartum-</p>	<p>MOMS</p> <p>Local public health departments and Federally Qualified Health Centers assist with the MOMS application process by:</p> <ul style="list-style-type: none"> • Assisting the woman over the telephone and making appointments with eligible/interested women. • Advising the applicant of any verification requirements and

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>Release</p> <p>Maternity Outpatient Medical Services (MOMS) is a health coverage program operated by the Department of Community Health (DCH). MOMS provides prenatal and postpartum outpatient pregnancy-related services to women who are pregnant or recently pregnant and who are not eligible for Medicaid. (The Department of Health Services, “DHS”, says that individuals determined eligible for MOMS meet all criteria for Medicaid Eligibility.)</p> <p style="text-align: center;">MEDICAID</p> <p>Ordinarily, undocumented immigrant women are not eligible for full Medicaid coverage unless they are “qualified aliens.” Rather, they are eligible for ESO Medicaid (Emergency Services Only) if they meet all other eligibility factors, including residency. The Michigan DHS defines residency to include one who lives in Michigan, except for a temporary absence, with the intent to remain in Michigan permanently or indefinitely or has entered the states with the intention to seek employment. Emergency services include labor and delivery, but not prenatal care.</p> <p>Women who are eligible for ESO Medicaid are automatically eligible for MOMS. Assuming that the undocumented women can</p>	<p>related services:</p> <p>Prenatal care and pregnancy-related care</p> <ul style="list-style-type: none"> • Pharmaceuticals and prescription vitamins • Laboratory • Radiology and ultrasound • Maternal Support Services • Childbirth education • Labor and delivery (including live birth, miscarriage, ectopic pregnancy and stillborn). <p>Note: Outpatient deliveries are not covered.</p> <ul style="list-style-type: none"> • Outpatient hospital care • Postpartum care through two calendar months after the pregnancy ends • Other pregnancy-related services approved by DCH <p style="text-align: center;">MEDICAID</p> <p>Aliens who are not otherwise eligible for full Medicaid because of immigration status may be eligible for Emergency Services Only (ESO) Medicaid. For the purpose of ESO coverage, federal Medicaid regulations define an emergency medical condition (including emergency labor and delivery) as a sudden onset of a physical or mental condition which causes acute symptoms, including severe pain, where the absence of immediate medical attention could reasonably be expected to:</p> <ul style="list-style-type: none"> • Place the person’s health in serious jeopardy, or • Cause serious impairment to bodily functions, or • Cause serious 	<p>assisting in securing any required documentation.</p> <ul style="list-style-type: none"> • Completing or assisting in the completion of the MSA-1142, MOMS Enrollment Notice. • Completing the DCH-1164, Guarantee of Payment for Pregnancy-Related Services. <p style="text-align: center;">DCH reviews the application, verifies eligibility, establishes the coverage period.</p> <p style="text-align: center;">MOMS Eligibility and Application Process</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>qualify for ESO Medicaid, they will be eligible for MOMS providing that they meet the Michigan residency requirement.</p> <p>Legal Aid organizations report that new Michigan regulations and caseworker interpretations have made it more difficult to establish residency in recent years.</p> <p>Michigan Poverty Law Program Legal Alert</p> <p>Michigan Medicaid Eligibility</p> <p>Federal SCHIP Regulations prohibit states from precluding a child from consideration as a state resident if the child is physically located in the state and is not institutionalized or a ward of the state. Under the HHS Opinion a fetus is considered to be a child, and thus is eligible for SCHIP coverage.</p>	<p>dysfunction of any bodily organ or part.</p> <p>ESO Medicaid Coverage</p>	
Minnesota	<p>Minnesota Care Minnesota provides for coverage for unborn children with family incomes up to 275 percent of the federal poverty line and who are not otherwise eligible for Medicaid. This includes coverage for pregnant undocumented immigrants as Minnesota has extended SCHIP funding to pregnant women and their unborn children.</p>	<p>Minnesota Care Coverage includes “prenatal care and associated health services from conception to birth.” Once enrolled, women will receive the standard Medicaid benefit package that includes prenatal care for the mother and her unborn child. The standard Medicaid coverage includes: · Initial and subsequent</p>	<p>Minnesota Care Pregnant women apply for prenatal coverage under Minnesota Care by filling out an application and mailing it to: Minnesota Care, P.O. Box 64838, St. Paul MN 55164 Additionally, one can mail the application to the county offices listed in the link below. County Offices that Process Applications MinnesotaCare will review the application all will</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>Minnesota SCHIP Funding</p> <p>Emergency Medical Assistance (“EMA”)</p> <p>Undocumented immigrants are not eligible to receive Medical Assistance (Minnesota’s version of Medicaid).</p> <p>EMA is available to non-citizens who are not eligible for federally-funded MA because of their immigration status. This includes undocumented and non-immigrant people, as well as non-qualified non-citizens who might also be eligible for the state-funded MA program.</p> <p>To qualify for EMA, non-citizens must meet all MA eligibility requirements not related to immigration status. They must have an MA basis, be Minnesota residents and meet applicable income and asset limits.</p> <p>A qualifying emergency for EMA may be either a short-term, acute condition (including labor and delivery) or an ongoing chronic condition. For short-term emergencies, eligibility exists for the duration of the emergency only and may begin or end mid-month. EMA for services related to chronic conditions meeting the emergency definition may continue indefinitely.</p> <p>EMA does not include prenatal care.</p> <p>Emergency Medical Assistance Information</p>	<p>history;</p> <ul style="list-style-type: none"> · Physical examinations; · Recording of weight, blood pressure, and fetal heart tones; · Routine chemical urinalysis; · Monthly visits up to 28 weeks gestation; · Biweekly visits up to 36 weeks gestation; and · Weekly visits until delivery. <p>Minnesota Medicaid Covered Services</p> <p>Babies born to women who are covered by one of Minnesota’s health care programs are covered through the month of their first birthday as long as the baby continues to live with the mother and reside in Minnesota. Care is provided through the current Medicaid delivery system.</p> <p>Minnesota SCHIP Program</p>	<p>send out notification within 30-45 days informing the applicant of eligibility. Pregnant women must provide medical verification of their pregnancy.</p> <p>MinnesotaCare Application Process</p>
Mississippi	<p>An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) is not</p>	<p>The term "emergency medical condition" means the sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient</p>	<p>Inquiries regarding eligibility for coverage of emergency services under Medicaid may be by contacting the regional Medicaid office. A listing may be found at:</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>eligible for Medicaid <i>except</i> emergency services. Nonqualified aliens must otherwise meet eligibility requirements, <i>i.e.</i>, federally mandated income and resource standards.</p> <p>http://www.dom.state.ms.us/CHIP/chip.html</p>	<p>severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:</p> <ol style="list-style-type: none"> (1) Placing the patient's health in serious jeopardy; (2) Serious impairment to bodily functions; or (3) Serious dysfunction to any bodily organ; or part. <p>Specifically excepted from this definition are care and services related to either an organ transplant procedure or routine prenatal or post-partum care.</p> <p>Labor and delivery are the only emergency services predetermined to be covered by Medicaid. All other conditions must be submitted to the Eligibility Department of the Mississippi Medicaid office for case-by-case review and approval.</p>	<p>http://www.dom.state.ms.us/CHIP/chip.html</p> <p>Unqualified aliens need not be verified through SAVE (Systematic Alien Verification for Entitlements) Program.</p> <p>Questions regarding eligibility may also be directed to:</p> <p>Mississippi Division of Medicaid Eligibility Division</p> <p>1-800-421-2408</p>
Missouri	<p>Medicaid: An alien who is not lawfully admitted for permanent residence in the US or permanently residing in the US under color of law (“nonqualified alien”) are not eligible for prenatal care except as provided by Medicaid as a qualifying “emergency service.” Nonqualified aliens must otherwise meet income eligibility requirements. Income must not exceed 200% of Federal Poverty Level (FPL):</p> <ul style="list-style-type: none"> • Single with annual income of \$19,140 or less • Married with annual combined 	<p>Applicants must contact the Family Support Division (FSD) office in the county where he or she lives.</p> <p>FSD offices by county may be found at the following link:</p> <p>http://www.dss.mo.gov/fsd/office/index.htm</p> <p>If the qualified provider makes an assessment that a pregnant woman is eligible for TEMP, the qualified provider issues her a white paper temporary ID card. The recipient may then obtain ambulatory prenatal services from any Medicaid-enrolled provider. If the woman makes a formal application for Medicaid or MC+ with the Family Support</p>	<p>Emergency medical services are those health care items and services furnished that are required to evaluate or stabilize a sudden and unforeseen situation or occurrence or a sudden onset of a medical or mental health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the failure to provide immediate medical attention could reasonably be expected by a prudent lay person, possessing average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> • placing the patient's physical or mental health <u>(or with respect to a pregnant woman, the health of the woman or her unborn child)</u> in serious

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>income of \$25,660 or less</p> <p>There is no resource limit.</p> <p>Missouri Medicaid provides for presumptive eligibility for all pregnant women. Presumptive eligibility allows uninsured pregnant women to obtain immediate prenatal care while their Medicaid eligibility is being processed. Undocumented women receive important care during the processing period while their Medicaid eligibility is being processed.</p> <p>TEMP: Missouri Medicaid Provider Manual Section 1.5.J.</p> <p>Temp Recipients - The purpose of the Temporary Medicaid During Pregnancy (TEMP) Program is to provide pregnant women with access to <i>ambulatory prenatal care</i> while they await the formal determination of Medicaid or MC+ eligibility. Certain qualified providers, as determined by the Family Support Division, may issue TEMP cards. These providers have the responsibility for making limited eligibility determinations for their patients based on preliminary information that the patient's family income does <i>not</i> exceed the applicable MC+ for Pregnant Women income standard for a family of the same size.</p>	<p>Division during the period of TEMP eligibility, her TEMP eligibility is extended while the application is pending. If application is <i>not</i> made, the TEMP eligibility ends in accordance with the date shown on the TEMP card.</p> <p>Infants born to mothers who are enrolled in the TEMP Program are <i>not</i> automatically eligible for Medicaid benefits. Information regarding Automatic Medicaid Eligibility for Newborn Children is addressed in the TEMP card.</p> <p>Providers and recipients can obtain the name of Medicaid enrolled Qualified Providers in their service area by contacting the local Family Support Division Office. Providers may call Provider Relations at (573) 751-2896 and recipients may call Recipient Services at (800) 392-2161 for questions regarding TEMP.</p>	<p>jeopardy; or</p> <ul style="list-style-type: none"> • serious impairment of bodily functions; or • serious dysfunction of any bodily organ or part; or • serious harm to self or others due to an alcohol or drug abuse emergency; or • injury to self or bodily harm to others; or • <u>with respect to a pregnant woman who is having contractions:</u> <ul style="list-style-type: none"> ○ There is inadequate time to effect a safe transfer to another hospital before delivery; or ○ Transfer may pose a threat to the health or safety of the woman or the unborn.

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>http://manuals.momed.com/1pBin22/1pext.dll?f=templates&fn=main-j.htm&2.0</p> <p>State-funded: Under state funded programs, all pregnant women, regardless of immigration status, are eligible for outpatient prenatal care.</p> <p>http://www.nilc.org/pubs/guideupdates/tb110_state-med-asst_2006-01.pdf</p> <p>http://www.latinainstitute.org/pdf/PrenatalCare-2.pdf</p>		
Montana	<p>Programs that Cover Qualified Aliens</p> <p>Montana Medicaid provides outpatient prenatal care.</p> <p>MCA 53-6-101.</p> <p>Programs that Cover Undocumented Immigrants</p> <p>Montana does not appear to provide prenatal care to undocumented immigrants. Under Nevada’s Medicaid</p>	<p>Montana Medicaid provides outpatient prenatal care (obstetrician or nurse midwife), which includes all prenatal visits, delivery (in hospital), and a six-week postpartum checkup.</p> <p>http://www.dphhs.mt.gov/medicaid</p>	<p>Montana Medicaid</p> <p>Pregnant women are presumptively eligible for Montana Medicaid. To apply for presumptive eligibility, a woman must apply with a Qualified Presumptive Eligibility Provider (“QPEP”) (e.g., City/County Health Department, Family Planning Clinic). If the QPEP determines that she is presumptively eligible, prenatal care will be provided for 45 days or until her local County Office of Public Assistance processes her</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>program, undocumented immigrants are entitled to emergency services only.</p> <p>In addition, Montana CHIP did not elect to expand to cover the period from conception to birth.</p> <p>Montana does have a program called MIAMI (The Montana Initiative for the Abatement of Mortality in Infants Act). MIAMI provides home visiting services to high-risk pregnant women, their infants, and infants identified at risk for special health care needs. If an undocumented expectant mother is identified as “high risk,” she may be eligible for services under MIAMI, notwithstanding her immigration status</p> <p>MCA 50-19-311.</p> <p>Information about MIAMI can be found at http://www.dphhs.mt.gov/P/HSD/family-health/home-visiting/home-visiting-miami.shtml</p>		<p>application and determines that she is eligible for Medicaid, whichever comes first.</p> <p>Applications are available at each local County Office of Public Assistance. Call the Montana Medicaid Help Line at 1.800.362.8312.</p>
Nebraska	<p>Kids Connection (which encompasses both Nebraska CHIP and Nebraska Medicaid) provides coverage for pregnant women without regard to immigration status.</p> <p>http://www.hhs.state.ne.us/med/kidsconx.htm</p> <p>The <i>child</i> applying for Kids Connection must be a citizen of the United States</p>	<p>During the pregnancy and for 60 days after the birth of the child, the mother is covered for all necessary health care, including the following: doctor visits; hospital charges; blood and urine tests; specialist care, if needed; ultrasound services; medications (including prenatal vitamins); delivery; and postpartum check-up.</p> <p>MAC Mom coverage also includes dental exams and</p>	<p>The expectant mother must complete an application and send it to Kids Connection, P.O. Box 94926, Lincoln, NE 68509-4926 or take it to her local Health and Human Services (HSS) office. The application requires proof of income (income cannot exceed 185% of the federal poverty level). One month’s pay stubs or a letter from an employer will satisfy this requirement if the expectant mother is working.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>or in the United States as a legal permanent resident or a qualified alien. However, the pregnant woman herself need not be a qualified alien. (I confirmed this information with Becky Gould at Nebraska Appleseed. 402.438.8853 x 102.)</p> <p>The immigrant mother is considered a “MAC Mom” MAC stands for Medical Assistance for Children. Because the mother does not qualify for Medicaid, health benefits are provided to the unborn baby.</p>	<p>treatment; eye exams; mental health counseling; family planning; and circumcision for the baby.</p>	<p>The application can be downloaded at http://www.hhs.state.ne.us/med/kidsconxapp.htm. Applications are also available at local HHS office and by calling 1.877.NEB KIDS (1.877.632.5437) to request an application.</p> <p>Once HHS receives the application, it can take up to 30 days for the review to be completed. If a caseworker does not call the expectant mother within 30 days, she can call 402.471.7000 for an update.</p> <p>More information is available by calling 1.877.NEB KIDS (1.877.632.5437) or visiting http://www.hhs.state.ne.us/med/kidsconxfaq.htm.</p>
Nevada	<p>Programs that Cover Qualified Aliens</p> <p>Nevada’s Medicaid program for pregnant women is CHAP (Child Health Assurance Program).</p> <p>See http://www.dhcfp.state.nv.us for more information.</p> <p>Programs that Cover Undocumented Immigrants</p> <p>Nevada does not appear to provide prenatal care to undocumented immigrants. Under Nevada’s Medicaid program, undocumented immigrants are entitled to true emergency services only.</p> <p>In addition, Nevada’s</p>	<p>CHAP covers prenatal visits, lab work, and tests (such as an ultrasound), labor and delivery charges, anesthesia, a hospital stay (up to 48 hours after a vaginal birth and 96 hours after a Cesarean section), and a six-week postpartum check up. The woman may elect to see either an OB/GYN or a certified nurse midwife.</p>	<p>CHAP Eligibility:</p> <p>Pregnant women are not presumptively eligible. Income cannot exceed 133% of the federal and resources cannot exceed \$2,000. However, a pregnant woman who is eligible for CHAP during any month in her pregnancy remains eligible for pregnancy-related and postpartum care even if her income changes.</p> <p>To apply, the woman must contact her local Division of Welfare and Supportive Services office. For more information call the Nevada Medicaid Central Office at 775.684.3600.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>SCHIP (called Nevada Check Up) did not elect to expand to cover the period from conception to birth.</p>		
New Hampshire	<p>1. Medical Coverage for Pregnant Women (MCPW) Qualifications Under the MCPW program: - Income cannot exceed 185% of the federal poverty income limits. - No resource limit.</p> <p>2. Presumptive Eligibility Pregnant women applying at Department of Health and Human Services district offices as well as to pregnant women applying at non-district office sites shall be given a "presumptive eligibility period" as provided in 42 U.S.C. 1396r-1. (RSA. TITLE XII.167.68.II.(c))</p> <p>3. Duration of medical assistance 1) If the pregnant woman is eligible for and receiving medical assistance on the day her pregnancy ends → continue her medical assistance for 60 days post-partum without regard to any other eligibility criteria. Terminate 60 day post-partum medical assistance on the last day of the month in which the 60th day falls. 2) If the pregnant woman is eligible for and receiving medical assistance on the day her child is born → continue medical assistance for the newborn for up to 1 year, as long as</p>		<p>How to apply: An applicant for Medical Assistance should 1) Visit a DHHS District Office and speak with a DHHS worker who will assist you through the application interview process; and 2) Provide copies of any information that we may need. (http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm) 3) The DHHS district office contact information can be found at http://www.dhhs.nh.gov/DHHS/Contact+Directory/default.htm</p> <p>Pregnant women already receiving services at certain community agencies, such as hospitals, well child or prenatal clinics or Women Infant & Children clinics may apply at those sites for Healthy Kids or Medical Coverage for Pregnant Women. Applications for Healthy Kids and Medical Coverage for Pregnant Women (MCPW) may also be filed by mail. (http://www.dhhs.state.nh.us/DHHS/MEDASSISTELIG/ELIGIBILITY/default.htm)</p> <p>Who decides: Pregnant women are assessed by the Division of Family Assistance, Office of Program Operations, Dept. of Health and Human Services for their financial eligibility and all non-financial eligibility. (http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm)</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>the child lives with the mother and one of the following applies:</p> <ul style="list-style-type: none"> · the mother remains eligible for medical assistance, or · the mother would be eligible if she were pregnant. <p>(http://www.hrsa.gov/reimbursement/states/New-Hampshire-Eligibility.htm)</p>		<p>How to appeal: If a pregnant woman disagrees with any decision the Division of Family Assistance makes on her case, she may request an Administrative Appeals hearing. (http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm)</p> <p>- procedures for the administrative appeal can be found at http://www.dhhs.nh.gov/DHHS/MEDASSISELIG/default.htm</p>
New Jersey	<p>For Medicaid:</p> <p>A “Qualified Alien” is an alien who</p> <ol style="list-style-type: none"> 1) entered U.S. before August 22, 1996 and meets the eligibility criteria set forth in N.J.A.C. 10:71-3.3.(c), then he/she is entitled to FULL Medicaid benefits. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(c). p.16-17) or 2) entered U.S. on or after August 22, 1996 and meets the eligibility criteria set forth in N.J.A.C. 10:71-3.3.(c), one of them being “lawfully admitted for permanent residence but only after having been present in the U.S. for 5 years,” then he/she is entitled to Medicaid benefits. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(d). p.17) <p>Other Medicaid eligibility requirements:</p> <p>1. An applicant needs to be aged, disabled or blind:</p> <ol style="list-style-type: none"> 1) Age (N.J.A.C. 10:71-3.9.(a)) 		<p>Application process for the Medical Emergency Payment Program for undocumented residents:</p> <ol style="list-style-type: none"> 1. Inform the hospital office staff that you wish to apply for this program. 2. If an application form is available, you will be asked to fill it out immediately. 3. If an application is not available, the staff member will notify the County Board of Social Services that you are interested in applying. 4. After the emergency medical treatment, you must call the County Board of Social Services yourself to schedule an interview. 5. Bring any bills that you received for emergency treatment with you to the County Board interview. 6. You must complete an application within 3 months of the date of the emergency in order to be covered under this program. (http://www.njfamilycare.org/pages/rest_who.html) <p>Medicaid: How to Apply - Medicaid hotline Monday through Friday, 8:30 to 4:30 (800) 356-1561</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>- The applicant must be 65 years of age or older to be eligible based on age alone.</p> <p>- A disabled or blind child must be under 18 years of age, or under 22 years of age and a student regularly attending school and neither married nor the head of the household.</p> <p>- A disabled or blind adult must be over 21 years of age and under 65 years of age or between 18 years of age and 22 years of age if not a full-time student.</p> <p>2) Disability (N.J.A.C. 10:71-3.12(a))</p> <p>3) Mental or physical impairment (N.J.A.C. 10:71-3.12(b))</p> <p>4) Blindness (N.J.A.C. 10:71-3.12(c))</p> <p>2. An applicant also needs to be financially eligible:</p> <p>1) Financial eligibility - Resources The resources criteria and eligibility standards of this section apply to all applicants and beneficiaries. (N.J.A.C. 10:71-4.1(a))</p> <p>2) Financial eligibility – Income Applicants must comply with the income standards set forth in N.J.A.C. 10:71-5.6. (N.J.A.C. 10:71-5.1(a))</p> <p>A “Non-Qualified Alien”</p> <p>- is not an eligible alien as specified in the two sections (1 and 2) under “Qualified Alien.”</p> <p>- is not eligible for full Medicaid benefits.</p> <p>- is entitled to Medicaid coverage for the treatment of an emergency medical condition only, if the alien is a New Jersey resident</p>		<p>For aliens:</p> <p>- “Persons claiming to be . . . eligible aliens shall provide the county board of social services with documentation of . . . alien status.” (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(f). p.118)</p> <p>- acceptable forms of documentation are listed in Medicaid Only Manual. N.J.A.C. 10:71-3.3.(g)3-5 p.18-20)</p> <p>A list of the County Board of Social Services: http://www.state.nj.us/humanservices/CWALIST.pdf</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>and meets all other Medicaid eligibility requirements. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>“Emergency medical condition” does NOT include routine prenatal or post-partum care. (Medicaid Only Manual. N.J.A.C. 10:71-3.3.(e). p.17-18)</p> <p>New Jersey “Resident” is defined as “a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.” (Medicaid Only Manual. N.J.A.C. 10:71-3.5.(a). p.20)</p> <p>For Medicaid Medical Assistance 1-800-356-1561</p> <p>NJ FamilyCare Any applicant in a “qualified” immigrant status is able to apply for NJ FamilyCare, regardless of the date that they entered the United States. They do not have to wait five years to be eligible. “Qualified” status includes: - An applicant under the Violence Against Women Act (http://www.njfamilycare.org/pages/rest_who.html)</p> <p>For NJ FamilyCare Health Insurance (Medicaid Managed Care) 1-800-701-0710</p>		

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
New Mexico	<p>Medicaid</p> <p>Medicaid is a joint federal and state program that pays for health care for eligible individuals.</p> <p>For more information, see http://www.state.nm.us/hsd/mad/GenInfo.htm</p>	<p>Medicaid</p> <p>Pregnant women who are in families that meet Aid to Families Dependent Children income and resource standards, are eligible for the full range of covered services.</p> <p>Under certain conditions, Medicaid will cover perinatal home health services. Among the conditions considered are whether such services are reasonable and necessary to treat a high risk pregnancy. See NMAC § 8.325.9.13.F (2006).</p> <p>Medicaid covers five hours of case management services per client for each pregnancy. Such services are provided up to 60 days after the end of the month in which the client delivered. Such services include:</p> <ul style="list-style-type: none"> • identification of programs, including programs that teach basic maternal and child health skills; • help in accessing identified programs; and • help coordinating the delivery of services when multiple providers or programs provide care. <p>See NMAC § 8.326.3.13 (2006).</p> <p>For undocumented immigrants who reside in the State, Medicaid will pay for necessary emergency services if such persons meet the requirements for Medicaid eligibility. Such services include emergency labor and delivery. See NMAC §§ 8.325.10.9, 8.325.10.13, 8.325.10.14, and 8.325.10.16</p>	<p>Medicaid</p> <p><u>Presumptive Eligibility for Pregnant Women</u></p> <p>A pregnant woman may receive ambulatory prenatal care while her Medicaid application is being processed. Her presumptive eligibility must be determined by an approved medical provider. Ambulatory prenatal care will be provided from the date a determination is made through the end of the month following the month in which a determination was made. See NMAC §§ 8.200.400.11, 8.230.400.18, 8.235.400.18 (2006).</p> <p><u>Citizenship/Immigration Status</u></p> <p>An individual is eligible for Medicaid if she entered the U.S. prior to August 22, 1996 and is within specific classes of aliens, including aliens lawfully admitted for permanent residence or permanently residing in the U.S. under color of law. Additionally, qualified aliens who entered the U.S. on or after August 22, 1996 and have lived in the U.S. for more than 5 years are eligible for Medicaid.</p> <p>Qualified aliens who entered the U.S. on or after August 22, 1996 are barred from Medicaid eligibility for a period of 5 years. However, such qualified aliens are eligible to receive emergency services. Certain qualified aliens are exempt from the five-year ban, including certain refugees and certain individuals who have been granted asylum. See NMAC § 8.200.410.11 (2006).</p> <p><u>Income and Resource Standards</u></p> <p>In determining an individual's eligibility for pregnancy-related</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
		(2006).	<p>services, the income standard is 185% of the federal poverty level. This standard is based on the number of family members in the individual's household. See NMAC § 8.235.500.11 (2006).</p> <p>To apply, an individual should contact their local Income Support Division Office.</p> <p>For more information, see http://www.state.nm.us/hsd/mad/GenInfo.htm</p>
New York	<p>Prenatal Care Assistance Program ("PCAP")</p> <p>PCAP provides complete pregnancy care and other health care services to women and teens who reside in the State.</p> <p>For more information, see: NY CLS Pub Health §§ 2522, 2525, 2529 http://nyhealth.gov/nysdoh/perinatal/en/pcap.htm</p> <p>Medicaid Obstetrical and Maternal Services Program ("MOMS")</p> <p>MOMS provides essentially the same pregnancy services in areas where PCAP health centers are not located.</p> <p>For more information, see: http://nyhealth.gov/nysdoh/perinatal/en/moms.htm</p> <p>Family Health Plus ("FHP")</p> <p>FHP is a public health insurance program that provides health insurance to people who do not have</p>	<p>PCAP & MOMS</p> <p>Generally, services provided include:</p> <ul style="list-style-type: none"> • routine pregnancy medical check-ups; • lab work and access to specialists; • hospital care during pregnancy and delivery; • information about pregnancy, labor, and delivery; • HIV counseling and testing; • Assistance with applying to other programs such as WIC and low or no cost health insurance for children and family; • one post-partum visit within 60 days following delivery; • health care for the baby for at least one year after birth; and • family planning services. <p>For more information, see: NY CLS Pub Health §§ 2522 http://www.health.state.ny.us/nysdoh/perinatal/en/servicedescription.htm</p>	<p>PCAP & MOMS</p> <p>There is no immigration status requirement to receive benefits.</p> <p>To receive benefits, an applicant must be pregnant, live in the State, and meet income requirements. Benefits are available to women whose family income does not exceed 200% of the federal poverty level.</p> <p>An applicant is required to complete an Access NY Health Care application, submit documentation proving identity, age, residence, and family income.</p> <p>For more information, contact the New York State Growing Up Health Hotline at (800) 522-5006</p> <p>Application information is available at the following link: http://nyhealth.gov/nysdoh/fhplus/application.htm</p> <p>Family Health Plus</p> <p>FHP is available to single adults, couples without children, and parents with limited income. Generally, a person must be between the ages of 19 and 64, be</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>health insurance. FHP is available to those whose income or resources are too high to qualify for Medicaid.</p> <p>FHP provides comprehensive coverage through participating managed health care plans.</p> <p>For more information, see http://www.health.state.ny.us/nysdoh/fhplus/who_can_join.htm</p> <p>Community Health Worker Program (“CHWP”)</p> <p>CHWP provides outreach, education, referral and follow-up, case management, advocacy and home visiting services to women at highest risk for poor birth outcomes. CHWP targets communities with high rates of infant mortality, out-of-wedlock birth, late or no prenatal care, teen pregnancies and births, and births to low income women.</p> <p>For more information, see: http://www.health.state.ny.us/nysdoh/perinatal/en/chwp.htm</p> <p>Medicaid</p> <p>Qualified aliens are eligible for full Medicaid benefits. Pregnant women with a family income at or below 200% of the federal poverty level are eligible to receive Medicaid benefits.</p> <p>An undocumented immigrant may receive</p>	<p>http://www.health.state.ny.us/nysdoh/pcap/index.htm</p> <p>http://nyhealth.gov/nysdoh/perinatal/en/moms.htm</p> <p>Family Health Plus</p> <p>FHP provides comprehensive coverage, including prevention, primary care, and other services. Women who become pregnant after enrolling in FHP have the option to continue receiving care through FHP or switch to Medicaid. A pregnant woman applying for insurance is not eligible for FHP. She should seek coverage under PCAP or Medicaid.</p> <p>Community Health Worker Program</p> <p>Health worker services include:</p> <ul style="list-style-type: none"> • outreach to pregnant women, including those who are uninsured or underinsured, to help them get prenatal and other health care services; • conducting monthly home visits throughout the woman’s pregnancy and the child’s first year; and • providing health education on topics such as lead poisoning prevention, HIV risk factors and ways to prevent transmission, risks related to prenatal substance abuse, and breastfeeding. <p>Medicaid</p> <p>Among other services, prenatal care is available to qualified</p>	<p>a resident of New York and a U.S. citizen or immigrants in various categories, including green card holders and PRUCOL. The application process includes a personal interview where an application is completed and proof of certain information is provided.</p> <p>For more information regarding how to apply, see http://www.health.state.ny.us/nysdoh/fhplus/how_can_i_apply.htm</p> <p>Community Health Worker Program</p> <p>To find a program, see the following list, which is organized by county.</p> <p>http://www.health.state.ny.us/nysdoh/perinatal/en/chwplist.htm</p> <p>Medicaid</p> <p>An applicant may contact their local department of social services to apply for benefits. See, http://www.health.state.ny.us/health_care/medicaid/ldss.htm</p> <p>There are certain income and resource limits that apply, which depend upon the number of family members in the applicant’s household. Additionally, the application process includes an interview. The applicant should bring the following materials to that interview:</p> <ul style="list-style-type: none"> • Proof of age, such as a birth certificate; • Proof of citizenship or alien status; • Recent paycheck stubs (if the applicant is working);

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>medical assistance for care and services needed to treat an emergency medical condition.</p> <p>For more information, see http://www.health.state.ny.us/health_care/medicaid/index.htm#qualify</p>	<p>aliens.</p> <p>An undocumented immigrant may receive care and services related emergency labor and delivery only.</p>	<ul style="list-style-type: none"> • Proof of income from sources like Social Security, Supplemental Security Income (SSI), Veteran’s Benefits (VA), retirement; • Any bank books and insurance policies that that the applicant has; • Proof of residence, such as a rent receipt or landlord statement; • Insurance benefit card or the policy (if the applicant has any other health insurance); and • Medicare Benefit Card <p>An application is available at the following link: http://nyhealth.gov/nysdoh/fhplus/application.htm</p>
North Carolina	<p>Under NC Family and Children’s Medicaid MA-3330, a non-qualified alien who meets the N.C. residency requirement (living in N.C. with the intent to remain) and who meets all other Medicaid eligibility factors can receive Medicaid for emergency medical services only, which include labor and delivery services.</p> <p>Information about the exact income requirements (meaning the income level a family must be below in order for a family member to receive benefits) can be attained for one’s specific family circumstances by contacting one’s county DSS office.</p> <p>There are 3 main ways in</p>	<p>In general, it is the county departments of social services (DSS) that determine the dates of coverage when an emergency medical service is labor and normal delivery or Caesarean delivery. Meanwhile, it is the Division of Medical Assistance (DMA) that determines the dates of coverage for all other emergency medical services including miscarriages and other pregnancy terminations.</p> <p>NOTE: Regular delivery and Caesarean section delivery do not include prenatal care, postpartum care, or a 60-day continuation period.</p> <p>Under NC Adult Medicaid Manual, MA- 2504(X)(C), in the case of regular deliveries, an eligible, non-qualified alien may receive coverage for the day of admission to the hospital, the</p>	<p>A pregnant non-qualified alien can qualify to receive emergency medical services through MAF, if she meets the residency and income requirements, if she was the caretaker of a child that was eligible for one of the Medicaid programs during the time when she needed emergency medical services related to her pregnancy (serious complications, labor and delivery etc.). The child does not need to have been receiving Medicaid but would need to have been eligible for Medicaid in order for the caretaker to be eligible for the emergency Medicaid.</p> <p>A pregnant woman, who meets the necessary income and residency requirements, is eligible to receive MPW, regardless of whether she is a qualified or non-qualified alien.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>which a non-qualified alien can receive Medicaid coverage for emergency medical services inclusive of labor and delivery and, in the case of Medicaid for Pregnant Women, some additional basic prenatal care. The 3 programs include Medicaid for Pregnant Women (MPW), Presumptive Medicaid for Pregnant Women, and Medicaid Assistance for Families (MAF).</p> <p>MPW covers ambulatory prenatal services provided by any Medicaid enrolled provider and also the cost of prescriptions. In NC, women, regardless of their immigration status, can receive MPW benefits if they meet the residency and income requirements.</p> <p>Pregnant women, both qualified and non-qualified aliens, who meet the other Medicaid requirements (income and residency), are eligible to receive Presumptive Medicaid for Pregnant Women, for a period of up to two months. Under Family and Children's Medicaid Manual MA-3245, Presumptive Medicaid covers basic prenatal care (check-ups etc.) but does not cover overnight hospital stays or significant medical procedures.</p> <p>Medicaid Assistance for Families covers those who are the caretaker for a Medicaid eligible child. A pregnant non-qualified alien can qualify to receive</p>	<p>day of delivery (if this is not the same day as hospital admission) and one day after the delivery, totaling a maximum of 3 days coverage. For a Caesarean section delivery, there is a maximum of 5 days coverage, beginning with the day the Caesarean section is performed.</p> <p>The benefit package of the Baby Love Program, which is only available to qualified aliens, includes childbirth and parenting classes, in-home skilled nursing care for high-risk pregnancies, nutrition counseling, psychosocial counseling and postpartum/newborn home visits.</p> <p>Note: Medicaid (MPW, MAF etc.) does not cover abortions except in the case of rape or incest.</p>	<p>Any pregnant woman who meets the income and residency requirements is eligible to receive Presumptive Medicaid for Pregnant Women benefits regardless of whether she is a qualified or non-qualified alien; however, the application procedures for Presumptive Medicaid for Pregnant Women are somewhat complicated. It is important to realize that coverage under Presumptive Medicaid begins as of the day the application is made and continues for the remainder of that month and then through the end of the following month. Thus, there is a clear advantage in terms of receiving more days of coverage to applying at the very beginning of a month as opposed to closer to the end of a month.</p> <p>A woman is only eligible to apply for Presumptive Medicaid for Pregnant Women one time during a pregnancy (meaning once the 2 month period lapses, an applicant cannot reapply for another 2 months of coverage during that same pregnancy).</p> <p>In order to apply for MAF or MPW, a pregnant woman should visit the DSS office in her county and ask for an application. In order to apply for Presumptive Medicaid, a pregnant woman should visit the local health department in her county and ask to apply.</p> <p>Notably, it is considered particularly easy to qualify for Presumptive Medicaid for Pregnant Women because not a lot of documentation is needed in order to be approved to receive these benefits and customers are approved particularly quickly.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>emergency medical services through MAF, assuming she meets the residency and income requirements, if she was the caretaker of a child that was eligible for Medicaid (usually meaning that the child was born in the U.S.) during the time when she needed emergency medical services. These services, under MAF, include labor and delivery services as well as care related to any serious complications of her pregnancy.</p> <p>There is a processing time of a maximum of 45 days for a Medicaid application from the time the application was signed by the customer. For labor and delivery, women can apply before the birth of the baby but if the baby is not born within the 45 days the application will be denied and the customer will have to reapply (which has no negative impact on coverage but involves more paperwork). Once Medicaid is approved for the mother (in the case of labor and delivery), the newborn is automatically approved for Medicaid also (this type is called MIC - Medicaid for Infants and Children) as the child is a U.S. Citizen.</p> <p>Qualified as well as non-qualified aliens may be able to receive discounts on pre-natal care from community health clinics, local hospitals, or the health department in their county if they provide documentation</p>		<p>It is important to realize that an application for Presumptive Medicaid through the local health department will be terminated if one applies for Medicaid through DSS after applying for Presumptive Medicaid. Thus, while a staff person at the local health department may tell a pregnant woman who is applying for Presumptive Medicaid about the option of applying for MAF or MPW, for example, she should understand that by applying for either of these forms of Medicaid she will cause her Presumptive Medicaid to be automatically terminated. Thus, applying for Medicaid through DSS after being approved for Presumptive Medicaid through a health department may not be advisable.</p> <p>In order to be eligible to take part in the Baby Love Program, pregnant qualified aliens must be within 200% of the Federal Poverty Level (for a family of 3). Qualified aliens do not become eligible for this program until they have been in the U.S., as qualified aliens, for a 5-year period; however, there are several groups of qualified aliens that may be exempt from this 5-year disqualification period. Under NC Adult Medicaid Manual, MA-2504(IV)(E), these exempt groups include, but are not limited to, refugees, asylees, Cuban and Haitian Entrants, trafficking victims, and aliens whose deportation is being withheld.</p> <p>Sliding scale programs that offer discounts to those living in poverty vary greatly among different hospitals, clinics, and even county health departments as these providers have different funding sources. In some cases,</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>that their income is within the federal poverty guidelines. Many community health clinics and hospitals in North Carolina have sliding scale programs that allow for such discounts.</p> <p>Qualified aliens who meet the income eligibility requirement can enroll in North Carolina’s Baby Love Program, as administered by the Division of Medical Assistance and the Division of Public Health, Women’s and Children’s Health Section. This program offers comprehensive care from the beginning of pregnancy through the postpartum period.</p> <p>Note: Non-qualified aliens are not eligible for participation in the Baby Love Program.</p>		<p>sliding scale programs give discounts to non-qualified aliens while others limit their benefits to citizens and qualified aliens. In any case, one can ask about sliding scale programs for pre-natal care at the health department in one’s county or at a local hospital or community health clinic.</p> <p>Qualified aliens who meet the eligibility requirements may contact the Baby Love Program by calling the N.C. Family Health Resource Line at 1-800-FOR-BABY (1-800-367-2229).</p>
North Dakota	<p>North Dakota Medicaid</p> <p>Only qualified aliens age 21 or over may receive pre-natal care under North Dakota Medicaid. To receive these North Dakota Medicaid benefits, a patient must meet lesser income standards (133% of the federal poverty level), and residency requirements. If these requirements are met, the patient may receive medically necessary prenatal services.</p> <p>Full North Dakota Medicaid benefits are available to</p>	<p>North Dakota Medicaid</p> <p>North Dakota Medicaid provides pregnant women with any and all necessary medical services that are otherwise covered under North Dakota Medicaid, including but not limited to routine exams, ultrasounds, laboratory work, drug coverage, family planning services and services related to labor and delivery. The program will also pay for out-of state care when necessary, subject to prior approval. Such services are not specifically, separately enumerated. North Dakota Medicaid essentially defers to</p>	<p>To receive North Dakota Medicaid, an applicant must meet residency and income requirements. County social service offices determine residency. No period of residency is required as a condition of eligibility; however, the applicant must have the intent to remain in North Dakota permanently or indefinitely or must have entered the state with a job commitment or seeking employment. See N.D. Admin. Code § 75-02-02.1</p> <p>North Dakota Medicaid benefits are available to pregnant women and infants if family income is</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>qualified aliens who entered the U.S. before August 22, 1996 or to those who entered on or after August 22, 1996 and who have maintained the status of qualified alien for five (5) years. However, the five (5) year limitation does not apply to certain aliens including refugees and asylees.</p> <p>North Dakota S-CHIP Program</p> <p>North Dakota's S-CHIP Program ("Healthy Steps") provides prenatal services for qualified immigrant women under the age of 21. It is a separate, stand-alone insurance program run by Blue Cross and Blue Shield of North Dakota.</p> <p>For additional information, contact: 1-800-342-4718</p>	<p>the discretion of the medical providers, as long as a procedure is not deemed to be duplicative or experimental.</p> <p>Except for emergencies, pregnant women whose income is below the North Dakota Medicaid eligibility threshold must apply and be accepted to the program before receiving prenatal care. North Dakota Medicaid does not allow for "presumptive eligibility". However, once an application is accepted there is a 3-month look-back period for covered expenses.</p> <p>North Dakota Medicaid provides pregnancy related and post-partum care services for an additional 60 days beginning on the last day of pregnancy.</p> <p>Again, there is no formal definition for what services are provided as "post-partum care," and the program will generally pay for services that are part of a medical provider's standard practice.</p>	<p>less than 133% of the federal poverty level. No asset test is applied to pregnant women.</p> <p>If applying for health care services only, an applicant for North Dakota Medicaid or S-CHIP benefits is required to file the "Application for HealthCare Coverage for Children, Families, and Pregnant Women."</p> <p>The application process for is handled either at the county or state level. The following link has the websites for all North Dakota Counties:</p> <p>http://www.nd.gov/humanservices/locations/countysocialserv</p> <p>If an application is denied, an applicant has 30 day to appeal the denial either to the county or state office where the application was submitted. If denied again, an applicant may appeal to an administrative hearing officer or a district court</p>
Ohio	<p>Healthy Start, WIC, and CFHS</p> <p>The Healthy Start program offers free medical coverage to families, children (up to 19 years), and pregnant women.</p> <p>Ohio's SCHIP program is administered through Ohio's Healthy Start program.</p> <p>http://www.odjfs.state.oh.us/forms/file.asp?id=43881</p>	<p>Healthy Start, WIC, and CFHS</p> <p>Coverage includes but is not limited to: doctor visits, hospital care, pregnancy related services, prescriptions, vision, dental, substance abuse, mental health services. Ohio Revised Code § 5111.01.8.</p> <p>http://www.odjfs.state.oh.us/forms/file.asp?id=43881</p> <p>WIC provides nutrition education, breastfeeding education and support;</p>	<p>Healthy Start, WIC, and CFHS</p> <p>Pregnant women and children must meet the income, resource, and family composition requirements or be eligible for medical assistance. A combined programs application can be used for Healthy Start, WIC, CFHS, and BCMH. A completed and signed application, including proof of income from work or wages, proof of pregnancy if applicable, immigration documents, other health insurance, signed and dated copy</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>WIC provides food, nutritional information, and breast feeding education to women who are breast feeding, pregnant, or just have had a baby, and children from birth to age five.</p> <p>http://www.odjfs.state.oh.us/forms/file.asp?id=43881</p>	<p>supplemental, highly nutritious foods; referral to prenatal and pediatric health care and other maternal and child health and human service programs, including Head Start, Medicaid and Food Stamps.</p> <p>http://www.odh.ohio.gov/odhPrograms/ns/wicn/wic1.aspx</p>	<p>of the Rights and Responsibilities form. Ohio Revised Code § 5111.01.3 and § 5101:1-38-01.2.</p> <p>An individual must be a citizen of the U.S., a qualified alien or be an alien who is lawfully residing within the U.S. as of August 22, 1996. Unqualified or undocumented aliens or qualified aliens ineligible for benefits have potential eligibility for alien emergency medical assistance. Ohio Administrative Code §5101:1-38-02.3.</p> <p>Citizenship/Alien Status information must be provided with the application. Family members who are not U.S. citizens must provide the county Department of Job and Family Services with proof of alien status such as an alien registration card or re-entry permit. However, if the application is for a child only, no proof of adult citizenship is required.</p> <p>Applicants for the Healthy Start program must provide social security numbers or apply for a social security number. Ohio Administrative Code § 5101:1-38-021.</p> <p>Once a person is determined eligible for health coverage, a reapplication date will be set.</p> <p>For more information: http://www.odjfs.state.oh.us/forms/file.asp?id=43881</p> <p>Information regarding citizenship/alien status may not need to be provided if the family member is applying for WIC.</p> <p>http://www.odjfs.state.oh.us/forms/file.asp?id=43881</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
Oklahoma	<p>Medicaid (a.k.a. SoonerCare)</p> <p>Provides payment for medical services to adults and children to those who meet the eligibility requirements. Oklahoma Administrative Code § 317:35-1-1.</p> <p>Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and post-partum periods. Oklahoma Administrative Code § 317:35-5-2.</p>	<p>Medicaid (a.k.a. SoonerCare)</p> <p>Categorical relationship to pregnancy-related services is established when the determination is made by medical evidence that the individual is or has been pregnant. Oklahoma Administrative Code § 317:35-5-2.</p>	<p>Medicaid (a.k.a. SoonerCare)</p> <p>Qualified aliens are eligible for Medicaid. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry, except non-qualified aliens are eligible for emergency care (including emergency labor and delivery). Illegal aliens are eligible only for emergency services (including emergency labor and delivery). Aliens that have been admitted for only a temporary period of time (for example, foreign students, visitors, temporary workers) are ineligible for Medicaid, including emergency services. Oklahoma Administrative Code § 317:35-5-25.</p> <p>[New legislation signed by the President will likely affect the 5 year alienage (non-qualified alienage). In other words, the new legislation will probably require all aliens to be able to show proper documentation prior to being permitted to receive Medicaid, aside from emergency Medicaid. For additional information, contact Oklahoma Healthcare Authority, Legal Division, Howard Pallotta, General Counsel at (405) 522-7300.]</p> <p>Unqualified or Ineligible aliens are not eligible to receive SoonerCare benefits. Oklahoma Administrative Code § 317:25-7-10.</p> <p>Applicants must complete a Health Benefits Application which must be signed by the individual, parent, spouse, guardian, or someone on the individual’s behalf. The</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
			<p>application may be obtained at a doctor’s office, hospital, other medical facility, Health Department, or county DHS office. Applicants must also complete a Notification of Needed Medical Services for preauthorization of medical services if applicable. The Health Benefits Application form or the Notification of Needed Medical Services form constitutes an application for Medicaid. Oklahoma Administrative Code § 317:35-6-15.</p> <p>In addition, the application process may require completion of: a Presumptive Eligibility Budget Sheet (verify pregnancy and provide income screening), Notice to Pregnant Women Regarding Presumptive Eligibility for Medicaid (informs the pregnant women whether she has determined to be presumptively eligible or ineligible by the qualified provider). Oklahoma Administrative Code § 317:35-6-38.</p>
Oregon	<p>CAWEM Non-qualified aliens are only eligible for Citizen Alien-Waived Emergency Medical Assistance (CAWEM). CAWEM coverage is limited to emergency services, including labor and delivery.</p> <p>Under Oregon Administrative Rule 410-120-1210(3)(f), pre-natal or postpartum care is not covered for CAWEM clients, even if they are seeking emergency services.</p> <p>OHP-OPP</p>	<p>CAWEM There is no coverage for pre-natal care for non-qualified aliens.</p> <p>OHP-OPP Individuals eligible for OHP-OPP receive the OHP Plus benefit package. Under Oregon Administrative Rule 410-130-10515, a physician, licensed physician assistant, nurse practitioner, certified nurse midwife, or licensed direct entry midwife may provide prenatal or perinatal (including labor and delivery) and/or postnatal services to the client. In addition to pre-natal, maternity and newborn care, pregnant</p>	<p>CAWEM N/A</p> <p>OHP-OPP This category includes pregnant qualified aliens in a filing group with income below Oregon’s 185% income limit and their assumed eligible newborn children at or above the 133% income limit. (Specific information is available in the Oregon Department of Human Services Oregon Health Plan Program Manual.)</p> <p>To apply for OHP-OPP, a person, or someone authorized to act on her behalf, must either contact a local branch office serving the</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>Pregnant qualified aliens are eligible for the Oregon Health Plan for Pregnant Females and their Newborn Children under One Year of Age (OHP-OPP). To receive OHP-OPP benefits, a patient must meet OHP-OPP's standard income and residency requirements.</p> <p>OHP-OPP benefits are available to a qualified alien (i) who was admitted as a qualified alien before August 22, 1996, (ii) who entered the US after August 22, 1996 and it has been five (5) years since she became a qualified alien, or (iii) who obtained her qualified alien status less than five (5) years ago but entered the US before August 22, 1996 and can show that she has been living in the US continuously for five (5) years from a date prior to August 22, 1996 to the date she obtained qualified status. However, the five (5) year limitation does not apply to certain aliens including veterans, Native Americans, refugees and asylees.</p> <p><i>See also</i> Oregon Administrative Rule 461-120-0120, and the Oregon Department of Human Services Oregon Health Plan Program Manual.</p> <p>OHP-CHP Pregnant women are not eligible for the Oregon Health Plan for Children</p>	<p>individuals receive maternity case management, which expands perinatal services to include management of health, economic, social and nutritional factors through the end of pregnancy and a two-month postpartum period.</p> <p>Under the Oregon Health Plan Client Handbook, pregnant clients are not charged premiums or co-payments.</p> <p>OHP-CHP N/A</p>	<p>area she lives in, an authorized outreach center, or call the toll-free number 1-800-359-9517.</p> <p>The individual must be a resident of Oregon with the intent to remain in Oregon. There is no minimum amount of time a person must live in Oregon to be a resident. The applicant must provide a social security number or verify they have applied for one as a condition of eligibility.</p> <p>The client's Medical Care Identification (ID) is confirmation of eligibility for medical services, subject to the limitations contained in Oregon Administrative Rules and appropriate individual medical provider rules.</p> <p>Under Oregon Administrative Rule 410-120-1140, there are three different types of IDs by which eligibility can be confirmed:</p> <p>(a) Form OMAP 1417 - Office of Medical Assistance Programs (OMAP) ID. This is a computer-generated notice that is mailed to the client once a month or anytime there is a change to the case (e. g., address change);</p> <p>(b) Form OMAP 1086 - Temporary ID. The responsible branch office issues this handwritten form;</p> <p>(c) Form WMMMID1C-A - Temporary ID. This is a computer-generated form that is signed by an authorized person in the responsible branch office.</p> <p>It is the responsibility of the medical provider to verify that the individual receiving medical</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	(OHP-CHP), which is Oregon's Children's Health Insurance Program (CHIP).		<p>services is, in fact, an eligible individual on the date of service for the service provided and whether OMAP is responsible for reimbursement. The Provider assumes full financial risk in serving a person not identified as eligible or not confirmed by OMAP as eligible for the service provided on the date(s) of service.</p> <p>The ID is not transferable, and is valid only for the individual(s) listed on the card.</p> <p>Eligibility is verified either:</p> <p>(a) From the ID, which shows the dates on which the client is eligible and indicates each client's benefit package; or</p> <p>(b) If a patient identifies herself as eligible, but does not have a valid ID, the provider may either:</p> <p>(A) Contact the OMAP Automated Information System (AIS), which is available on the Internet or via telephone;</p> <p>(B) Providers who have contracted with an Electronic Eligibility Verification Service (EEVS) vendor can access client eligibility data 24 hours a day, 7 days a week; or</p> <p>(C) Providers may contact the local Department of Human Services (DHS) branch office during regular working hours to confirm eligibility if the information is not available electronically.</p> <p>OHP-CHP N/A</p>
Pennsylvania	Pennsylvania's "Healthy Beginnings" program provides Non-Money Payment (NMP) Medicaid coverage for prenatal	Full range of prenatal outpatient services to pregnant women through the end of the month in which the 60-day postpartum period ends. The newborn child	For "Healthy Beginnings" the eligibility and application process requires the applicant to establish that she is pregnant, meets the applicable income conditions for

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>outpatient services to pregnant women who are determined to be presumptively eligible. 55 Pa. Code §§ 140.1, 140.141. <i>See Medicaid Eligibility Handbook</i>, Section 318.1.</p> <p>A pregnant woman or a qualified child up to age 1 is eligible if family income is equal to or less than 185% of the Federal Poverty Income Guidelines for the family size. 55 Pa. Code § 140.1(b). Presumptive eligibility is determined by the qualified provider based upon, <i>inter alia</i>, meeting citizen/alien requirements of 55 Pa. Code § 150.1. <i>See</i> 55 Pa. Code § 140.141(i); <i>Medicaid Eligibility Handbook</i>, Section 318.13. Undocument aliens do not qualify. <i>Medicaid Eligibility Handbook</i>, Sections 322.31, 322.312, 322.313, 322.32.</p> <p>In March 2004, Pennsylvania began the “Pilot Program for Pregnant Women” to provide managed care for pregnant women in order to prevent gaps in service and provide earlier enrollment in prenatal programs. <i>Medicaid Coverage for Pregnant Women</i> (available at www.dpw.state.pa.us/lowinc/medassistance/003671670.htm.) The Program requires the applicant to certify that she is a US citizen or an alien lawfully admitted for permanent residence by signing the Certification of Citizenship or Alien Status.</p>	<p>is also eligible through the end of the month in which the 60-day postpartum period ends. 55 Pa. Code § 140.142. <i>Medicaid Eligibility Handbook</i>, Section 318.1.</p> <p>For undocumented or illegal aliens, Medical Assistance extends only to Emergency Medical Conditions as defined by regulation. For labor and delivery services the County Assistance Office will authorize Medical Assistance beginning the date delivery is complete and mother and child are stabilized. There is no postpartum coverage. <i>See Medicaid Eligibility Handbook</i>, Sections 322.32 and 338.41.</p>	<p>Medical Assistance, satisfies the citizenship/alienage requirements, and satisfies residency requirements 55 Pa. Code §§ 140.21-140.31. <i>See Medicaid Eligibility Handbook</i>, Section 318.11. The “Pilot Program for Pregnant Women” has a streamlined application process that employs Form PA 600 PW (Application for Medicaid Coverage for Pregnant Women). <i>See Medicaid Coverage for Pregnant Women, supra</i> (links to the form are available at www.dpw.state.pa.us/lowinc/medassistance/003671670.htm.) The applicant must certify that she is a US citizen or an alien lawfully admitted for permanent residence by signing the Certification of Citizenship or Alien Status. <i>Id.</i></p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<i>Id.</i>		
Puerto Rico	Medicare is furnished to eligible individuals (qualified aliens) who are residents of Puerto Rico. I found no evidence of other state programs.		
Rhode Island	Section 42-12.3-3 of the General Laws of Rhode Island provides for medical assistance for pregnant women through the RIte Start program. The program provide Medicaid coverage through expanded family income disregards for pregnant women whose family income levels are between one hundred eighty-five percent (185%) and two hundred fifty percent (250%) of the federal poverty level. This section establishes a payor of last resort program to cover prenatal, delivery and postpartum care. The program shall cover the cost of maternity care for any woman who lacks health insurance coverage for maternity care and who is not eligible for medical assistance under title XIX of the Social Security Act including but not limited to a non-citizen pregnant woman lawfully admitted for permanent residence on or after August 22, 1996, without regard to the availability of federal financial participation, provided such pregnant woman satisfies all other eligibility requirements. The director shall promulgate regulations to implement this program. Excluded services under this paragraph will include, but not be limited to, induced	<p>The following services shall be provided pursuant to Section 42-12.3-3 of the General Laws of Rhode Island:</p> <ol style="list-style-type: none"> (1) Antepartum and postpartum care; (2) Delivery; (3) Cesarean section; (4) Newborn hospital care; (5) Inpatient transportation from one hospital to another when authorized by a medical provider; (6) Prescription medications and laboratory tests; <p>The department of human services shall provide enhanced services, as appropriate, to pregnant women as defined in this section, as well as to other pregnant women eligible for medical assistance. These services shall include: care coordination, nutrition and social service counseling, high risk obstetrical care, childbirth and parenting preparation programs, smoking cessation programs, outpatient counseling for drug-alcohol use, interpreter services, mental health services, and home visitation. The department of human services shall provide for extended family planning services for up to twenty-four (24) months postpartum. These services shall be available to women who have been determined eligible for RIte Start or for medical assistance under title XIX of the Social Security Act.</p>	<p>All pregnant women can qualify for Rhode Island’s health insurance program. RIte Care/RIte Share Fact Sheet: http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/RCRS/rcrs_factsheet_eng.pdf.</p> <p>A pregnant women can go to a local DHS office to apply or can print a copy of the application and apply by mail. (www.dhs.ri.gov) The applications are in English and Spanish. If pregnant, send in with the application a letter or other documentation signed by your doctor, physician’s assistant, registered nurse practitioner or midwife.</p> <p>Under state law, pregnant women can still be determined eligible for RIte Care, RIte Share or Medical Assistance, even if they do not show proof of citizenship and identity. However, their Medical Assistance will end at the end of their postpartum period if they do not bring in proof of citizenship and identity.</p> <p>http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/Citizenship/citizenship_overview.pdf.</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	abortion except to prevent the death of the mother.		
South Carolina	The state of South Carolina does not provide prenatal services.	Some hospitals and nonprofits have education programs but these are not state provided services.	South Carolina Appleseed Legal Justice Center P.O. Box 7187 Columbia, SC 29202 (803) 779-1113
South Dakota	South Dakota's SCHIP program is called CHIPs ("Children's Health Insurance Program")	Provides full Medical Assistance (i.e., Medicaid) coverage (doctor, hospital, mental health, drugs) and "Healthy Kids Klub" services (checkups, immunizations, etc.). http://dss.sd.gov/medicalservices/chip/ http://dss.sd.gov/medicalservices/recipientinfo/covered.asp http://dss.sd.gov/medicalservices/providerinfo/programs/healthykidsclub.asp	According to the Plan document (http://dss.sd.gov/medicalservices/docs/2002StateCHIPPlan.pdf), "Children must be residents of the State of South Dakota and meet the citizenship and immigration status requirements applicable to Medicaid." Section 4.1.5, above link. South Dakota only provides Medicaid eligibility to U.S. citizens and qualified aliens (after a five-year waiting period). See, S.D. Chart on Emergency Medicaid. The application is available online: http://dss.sd.gov/formspubs/docs/MEDELGBLTY/DSS-EA-301MCHIP.pdf Available for families making up to 200% of poverty level. http://dss.sd.gov/medicalservices/chip/
Tennessee	TennCare Tennessee's Medicaid program, TennCare, covers women who are pregnant. However, an individual must be a citizen of the United States, a naturalized citizen, certain American Indians born outside of the United States, or a qualified alien, unless applying for emergency medical services		Eligibility for TennCare and other Medicaid programs is decided by the Department of Human Services. All 95 counties have a DHS office and applications can be picked up by or mailed to the applicant: http://www.tennessee.gov/human_serv/st_map.html . Applicants can also apply online: https://fabenefits.dhs.tn.gov/vip/web/site/signupervlet?pagename=h

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>assistance as an illegal or undocumented alien or one lawfully admitted for residence who is not aged, blind, disabled, or under age eighteen (18). Aliens who entered the United States on or after August 22, 1996 have a five (5) year bar before potential eligibility for TennCare Medicaid unless they meet the exceptions to the five (5) year bar as outlined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Each applicant/recipient is required to provide documentary evidence of citizenship and identity when applying for medical assistance. Tenn. Comp. R. & Regs. 1240-03-03-.02; http://www.tn.gov/tenncare/mem-eligibility.html.</p>		<p>omepage.</p> <p>;</p>
Texas	<p>Medicaid</p> <p>The Texas Department of Human Services administers Medicaid benefits to pregnant women and children and parents and caretakers of children who are eligible to receive such benefits. The Texas Department of Human Services provides limited medical coverage for pregnant women through the Presumptive Medicaid for Pregnant Women Program. Texas Administrative Code § 354.1530(a).</p>	<p>Medicaid</p> <p>Pregnant women eligible to receive presumptive Medicaid may receive:</p> <p>Medically necessary services, except labor, delivery, and inpatient services. Texas Administrative Code § 354.1530(e).</p> <p>***</p> <p>All Texas Medicaid programs pay for:</p> <ul style="list-style-type: none"> • Regular medical and dental check-ups for minors; • Ambulance services; 	<p>Medicaid</p> <p>Pregnant applicants must meet all applicable eligibility requirements for pregnant woman as specified in the Medically Needy and Children and Pregnant Women Programs (see below). Texas Administrative Code § 354.1530(b).</p> <p>Pregnant applicants may apply at qualified provider sites. Texas Administrative Code § 354.1530(b).</p> <p><i>Medically Needy and Children and Pregnant Women Programs</i></p> <p>Immigrants with approved INS</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>SCHIP</p> <p>SCHIP offers health insurance to those families that earn too much to qualify for Medicaid but earn too little to afford private insurance.</p> <p>http://www.chipmedicaid.org/english/index.htm http://www.dshs.state.tx.us/mch/pdf/CHIP_Prenatal%20Care_Program_bullets.pdf</p> <p>WIC</p> <p>WIC provides nutrition education and counseling, nutritious foods, and assistance accessing health care to low-income women, infants, and children through the Special Supplemental Nutrition Program.</p> <p>http://www.dshs.state.tx.us/wichd/</p> <p>Emergency Medicaid</p> <p>Emergency Medicaid provides medical assistance to certain individuals regardless of immigration status.</p> <p style="text-align: center;">***</p> <p>Additional Information:</p> <p>Texas Department of Health and Human Services (512) 491-1867</p>	<ul style="list-style-type: none"> • Family planning; • Inpatient and Outpatient Hospital services; • Lab and X-ray services; • Services of certified nurse midwives, family and pediatric nurse practitioners; • Physicians; and • Dentists (when providing medical services). <p><i>Medically Needy and Children and Pregnant Women Programs</i></p> <p>Medicaid coverage begins on the earliest day of the month in which the application is received and it is determined that the applicant meets eligibility criteria. As for retroactive coverage:</p> <p>Pregnant woman’s coverage begins no earlier than the first day of the month in which the pregnancy began and ends the second month after the pregnancy terminates. Texas Administrative Code §§ 354.1578(2)(A) and 354.1559(2)(A).</p> <p>The newborn’s coverage begins no earlier than the child’s date of birth and ends the month of the first birthday, month that his mother’s Medicaid ends, or the month that he is no longer living with his mother. Texas Administrative Code §§ 354.1559(2)(B) and 354.1578(2)(B).</p> <p>SCHIP</p> <p>SCHIP offers benefits to children under the age of 19, including:</p> <ul style="list-style-type: none"> • Regular check-ups and 	<p>status may apply for medical assistance. Other immigrants admitted to the U.S. on or after August 22, 1996 are eligible for Medicaid for a seven-year period following entry to the Country (rather than waiting the 5 year period of eligibility for TANF). Texas Administrative Code §§ 354.1556 and 354.1577.</p> <p>[Note: Beginning July 1, 2006, Texas began verifying and recertifying the citizenship status of those individuals applying for or receiving Medicaid benefits. http://www.hhs.state.tx.us/medicaid/index.shtml]</p> <p>Applicants may include:</p> <ul style="list-style-type: none"> • Pregnant women age 19 or older with income less than 158% of the federal poverty limit; • Pregnant women under age 19 or children under age 1 with income less than 185% of federal poverty limit; • Children ages 1-5 with income less than 133% of federal poverty limit; • Children ages 6-18 with income less than 100% of federal poverty limit; • Newborns who live with their legal mothers who were recipients of Medicaid at the time the child was born; • Newborns born to mothers incarcerated in a Texas criminal justice facility; and • Children who are TANF-eligible except for the applied income of stepparent or grandparent with whom they live. <p>Applications are processed by the Texas Department of Human Services using the application</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
		<p>office visits;</p> <ul style="list-style-type: none"> • Prescription drugs and medical supplies; • Dental visits, cleanings, and fillings; • Access to medical specialists; • Shots and Immunizations; • Hospital Care and Services; • X-rays and lab tests; • Mental Health care; • Coverage for Special health needs; • Coverage for pre-existing conditions; and • Eye exams and eye glasses. <p>WIC</p> <p>Coverage includes nutrition education, nutritious foods, referrals to health and human services, breastfeeding support, and immunizations. Food benefits are issued for each client.</p> <p>http://www.dshs.state.tx.us/wich/d/gi/eligible.shtm#eligibility</p> <p>Emergency Medicaid</p> <p>Emergency Medicaid (see Emergency Medicaid chart) provides labor and delivery assistance to pregnant women regardless of immigration status. Texas Administrative Code § 354.2103</p>	<p>rules of TANF. Texas Administrative Code § 354.1575. http://www.dads.state.tx.us/forms/h1010-b/h1010-b.pdf</p> <p>SCHIP</p> <p>Adults who live with uninsured children may apply for CHIP benefits. Child must be under 19, Texas resident and a US citizen or legal permanent resident. <u>However, immigration status of the parents does not affect a child's eligibility and is not reported on the application form.</u></p> <p>Applicants can apply for SCHIP over the phone, fax, or mail to Texas Health and Human Services Commission. Apply online: https://www.texkid.org/CISS/ Apply by phone: 1-877-543-7669 (1-877-KIDS-NOW) Request an application: https://www.texkid.org/CISS/paperAppRequestForm.do?appSource=chipmedicaid</p> <p>WIC</p> <p>Applicants of WIC may include:</p> <ul style="list-style-type: none"> • Pregnant women; • Women who are breastfeeding a baby under 1 year of age; • Women who have had a baby in the past 6 months; and • Parents, step-parents, guardians, and foster parents of infants and children under the age of 5 can apply for their children. <p><u>Applicants must live in Texas but U.S. citizenship is not required.</u></p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
			<p>In most instances, applications must be made in person. Applicants should call (800) WIC-FORU or (800) 942-3678 to obtain the contact information of the WIC clinic near them. The WIC clinic will schedule an appointment with the applicant. Applicant should bring documentation of the household's source of income or wages, proof of address, identification for each person applying for WIC benefits. The appointment will consist of a health exam including height and weight measurement, a finger stick to screen for low iron, a medical and health history and a diet recall and history to determine nutritional risk.</p> <p>http://www.dshs.state.tx.us/wichd/gi/eligible.shtm#eligibility</p> <p>Emergency Medicaid The applicant should complete an Application for Assistance (Form 1010) and return it to a Texas Department of Human Services office or representative. Texas Administrative Code § 354.2103 http://www.dads.state.tx.us/forms/h1010-b/h1010-b.pdf</p>
US Virgin Islands	Virgin Islands Code, 19 V.I.C. § 35 provides that within 120 days after conception all pregnant women shall submit to an examination by a practicing physician subject to the supervision of the Commissioner of Health to determine their freedom from active venereal infection. If found infected they shall be treated as provided in section 33 of		<p>St. Croix: Rena Sarauw V.I. Medicare Coordinator/ V.I. SHIP Director Gov. Juan F. Luis Hospital & Medical Center 4007 Estate Diamond – 1st Floor St. Croix, VI 00820 Telephone: (340) 772-7368 Fax: (340) 772-9120 St. Thomas: Leonilda Jarvis V.I. SHIP Office Representative</p>

State	Programs that Provide Pre-Natal Services for Qualified and Non-Qualified Immigrants	Coverage	Eligibility/Application Process
	<p>this title.</p> <p>In the U.S. Virgin Islands, Medicaid is called the Medical Assistance Program (MAP). The Department of Health's Bureau of Health Insurance and Medical Assistance is the division responsible for administering Medicaid in the Virgin Islands.</p> <p>Eligibility for MAP is determined by the Certification Units and is based on family income, resources, and other factors. Examples are documents needed for eligibility determination are: 1) <i>Verification of U.S. Citizenship</i> and age and 2) <i>Verification of resources</i>. Other documents may be required as well.</p>		<p>V.I. SHIP Office Schneider Regional Medical Center 9048 Sugar Estate – 1st Floor St. Thomas, VI 00802 Telephone: (340) 714-4354 Fax: (340) 777-8510</p>

Utah	<p>Utah provides coverage for specific emergency services to non-citizens through its Emergency Medicaid program. <i>See</i> Emergency Services Only, for Non-Citizens, Utah Medicaid Program, <i>available at</i> http://health.utah.gov/medicaid/provhtml/emergency_medical.html. Delivery of a child is covered under this program for non-citizens, but not pre-natal or post-partum services. <i>See id.</i>; <i>see also</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), <i>available at</i> http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/Section</p>	<p>“Emergency” shall mean a medical condition for which the absence of immediate medical attention could reasonably be expected to result in death or permanent disability to the person, or in the case of a pregnant woman, to the unborn child. Emergency services shall be those rendered from the moment of onset of the emergency condition, to the time the person’s condition is stabilized at an appropriate medical facility, or death results. The definition of emergency services shall include labor and delivery services, but not pre-natal or post-partum services. Emergency services shall not include prolonged medical support, medical equipment, or prescribed drugs which are</p>	<p>Persons seeking assistance to pay for medical services may apply at the Department of Health offices or Medicaid outreach offices in most major hospitals and many area public health clinics. Department of Health offices are located at Department of Workforce Services buildings in some communities. People may call the Medicaid Information Line to find out the location of the nearest office.</p> <p>For information see http://health.utah.gov/medicaid/</p>
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	<p>nI-1-08.pdf.</p> <p>Emergency Medicaid refers to coverage for individuals who meet all of the other eligibility criteria for one of the state’s Medicaid programs, but who are not U.S. citizens or qualified resident aliens. Emergency Medicaid only covers emergency medical services. Coverage is provided for the month the emergency occurs and is not provided ongoing. Pregnant women can apply one month before the expected date of delivery and receive coverage for the labor and delivery charges. An infant born to a woman eligible for emergency Medicaid is eligible for Medicaid through the month of the baby's first birthday. <i>See</i> Utah Medical Programs Summary, at 12 (Jul. 2010), available at http://health.utah.gov/medicaid/pdfs/medicalprograms07-10.pdf.</p> <p>To qualify for Emergency Medicaid:</p> <ul style="list-style-type: none"> ○ Individual must be a resident of Utah; ○ Individual must show that they have had emergency medical services in the month they apply or in the 90 day period before the application date; and ○ Individual must meet the other eligibility requirements for the medical program needed (e.g., pregnant woman would need to meet the eligibility requirements for the Prenatal (PN) or Pregnant Women (PG) programs). 	<p>required beyond the point at which the emergency condition has been resolved. Emergency services also shall not include long term care or organ transplants.</p> <p><i>See</i> Utah Medicaid Provider Manual, at 13-7 (Apr. 2005), <i>available at</i> http://health.utah.gov/medicaid/manuals/pdfs/Medicaid%20Provider%20Manuals/Section%20I%20(All%20Providers)/Archive/2008/SectionI-1-08.pdf.</p> <p>Pregnant women who qualify for PN Emergency Medicaid may be eligible for emergency services at any time during their pregnancy if they have an emergency need. If the emergency need occurs in any month other than the month before the expected delivery, the case must be closed once the emergency has been resolved. The pregnant woman must reapply and eligibility must be redetermined to cover a subsequent emergency or the actual delivery.</p>	
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	<p><i>See</i> http://jobs.utah.gov/customereducation/services/medicaid/ncitizen.html.</p>		
Vermont	<p>Vermont does not have a program for routine prenatal care to non-citizens. In Vermont, an individual who does not meet the citizenship requirement is eligible for emergency services, provided such care and services are not related to either an organ transplant procedure or routine prenatal or post-partum care, if both of the following conditions are met:</p> <p>A. The noncitizen has, after sudden onset, a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:</p> <ul style="list-style-type: none"> . serious jeopardy to the patient's health, . serious impairment of bodily functions, or . serious dysfunction of any bodily organ or part. <p>The noncitizen must meet all other eligibility requirements for Medicaid except verification of alien status and, for illegal noncitizens, verification of a social security number.</p>	<p>“Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition. “Emergency medical condition” means the sudden and, at the time, unexpected onset of an illness or medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by the prudent layperson, who possess an average knowledge of health and medicine, to result in:</p> <ul style="list-style-type: none"> a. placing the member's physical or mental health in serious jeopardy; or b. serious impairment to bodily functions; or c. serious dysfunction of any bodily organ or part. 	<p>Any individual who wants Medicaid must file a Medicaid application with the Department for Children and Families:</p> <p>Vermont Department for Children and Families Economic Services Division 103 South Main Street Waterbury, VT 05676-1201</p> <p>1-800-479-6151; mybenefits.vt.gov.</p>
Virginia	<p>Nonqualified aliens are eligible for Medicaid coverage of emergency medical care only. <i>See</i> 12 Va. Admin. Code § 30-50-310(A).</p>		

	Under Virginia law, emergency treatment of a medical condition for certain qualified aliens affected by five-year bar and for nonqualified aliens does not include routine prenatal or postpartum care. See 12 Va. Admin. Code § 30-50-310(B).		
Washington	<p>Medical Assistance – Pregnancy Medical Program</p> <p>All aliens may receive prenatal care in Washington regardless of immigration status (lawfully present in the U.S. or not). To receive these pregnancy benefits meet income requirements standard income and residency requirements.</p> <p>Pregnant women are eligible for categorically needed scope of care under the non-citizen pregnant women's program, if they are not eligible for Medicaid because of citizenship or immigration status. This includes undocumented women.</p> <p>For more information see: http://hrsa.dshs.wa.gov/Eligibility/OVERVIEW/MedicalOverviewWomen%27sHealth.htm</p>	<p>Medical Assistance – Pregnancy Medical Program</p> <p>A woman who was eligible for medical coverage on the last day of pregnancy and received medical coverage on the last day of pregnancy is eligible for postpartum care for a minimum of 60 days from the end of her pregnancy. Wash. Admin. Code § 388-462-0115. This extension continues through the end of the month in which the sixtieth day falls. Wash. Admin. Code § 388-462-0015.</p> <p>A woman who was eligible for medical coverage on the last day of pregnancy is eligible for family planning services for twelve months from the end of pregnancy. Wash. Admin. Code § 388-462-0115.</p> <p>The newborn is covered for medical services under the mother's medical identification card during the mother's post partum period as long as the mother received medical coverage at the time of the baby's birth.</p>	<p>Medical Assistance – Pregnancy Medical Program</p> <p>A person can apply for pregnancy medical benefits at the local community services office or online.</p> <p>To locate a local community services office see: https://fortress.wa.gov/dshs/f2ws03esaapps/onlinecso/findservice.asp</p> <p>For more information on the online application see: https://fortress.wa.gov/dshs/f2esaapps/esaosa/</p>
West Virginia	<p>Women, Infants & Children Program (“WIC”)</p> <p>The WIC Program provides supplemental foods, nutrition education and referrals to health care, at no cost, to low-income pregnant, breastfeeding and</p>	<p>WIC services include: (i) nutrition counseling and education; (ii) breastfeeding promotion and support; (iii) health screening; (iv) medical and social service referrals; and (v) monthly food packages.</p>	<p>In order to qualify for this benefit program, you must be a resident of the State of West Virginia, pregnant, breastfeeding and postpartum woman, infant or child up to 5 years of age and: (1) are individually determined by a health professional to be at nutrition risk; and, (2) meet an income standard, or are</p>

	<p>postpartum women, infants, and children up to age 5 who are determined to be at nutritional risk. WIC does not distinguish between the eligibility of qualified and non-qualified immigrants.</p> <p>Nutrition risk is any medical or health problem which can be corrected or lessened by proper amounts and types of food intake. Examples of nutrition risk are: (i) low iron levels; (ii) insufficient growth, i.e. low weight for age, low weight for height; (iii) premature delivery; and (iv) inadequate dietary intake (types or amounts of food)</p> <p>Link to website: http://ons.wvdhhr.org/</p>		<p>determined automatically income eligible.</p> <p>Women may apply for the program through the following website: http://ons.wvdhhr.org/Applicant/BecomeaWICParticipant/tabid/1144/Default.aspx</p>
Wisconsin	<p>BadgerCare Prenatal Program for pregnant women: The BadgerCare Prenatal Program provides health care for pregnant women who have been denied Wisconsin Medicaid because of their immigration or citizenship status. This program will pay for prenatal care and labor and delivery. BadgerCare coverage terminates at the end of the pregnancy. http://www.dhs.wisconsin.gov/medicaid/Publications/p-10164.pdf</p>		<p>Apply online at access.wi.gov.</p> <p>Apply in person or by phone/mail/fax at county/tribal human or social services department.</p>
Wyoming	<p>Medicaid EqualityCare is a state public health insurance program designed to help pay for certain health care services and is available to both qualified and non-</p>	<p>Coverage questions may be answered by calling the EqualityCare Client Help Line at 1-800-251-1269. For emergency services coverage, the emergency center would need to diagnose the situation an emergency in over for the</p>	<p>EqualityCare Applicants obtain an application and submit it to the their local Department of Family Services (DFS) office. Applications can be obtained through a DFS office or at a Public Health office,</p>

	<p>qualified aliens.</p> <p>Non-qualified aliens are eligible for emergency care services under EqualityCare, provided they meet the income guidelines set forth. Emergency services are those necessary to prevent the death of serious impairment of an individual. <i>See</i> Wy. Medicaid Rules Ch. 26, Sec. 4 (vv). Childbirth may be considered an emergency service, although prenatal care would not be and would not be covered.</p> <p>Kid Care CHIP Kid Care CHIP is a public health plan designed to cover children in Wyoming who meet specified eligibility criteria. Wyoming follows federal guidelines as to alien eligibility and research indicated that Kid Care CHIP does not cover fetuses.</p>	<p>medical bills to be covered.</p>	<p>Women, Infants and Children office, or various doctors' offices. <i>See</i> Wy. Stat. Ann. § 42-4-106.</p> <p>Applications will be reviewed by a benefit specialist who will determine eligibility. Applicants who are eligible for EqualityCare will receive a letter explaining the coverage. Applicants who are determined to be ineligible will receive a letter explaining the reason for the denial. <i>See</i> Wy. Stat. Ann. § 42-2-106.</p> <p>If a request for medical services (childbirth) was denied by the Office of Medicaid, a request for an administrative hearing must be made in writing and include the individual's name, address and the reason for the hearing request. The hearing request should be mailed to: Office of Medicaid, 2300 Capitol Avenue, Cheyenne, WY 82002.</p> <p>Requests for administrative hearings will be reviewed, and if a hearing is granted, notice will be sent regarding the date and time of the hearing.</p>
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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law
 4910 Massachusetts Avenue NW · Suite 16, Lower Level · Washington, DC 20016
 (o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

D. TANF

1. Eligibility for State Funded TANF Replacement

Eligibility for State Funded TANF Replacement Programs for Immigrant Crime Victimsⁱ				
	Qualified Immigrantsⁱⁱ	VAWAⁱⁱⁱ	PRUCOL (includes VAWA, T & U-Visa Applicants)^{iv}	Deeming^v
States				
Alabama	No	No	No	No
Alaska	No	No	No	No
Arizona	No	No	No	No
Arkansas	No	No	No	No
California	Yes	Yes	Yes	Maybe
Colorado	No	No	No	No
Connecticut	Yes* requires pursuit of citizenship	Yes	No	Maybe
Delaware	No	No	No	No
District of Columbia	No	No	No	No
Florida	No	No	No	No
Georgia	No	No	No	No
Hawaii	No	No	No	No
Idaho	No	No	No	No
Illinois	Yes* for abused immigrants only	Yes	No	No
Indiana	No	No	No	No
Iowa	Yes* abused immigrants only	Yes	No	No
Kansas	No	No	No	No
Kentucky	No	No	No	No
Louisiana	No	No	No	No
Maine	Yes* must meet hardship criteria, including seniors, disabled & victims of domestic violence	Yes	Yes* must meet hardship criteria, including seniors, disabled & victims of domestic violence	Maybe
Maryland	Yes	Yes	No	Maybe
Massachusetts	No	No	No	No
Michigan	No	No	No	No

	Qualified Immigrants^{vi}	VAWA^{vii}	PRUCOL (includes VAWA, T & U-Visa Applicants)^{viii}	Deeming^{ix}
States				
Minnesota	Yes** LPRs receiving benefits must enroll in literacy and civics classes and pursue citizenship	No	Yes	Maybe
Mississippi	No	No	No	No
Missouri	No	No	No	No
Montana	No	No	No	No
Nebraska	No	No	No	No
Nevada	Yes* abused immigrants only	Yes	No	No
New Hampshire	No	No	No	No
New Jersey	Yes* abused immigrants only	Yes	Yes* Those who resided in the US on or before Aug. 22, 1996 only.	No
New Mexico	Yes	Yes	No	Maybe
New York	Yes	Yes	Yes	No
North Carolina	No	No	No	No
North Dakota	No	No	No	No
Ohio	No- including those who have completed the 5 year bar, unless they are persons under an order of supervision of the court	No	No	No
Oklahoma	No	No	No	No
Oregon	Yes	Yes	No- abused immigrants only	Maybe
Pennsylvania	Yes	Yes	Yes	Maybe
Rhode Island	No	No	No	No
South Carolina	No	No	No	No
South Dakota	No	No	No	No

	Qualified Immigrants ^x	VAWA ^{xi}	PRUCOL (includes VAWA, T & U-Visa Applicants) ^{xii}	Deeming ^{xiii}
States				
Tennessee	Yes* abused immigrants only	Yes	No	No
Texas	No	No	No	No
Utah	Yes	Yes	No	Maybe
Vermont	No	No	No	No
Virginia	No	No	No	No
Washington	Yes**	Yes	Yes	Maybe
West Virginia	No	No	No	No
Wisconsin	Yes- family eligibility is determined by parents' immigration status	Yes	No	Maybe
Wyoming	Yes	Yes	No	Maybe
Puerto Rico	No	No	No	No
Guam	No	No	No	No

* See exceptions and bars to eligibility - National Immigration Law Center, State-Funded TANF Replacement Programs, Table 8, August 2011, available at: http://www.nilc.org/guide_tanf.html

**Lawful Permanent Residents (LPR) only.

ⁱThis chart was developed by Benish Anver and Leslye E. Orloff (March 12, 2013).

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ⁱⁱ **Qualified Immigrants**– are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty (parent/child of such battered child/spouse is also “qualified”); and (5) victims of trafficking and their derivative beneficiaries who have obtained a T visa or whose application for a

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

T visa sets forth a *prima facie* case. (A broader group of trafficking victims who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.) See National Immigration Law Center, State-Funded TANF Replacement Programs, Table 8, August 2011, available at: http://www.nilc.org/guide_tanf.html (full details of programs available in states provided by NILC).

iii **Violence Against Women Act (VAWA)**– includes: 1. VAWA self-petitioners, as defined by INA § 101(a)(51); 2. VAWA cancellation of removal, INA § 240A; 3. VAWA suspension of deportation, INA § 244(a)(3)(as in effect prior to March 31, 1997); 4. An immigrant who has been subjected to battering or extreme cruelty, whose spouse or parent filed a family based visa petition for them, which is pending and sets out a prima facie case for approval or has been approved. The battery and extreme cruelty could have been perpetrated by the spouse or parent or a member of the spouse or parent’s family residing in the same household as the victim. All immigrants applying for benefits under VAWA must demonstrate a substantial connection between the battering or extreme cruelty and the need for benefits.

iv **PRUCOL or Permanently Residing in the U.S. Under the Color of Law**– is not an immigration status, but a benefit eligibility category. The term, which generally means that U.S. Citizenship and Immigration Services is aware of a person’s presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

v **Deeming**– in some cases, a sponsor’s income and/or resources may be added to the immigrant’s in determining eligibility. Exceptions from deeming may apply.

E. Food Assistance

1. State-Funded Food Assistance Programs (NILC)

TABLE 12
State-Funded Food Assistance Programs

This table lists the state-funded programs that provide nutrition assistance to immigrants who are not eligible for coverage under the federally funded Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program. Unless otherwise noted, state-funded assistance is provided at the federal SNAP benefit level.

(Information updated JUNE 2013)

STATE	ELIGIBLE IMMIGRANTS
California	“Qualified” immigrants, lawful temporary residents, victims of trafficking, U visa/interim relief applicants, and U visa holders. Eligibility for this program may be affected by deeming.
Connecticut	Immigrants ineligible for federal food stamps (SNAP) due to the 1996 federal welfare law eligible for food assistance at 75% of the federal amount. Immigrants who entered the U.S. on or after Apr. 1, 1998, must meet a 6-month residency requirement.
Maine	Immigrants ineligible for federal food stamps (SNAP) due to the 1996 federal welfare law and PRUCOLs. Individuals applying after July 1, 2011, must meet hardship criteria in order to qualify, which includes exceptions for seniors, persons with disabilities, survivors of domestic violence and other hardship exceptions to be defined by rule.
Minnesota	Lawfully residing immigrants who are either 50 years or older or are receiving TANF. (The TANF program combines cash and food assistance.) Must take steps toward citizenship. Eligibility for this program may be affected by deeming.
Washington	“Qualified” immigrants, PRUCOLs, and lawfully present immigrants eligible for nutrition assistance at 50 percent of the federal amount. Eligibility for this program may be affected by deeming.

(rev. 6/13)

Key Terms Used in Table

“Qualified” immigrants – are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also “qualified”; and (5) victims of trafficking and their derivative beneficiaries who have obtained a T visa or whose application for a T visa sets forth a *prima facie* case. (A broader group of trafficking victims who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.)

“PRUCOL” or permanently residing in the U.S. under color of law – is not an immigration status, but a benefit eligibility category. The term, which generally means that the Department of Homeland Security is aware of a person’s presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor’s income and/or resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

F. SSI Benefits (NILC)

1. State-Funded SSI Replacement Programs

TABLE 9
State-Funded SSI Replacement Programs

This table lists the state-funded programs that provide cash assistance to immigrants who are not eligible for coverage under the federal Supplemental Security Income (SSI) program. In many other states, General Assistance and similar programs may fill in some of the gaps for immigrants who are ineligible for federally funded Supplemental Security Income (SSI). The benefit levels, however, are generally much lower than those provided by SSI, and other restrictions and time limits may apply. *(Unless otherwise indicated, information updated March 2011)*

STATE	ELIGIBLE IMMIGRANTS
California	“Qualified” immigrants, PRUCOLs, victims of trafficking, U visa/interim relief applicants, and U visa holders who are ineligible for federal SSI. Benefit levels for individuals are \$10 less than the federal SSI and state SSI supplement. Eligibility for this program may be affected by deeming.
Hawaii	“Qualified” immigrant seniors and persons with disabilities can receive Aid to the Aged, Blind and Disabled (AABD), which provides \$418 per month.
Illinois	“Qualified” immigrants who were lawfully residing in the U.S. before Aug. 22, 1996, were not receiving SSI on that date, are 65 or older, and are determined ineligible for SSI because they do not have a disability. Eligibility for this program may be affected by deeming. Refugees, persons granted asylum or withholding of deportation/removal, Cuban and Haitian entrants, and Amerasian immigrants, who would be eligible for SSI, but for the expiration of the seven-year eligibility period, can receive up to \$500 per month under Illinois’ Aid to the Aged, Blind, and Disabled Program.
Maine	“Qualified” immigrants and PRUCOLs who are ineligible for federal SSI. Benefit levels for individuals are equal to the federal SSI and state SSI supplement.
Nebraska	“Qualified” immigrants, regardless of date of entry into the U.S. Eligibility for this program may be affected by deeming.
New Hampshire	“Qualified” immigrants who entered the U.S. on or before Aug. 22, 1996, and those who entered after Aug. 22, 1996 who have been in “qualified” immigrant status for 5 years. Refugees, asylees, Cuban/Haitian entrants, Amerasian immigrants and persons granted withholding of deportation/removal are eligible without regard to their date of entry into the U.S.

(rev. 03/11)

Key Terms Used in Table

“Qualified” immigrants – are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also “qualified.”

“PRUCOL” or permanently residing in the U.S. under color of law – is not an immigration status, but a benefit eligibility category. The term, which generally means that U.S. Citizenship and Immigration Services is aware of a person’s presence, but has no plans to deport/remove him or her, has been interpreted differently depending on the benefit program and jurisdiction.

Deeming – in some cases, a sponsor’s income and/or resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.

NOTE: The information in this table is subject to change. Please check with your state or local social services agency or legal assistance office regarding the most current rules.

Part V: Drivers Licenses and Social Security Numbers

A. Acceptable Forms of Identification for State Driver's License/Identification Card

Acceptable Forms of Identification for State Drivers License/Identification Card

By Angela Baker and Leslye Orloff (March 2013)



	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada
	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV
Social Security Card or a letter confirming ineligibility	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
U.S. Certificate of Naturalization	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x		x	x	x	x
U.S. Certificate of Citizenship	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x	x	x	x		x	x	x	x
Permanent or Temporary Resident Alien Card	x			x	x	x	x	x	x		x	x	x	x	x	x	x		x		x	x	x			x	x	x
Green Card - I-551					x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x	x
Valid foreign passport with valid U.S. Immigration document	x	x			x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x	x
Foreign Birth Certificate (with approved English translation)																												
Current International driver license or permit	x									x																		
Marriage License	x		x	x	x		x	x	x		x	x		x	x	x				x			x	x			x	
Documents from court record (divorce, adoption, name-change, bankruptcy decree)	x		x	x	x	x	x	x	x		x	x		x	x	x				x						x		
State Certificate of Birth (foreign born)			x																									
A certificate, declaration, or registration document verifying the formation of a domestic partnership					x						x									x								
Employment authorization document (I-688A, I-688B, I-766)	x	*	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		**	x	x	x
Valid Visa (with supporting documents) authorizing presence in the U.S. for a period exceeding 160 days	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x			x		
Valid I-94 arrival/departure record issued by DHS	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x			x	x	x
Original I-797 (notice of action) issued by DHS, showing approval of change of status or extension of stay	x			x	x	x		x	x	x	x		x	x					x	x	x	x				x		
Original I-797 (notice of action) issued by DHS, evidencing timely filing of an extension petition	x				x				x				x						x			x						
Refugee Travel Document I-571			x	x	x	x	x	x	x	x	x		x		x		x	x	x	x	x	x	x			x	x	x
Immigration judge's order granting asylum; DS-20					x	x			x	x		x			x		x		x		x							
Mexican Board Crossing Card with Valid I-94					x														x				x					
Valid DHS/TSA Transportation Worker Identification Credential (TWIC)											x							x	x		x							
Travel document Indicating Permit to Re-enter- I-327															x			x	x		x	x	x			x		x
Pending application for status as a special immigrant juvenile																			x									
Letter or notice acknowledging person as a victim of crime pursuant to Victims of Trafficking and Violence Protection Act of 2000, or letter showing a person has a prima facie case pursuant to VAWA																			x									
Authorization for an Alien entry into U.S. and supporting immigration documentation																												
I-220b																												
Follows the REAL ID Act	x																											

Notes: * No information listed on doa.alaska.gov

** Non U.S. Citizens must present the appropriate immigration documents indicating applicant's status.

*** International applicants can only obtain a driver's license or identification card at an international customer office.

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Acceptable Forms of Identification for State Drivers License/Identification Card

By Angela Baker and Leslye Orloff (March 2013)



	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Social Security Card or a letter confirming ineligibility	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
U.S. Certificate of Naturalization		x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
U.S. Certificate of Citizenship		x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
Permanent or Temporary Resident Alien Card	x	x	x	x	x	x	x	x	x		x		x		x	x	x	x	x		x	x
Green Card - I-551	x	x	x	x	x	x	x	x	x	x	x				x	x	x	x	x	x	x	x
Valid foreign passport with valid U.S. Immigration document	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x	x	x	x	x	x
Foreign Birth Certificate (with approved English translation)			x				x				x					x	x		x			
Current International driver license or permit	x										x								x			
Marriage License	x	x	x		x	x	x	x	x			x	x				x	x	x	x		
Documents from court record (divorce, adoption, name-change, bankruptcy decree)	x	x	x		x	x							x					x	x	x		
State Certificate of Birth (foreign born)		x																				
A certificate, declaration, or registration document verifying the formation of a domestic partnership		x										***										
Employment authorization document (I-688A, I-688B, I-766)	x	x		x	x	x	x	x			x				x	x	x	x	x	x	x	x
Valid Visa (with supporting documents) authorizing presence in the U.S. for a period exceeding 160 days				x	x		x	x	x		x		x	x	x	x	x	x	x	x	x	x
Valid I-94 arrival/departure record issued by DHS	x	x		x	x	x	x	x	x		x				x	x	x	x	x	x	x	
Original I-797 (notice of action) issued by DHS, showing approval of change of status or extension of stay		x			x		x		x							x		x				x
Original I-797 (notice of action) issued by DHS, evidencing timely filing of an extension petition																x						x
Refugee Travel Document I-571	x	x		x		x	x		x						x	x	x	x	x	x	x	x
Immigration judge's order granting asylum; DS-20	x	x			x	x	x		x						x	x	x	x	x			x
Mexican Board Crossing Card with Valid I-94	x					x		x											x			
Valid DHS/TSA Transportation Worker Identification Credential (TWIC)																		x	x			x
Travel document Indicating Permit to Re-enter- I-327		x		x	x				x						x			x	x	x	x	
Pending application for status as a special immigrant juvenile																						
Letter or notice acknowledging person as a victim of crime pursuant to Victims of Trafficking and Violence Protection Act of 2000, or letter showing a person has a prima facie case pursuant to VAWA																						
Authorization for an Alien entry into U.S. and supporting immigration documentation					x																	
I-220b					x																	
Follows the REAL ID Act								x												x	x	

Notes: * No information listed on doa.alaska.gov

** Non U.S. Citizens must present the appropriate immigration documents indicating applicant's status.

*** International applicants can only obtain a driver's license or identification card at an international customer office.

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Acceptable Forms of Identification for State Drivers License/Identification Card
By Angela Baker and Leslye Orloff (March 3013)

State		State Requirements	Additional Information
Alabama	AL	Two forms of ID, at least one must contain a photograph. Option A: One primary identification plus social security card. Option B: Three forms of non-photo identification (one primary, plus social security card, plus one non-photo ID).	
Alaska	AK	Applicant must provide documentary proof of: (1)primary: legal name and date of birth, (2) secondary item, (3) current residence address, and (4) social security card	
Arizona	AZ	Two forms of ID, at least one must contain a photograph. Option A: One primary identification plus social security card. Option B: Three forms of non-photo identification (one primary, plus social security card, plus one non-photo ID).	
Arkansas	AR	Applicant must provide a social security card. If the applicant is not eligible for a social security number, then the applicant must sign an affidavit stating they do not have a social security number. Additionally, all applicants are required to provide proof of legal presence, and proof of identity (two primary documents, or alternatively, one primary and one secondary document).	
California	CA	Applicant must provide a social security card , verify their date of birth and legal presence in the United States .	
Colorado	CO	Proof of identity, age, name, and legal presence. Plus a social security card and proof of Colorado residency. A single document or multiple documents are required to prove all required elements. If an applicant cannot prove all required elements, then they can request to go through the "Exceptions Processing" with additional or alternative documents.	
Connecticut	CT	Two forms of identification (at least one must be primary), social security number, proof of legal presence, and state residency.	
Delaware	DE	Social security number, if eligible, two proofs of residency, one primary document and one secondary document.	
Florida	FL	Social security number, if eligible, two proofs of residency, one primary document and one secondary document.	
Georgia	GA	Social security number, if eligible, one primary document and proof of residency. Non-citizens must present proof of identity and lawful presence in the United States	
Hawaii	HI	Social security number, if eligible, identity, and proof of legal presence.	Drivers license will be valid for the verified length of stay. If the expiration date cannot be verified, then the license will expire one year from the date of entry into the United States.
Idaho	ID	Proof of residency lawful status in the United States, age and identity. An examiner may require a combination of primary and secondary documents.	
Illinois	IL	Social security number, proof of legal name, date of birth, and residency. The number of documents required may vary.	
Indiana	IN	Social security number, proof of identity, lawful status in the United States, and two proof of residency documents.	
Iowa	IA	Social security number, one primary, and one secondary document.	
Kansas	KS	Social security number, proof of identity, lawful status in the United States, proof of residency, and proof of principal residence address.	
Kentucky	KY	Social security number, proof of identity, legal status, and residency.	A license or ID card issued to a non U.S. citizen will be issued to expire with their BCIS documents. Exceptions to this are "Special Status Individuals" (Asylee, Refugee, Paroled in Public Interest, or I-1). These individuals will receive a 4 year license or I.D. If the persons BCIS documents are issued for an indefinite period of time, but the person is not considered a "Special Status", the license or ID will be valid for a 2 year period.
Louisiana	LA	Proof of identity, social security number,	
Maine	ME	Social security number, proof of legal presence, and residency.	A credential will not be issued if the authorized period of admission is less than a 120 days. A credential will expire on the date indicated as the expiration date of the authorized period of admission. If the authorized period of admission is duration of status, the issued credential will expire four (4) years from date of issuance. If the authorized period of admission is neither, duration of status or indicated by a specific date, the issued credential will expire 120 days from the date of issuance.
Maryland	MD	Social security number, proof of identity, lawful presence, and residency.	

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Acceptable Forms of Identification for State Drivers License/Identification Card
By Angela Baker and Leslye Orloff (March 3013)

State		State Requirements	Additional Information
Massachusetts	MA	Social security number, three forms of identification, and proof of residency.	
Michigan	MI	Social security number, identity, legal presence, and residency.	
Minnesota	MN	One primary and one secondary document.	
Mississippi	MS	A certified state issued birth certificate, social security number, and two proofs of residency.	
Missouri	MO	Proof of identity, social security number, and residency.	
Montana	MT	Social security number, proof of identity, authorized presence within the United States, and residency.	
Nebraska	NE	Social security number, proof of identity, and residency.	
Nevada	NV	Social security number, proof of identity, and residency.	
New Hampshire	NH	One primary, secondary, and proof of residency.	
New Jersey	NJ	Social security number, proof of identity, and residency.	
New Mexico	NM	Social security number, proof of identity, and two proofs residency.	
New York	NY	Social security number, proof of identity, and date of birth.	
North Carolina	NC	Social security, proof of age, identity, residency, and liability insurance.	
North Dakota	ND	Social security number, proof of identity, lawful presence, and residency.	
Ohio	OH	Social security number, proof of identity, legal presence, and residency.	
Oklahoma	OK	Proof of identity and legal presence.	License will be labeled as "temporary" and will be issued for the period of time of the person is authorized to be in the United States or for four years, whichever is shorter.
Oregon	OR	Social security number, proof of identity, lawful presence, and residency.	If you do not have the required documents to prove your current full legal name, then you may be eligible for a temporary permit
Pennsylvania	PA	Social security number, proof of identity, and two proofs of residency. Non-U.S. Citizens must bring ALL of the following: Social security card, valid passport, all original USCIS/immigration documents, written verification if employed.	
Rhode Island	RI	Social security number, identity, and residency.	
South Carolina	SC	Social security number, identity, legal presence, and residency.	The expiration date of the driver's license will be determined by the applicant's authorized period of stay in the United States or the expiration date of the applicant's employment authorization document, but will not exceed 5-years.
South Dakota	SD	Social security number, identity, and residency.	
Tennessee	TN	Social security number, valid driver license from another state, proof of identity, legal presence, and residency.	
Texas	TX	Social security number, identity, legal presence, and residency.	Limited term licenses and ID cards issued to temporary visitors expire when the person's period of lawful presence expires.
Utah	UT	Social security number, identity, and residency.	If you are an undocumented Immigrant in the United States, you must provide the following documentation to obtain a Driving Privilege Card (DPC) or Learner Permit:
Vermont	VT	Social security number, proof of identity, lawful presence, and residency.	
Virginia	VA	Social security number, proof of identity, legal presence, and residency.	If an applicant is authorized to be in the U.S. for an indefinite period of time, DMV will issue a driver's license or ID card valid for one year.
Washington	WA	Social security number, proof of identity, and residency.	Even if an individual's stay in the U.S. is limited in duration, DMV will issue a driver's license or ID card for the amount of time that the individual is authorized to remain in the U.S.
West Virginia	WV	Social security number, identity, and residency.	
Wisconsin	WI	Proof of identity, legal presence, and residency.	
Wyoming	WY	Social security number and proof of identity.	

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)
American University, Washington College of Law

4801 Massachusetts Avenue NW · Washington, D.C. 20016
(o) 202.274.4457 · (f) 202.274.4226 · niwap@wcl.american.edu · wcl.american.edu/niwap

**B. U.S. Department of Health & Human Services
Memo on SSN**

U.S. Department of Health & Human Services

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Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits

DEPARTMENT OF HEALTH AND HUMAN SERVICES DEPARTMENT OF AGRICULTURE

Dear State Health and Welfare Officials:

SUBJECT: Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits

Since 1993, the Clinton Administration and states have worked diligently to ensure that eligible persons are enrolled in and have access to federal benefit programs and services. Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp supports are critical for all eligible low-income families, especially those trying to make the transition from welfare to work. The Administration will continue to work with states to reduce and eliminate access barriers that discourage the enrollment of all eligible program participants, including those in immigrant families. For example, in May 1999, the Immigration and Naturalization Service (INS) issued comprehensive guidance regarding the standards used for making public charge determinations. The public charge guidance was issued to address concerns in immigrant communities about the consequences of participating in public assistance programs such as TANF, Medicaid, SCHIP and Food Stamps. We also have worked with states to simplify and streamline their application forms and processes and to reduce administrative barriers to enrollment.

Recent information, however, has focused attention on another barrier: that U.S. citizen children and other eligible persons who live in immigrant families still may be deterred from applying for benefits because they are concerned about responding to certain questions on application forms regarding the disclosure of immigration status and social security numbers (SSNs) for family members who are not seeking assistance. This concern appears to stem from uncertainty among immigrant families regarding the confidentiality of information provided to states and the fear that states may provide information about family members to the INS. Although federal law may sometimes require states to ask these questions of applicants, many states are requiring non applicants to disclose immigration status and/or SSNs, even though this information is not legally required. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color and national origin by federal fund recipients. To the extent that states' application requirements and processes have the effect of deterring eligible applicants and recipients who live in immigrant families from enjoying equal participation in and access to these benefit programs based on their national origin, states inadvertently may be violating Title VI.

To help states understand their responsibility for enrolling eligible children and families, and to reduce and eliminate access barriers, we are providing this guidance and the accompanying set of Questions and Answers (Qs&As). Together, they clarify when a state is required to request information about citizenship, immigration status, and social security numbers (SSNs) on joint and single-program applications, when a state is not required to do so, and the circumstances under which a state mayor may not deny benefits when an applicant does not provide the information that the state has requested. The guidance and the accompanying Qs&As also clarify policy in the TANF program and set forth new policy in the Food Stamp program intended to provide states with greater flexibility to design their application forms and procedures to eliminate access barriers for eligible children and adults in immigrant families.

Section I of the guidance sets forth basic rules regarding inquiries into citizenship and immigration status during the application process. Section II addresses the application of the basic requirements of the Privacy Act to inquiries regarding social security numbers on benefit application forms. Section III outlines the content of the accompanying set of Qs&As. These Qs&As are an integral and important part of this guidance, as they detail the specific rules and how those rules are applied in the Medicaid, SCHIP, TANF and Food Stamp programs. Finally, Section IV outlines specific suggestions to help states make changes to their application forms and processes to eliminate access barriers in conformity with this guidance.

I. Application Requirements and Inquiries Regarding Citizenship or Immigration Status

Under federal law, states are required to establish the citizenship and immigration status of applicants for Medicaid (except emergency Medicaid), SCHIP, TANF and Food Stamps. However, states may not require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigration status.

Thus, for example, in the Medicaid program, if benefits are being sought only for the child, the child is considered the "applicant," and the state is required to establish the citizenship and immigration status of the child, but not the child's parents. Further, the state may not deny benefits to the child, if otherwise eligible, because the child's parents have not provided information to establish that they are citizens or qualified immigrants.

It is important to underscore that each federal benefit program has somewhat different rules and policies regarding who is and is not considered "an applicant." While Medicaid and SCHIP allow -- indeed encourage -- individual children to apply for and receive benefits, TANF and Food Stamps, as a general rule, require families or households to apply for benefits as a unit. The accompanying Qs&As explain in detail how the rules regarding the requirements for establishing citizenship and immigration status are applied within each benefit program.

II. Application Requirements and Inquiries Regarding Social Security Numbers

States must comply with the Privacy Act and other federal laws when seeking disclosure of an individual's SSN. Under the Privacy Act, ? 7(a),

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states are prohibited from denying an individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number (SSN) unless such disclosure is required by federal statute, or the state maintains a system of records in existence and operating before January 1, 1975, and the disclosure of the SSN was required under statute or regulation adopted prior to that date to verify the identity of an individual.

Where a state is not authorized to require an individual to disclose his/her SSN, states may request that individuals voluntarily provide SSNs. However, under the Privacy Act, any time a state agency requests an individual to disclose his or her SSN, that agency "shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." (Privacy Act of 1974 § 7(b)). Thus, in the Medicaid example cited earlier in Section I, states can ask non-applicant parents for their SSNs to verify income, but to avoid a potential violation of the Privacy Act, they must clearly indicate that the provision of this information is voluntary and that their SSNs will be used, for example, only to verify their income. States also should inform the non-applicant parents that the failure to provide their SSNs voluntarily will not affect the eligibility of their child, if otherwise eligible.

The Privacy Act, as a general rule, prohibits states from denying program benefits to certain applicants who do not disclose their SSNs if the disclosure is not required by federal statute. In addition separate and apart from the Privacy Act prohibitions, Medicaid, SCHIP and Food Stamp laws and federal policies prohibit states from denying benefits to an applicant because of the failure of another household member to disclose his or her SSN.

Again, because of differences among the Medicaid, SCHIP, TANF and Food Stamp programs, the specific rules and procedures for each program with regard to SSN inquiries are set forth in detail in the accompanying set of Qs&As.

III. Program-Specific Rules

The accompanying Qs&As detail program-specific rules and provide further explanation of: (1) the legal and policy basis for this guidance; (2) the circumstances under which a state may and may not request information about citizenship, immigration status and SSNs on single and joint-program applications; (3) when a state may and may not deny benefits because an applicant has not provided the information the state has requested; and (4) other implementation issues.

IV. Suggestions for States

We recognize that most states have consolidated their application forms and use joint applications for Medicaid, SCHIP, TANF, Food Stamps and other benefits. Joint applications eliminate duplication for states and applicants, and they help ensure that applicants receive all the benefits to which they may be entitled, not just benefits for which they had originally intended to apply. We also recognize that designing consumer-friendly, non-discriminatory joint application forms that combine eligibility requirements for different federal and state benefit programs can be challenging, especially given the recent and significant changes introduced by welfare reform. States need to review and possibly modify their application forms to make them consistent with this guidance. Given the variety of application forms and processes used by states, it is difficult to provide specific direction as to how each may need to be modified. Federal regional offices are available to provide technical assistance, and we encourage states to work with them as they adapt application forms to be consistent with this guidance. The following general recommendations may be helpful:

1. As explained in more detail in the accompanying set of Qs&As, states have the flexibility under this guidance to restructure their joint application forms and processes to allow family or household members who are not seeking benefits to be designated as non-applicants early in the eligibility process. This approach eliminates the need to make broad inquiries about citizenship, immigration status or SSNs, while still allowing states to obtain other information from non-applicant family or household members that is necessary to make eligibility determinations, e.g., income and resources.
2. Many joint applications require individuals to provide the citizenship or immigration status, and/or the SSN, of every member of the "household" in order to be eligible for any or all of the benefits under the joint application (including TANF, Medicaid, and Food Stamps). States should delete such general requests from joint applications and replace them with requests that are directed to the relevant "applicant(s)" for benefits, consistent with this guidance (including the attached program specific rules).
3. As noted throughout this guidance letter and the Qs&As, non-applicants cannot be required to disclose information about their citizenship or immigration status as a condition of an applicant's eligibility. Even asking non-applicants to disclose such information, without stating clearly that this information is not required, raises concerns under Title VI of the Civil Rights Act of 1964, if the effect is to deter otherwise eligible applicants who are protected against discrimination by Title VI from applying for benefits.
4. States should make clear statements about the use and confidentiality of personal information collected through the eligibility process, including SSNs and immigration status, in order to address directly the fears of immigrant families. For example, if a state or local agency is collecting SSNs only to verify income and improve administration of its programs, it could add the following statements to its application form: "We only use social security numbers to help us verify your income. We will not share social security numbers with the INS." We believe such clear statements will encourage individuals to more readily provide SSNs, either as required or requested.
5. If a state requires that applications be filed on a "family" or "household" basis under the TANF and/or Food Stamp programs, states

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should clearly provide information about how eligibility is affected and how the application will be processed if any member of the family or household unit does not provide information about citizenship, immigration status or an SSN. For example, with respect to TANF, states are encouraged to advise that if an individual family member does not provide information about his or her citizenship and immigration status, and/or does not provide his or her SSN, he or she will be excluded from the family unit as an ineligible household member. His or her failure to disclose this information will not affect the potential eligibility of other family members, but it will affect the amount of the benefits received. As noted above, states are encouraged to allow family and household members to choose to be identified as non-applicants early in the eligibility determination process.

6. If states decide not to permit individual family or household members to choose to be non-applicants in TANF and/or Food Stamps, states must ensure that their application forms promote enrollment of eligible families and eliminate the potential for discriminatory impact on eligible applicants based on national origin. We recommend that states design their joint application forms so that families and households complete the information needed to apply for Medicaid and/or SCHIP first, since neither of these programs requires a family or household to apply as a unit. States should inform families and households that they may choose not to apply for TANF and/or Food Stamp benefits and that their eligibility for Medicaid or SCHIP benefits will not be affected if the individuals applying for these benefits are otherwise eligible. States should also inform families and households that they may apply for any individual benefit program independent of the other programs. Families can then make informed decisions about whether they will provide additional information needed to establish eligibility for the other programs.
7. In order to ensure that no inappropriate inquiries are made, states should clearly inform applicants which inquiries, or portions of inquiries, applicants are and are not required to answer for each benefit program. For example: "If you are applying for Medicaid only, you only need to answer questions in [the Medicaid] Section or Question(s) xx," or alternatively, "If some family or household members are not applying for assistance for themselves, they do not need to provide [SSN and citizenship/immigration status] information in Section or Question xx." States may include this information on their application forms or provide a separate written notice, attached to the joint application, that identifies what information must be provided in order for the applicant(s) to receive specific benefits. States may wish to consider using the sample notice that is attached to the Qs&As that accompany this guidance.
8. States should provide information to all applicants about how the application will be processed and the effect on other family members. With respect to Medicaid, SCHIP, Food Stamps and TANF, states should emphasize the following points:
 - o Except for non-citizens applying only for Medicaid coverage of emergency services, the state will not provide benefits to applicants who do not disclose their immigration status.
 - o The state will not attempt to determine, via the INS, the immigration status of non-applicant household members who do not provide their immigration status.
 - o When a state allows family or household members who do not provide their immigration status or SSNs to be treated as non-applicants, it also should inform the applicant that the state will not delay or deny the application for the members who disclose their immigration status and SSNs.
 - o Under Medicaid, TANF, and Food Stamps, family members who are applicants, and who do not have SSNs, must apply for one, but the state may not delay, deny or discontinue assistance pending the issuance of their SSNs. States and local agencies also must assist applicants to apply for SSNs.
9. States should consider education and training activities to ensure that intake caseworkers and other staff persons responsible for processing applications and making eligibility determinations understand and adhere to the principles described in this guidance.
10. States should consider developing and implementing a plan for informing prospective applicants of the state's commitment to these principles. Non-profit organizations that provide assistance to or advocate for immigrants and/or low income families should be able to provide help in developing and implementing any such plan.

We look forward to working with you and are available to provide technical assistance at your request. If you have any questions or suggestions regarding the issues discussed in this letter, please contact our regional staff.

Sincerely,

/S/

U.S. Department of Health & Human Services

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Olivia Golden, Assistant Secretary
Administration for Children and Families

/S/
Nancy-Ann Min DeParle, Administrator
Health Care Financing Administration

/S/
Shirley R. Watkins, Under Secretary
Food, Nutrition, and Consumer Services

/S/
Thomas Perez, Director
Office for Civil Rights

Last revised: January 21, 2003

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U.S. Department of Health & Human Services · 200 Independence Avenue, S.W. · Washington, D.C. 20201

C. Memorandum on Steps to Obtain a Social Security Number for an Undocumented Immigrant and/or Child

MEMORANDUM¹

TO: Advocates, Attorneys, Benefit Providers, Justice System Personnel, and other interested persons

FROM: Leslye Orloff, Edna Yang, and Krisztina E. Szabo
National Immigrant Women's Advocacy Project (NIWAP)

DATE: March 18, 2014

RE: Obtaining Non-Work Social Security Numbers

Steps to Obtain a Social Security Number for an Undocumented Immigrant and/or Child

Generally, only noncitizens authorized to work in the United States by the Department of Homeland Security (DHS) can get a Social Security number ("SSN"). Social Security numbers are used to determine a person's eligibility for Social Security benefits based on an individual's reported wages to the government and to receive some other government services.

Immigrants who are not authorized by DHS to work in the U.S. can get a SSN only if they can prove that they need it for a valid non-work reason. This might happen in a situation where state or federal law requires the immigrant to have a SSN to obtain benefits to which the immigrant has already established entitlement.²

In order to better serve undocumented battered immigrant women and their children who are applying for public benefits that they are entitled to receive, advocates need to understand the process by which an undocumented immigrant can obtain a non-work SSN. Advocates are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are not denied non-work SSNs by caseworkers who do not fully understand the process and eligibility requirements involved in issuing non-working SSNs.

A Social Security number may be assigned for a non-work purpose to an immigrant who cannot provide evidence of immigrant status that allows them to work under 20 C.F.R. § 422.107(e), if the evidence described in that paragraph does not exist and if the immigrant resides either in or outside the U.S., or a territory of the U.S., *and a social security number is required by law as a condition of the alien's receiving a federally funded benefit to which the alien has established entitlement.*³

¹ This memorandum is an updated version of the "Obtaining Non-Work Social Security Numbers" memorandum written by Leslye E. Orloff and Edna Yang published on November 17, 2000.

² Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>.

³ Non-work social security numbers are also issued to immigrants if the state government requires a social security number to administer statutes governing the issuing of a driver's licenses and the registering of motor vehicles. It can also be argued that in jurisdictions where the courts ask for social security numbers of parties applying for divorce, child support, paternity, and marriage licenses, non-work social security number should be issued. *See* Memorandum regarding §466(a)(13) of the Social Security Act; *see also* SSA Programs Operations Manual System, Records Manual (POMS RM) 00203.510, available at <http://policy.ssa.gov/poms.nsf/lnx/0100203510!opendocument>.

I. Who Is Eligible for A Non Work Social Security Number (SSN)

A Non-Work SSN Will Be Processed For Undocumented Immigrants Who Are Entitled to the Following Public Benefits:⁴

- Temporary Assistance to Needy Families (“TANF”);
- Title XIX Medicaid program;
- Food Stamps;
- Disability insurance (SSDI) and old age survivors insurance (OASDI) under Title II Benefits;⁵ or
- Medicare eligibility due to end stage renal disease under Title XVIII.

SSN Will Not Be Processed For Undocumented Immigrants Who:⁶

- Are ineligible for benefits/payments under Title II (SSDI and OASDI), Title XVI (SSI), Title XVIII, TANF, Medicaid, and Food Stamps;
- Is an SSI ineligible spouse, parent, or child;
- Is appointed representative payee for SSDI, OASDI, or SSI beneficiary;
- Is eligible only for emergency services under Medicaid, since emergency Medicaid is open to all immigrants and having a SSN is not a condition of eligibility for emergency Medicaid;

⁴ POMS RM 00203.560(A)(2)) available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>; POMS RM 10211.610 Valid Reasons to Assign an SSN for Nonwork Purposes, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110211610>.

⁵ The Social Security Protection Act of 2004 introduced a new requirement for Title II benefit applicants: In order to be considered “fully insured” or “currently insured” for Social Security retirement, survivors’, or disability benefits, a non–U.S. citizen must have been assigned a Social Security number that was, at the time it was assigned or at any later time, valid for work purposes. Alternatively, the applicant must have been admitted to the United States temporarily for business or as a crewman when the relevant work quarters were earned. These requirements pertain only to applications based on Social Security numbers issued on or after Jan. 1, 2004. Pub. L. No. 108-203 § 211 (Mar. 2, 2004). Because most applicants for Title II benefits already are required to demonstrate that they are lawfully present in the U.S., the new Social Security number requirement is not expected to restrict access to these benefits significantly. 42 U.S.C. § 402(y).

⁶ POMS RM 00203.560 available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>.

- Alleges a need for a SSN solely for tax,⁷ driver's license, credit check, student loans, or similar purposes.⁸

II. Evidence Required for a Working and Non-Working Social Security Number

Often times, clients feel overwhelmed and unable to gather the required evidence to obtain their non-work SSN by themselves. It is essential for advocates to stress to their clients the importance of the evidence as well as to work with their clients in locating the necessary information and evidence required to obtain a non-work SSN.

Working Social Security Number

In order to obtain a work authorized social security number, the Applicant must be 1) A U.S. citizen (U.S. born or foreign-born), or 2) An immigrant (either U.S. born or foreign-born) authorized to work in the United States.

The applicant must also be able show at least two original documents to prove the following:⁹

- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital records or birth, or a passport;¹⁰
- Identity, through documents including, but not limited to, driver's license, identity card, school record, medical record, marriage records, passport, U.S. military identification or record, or DHS document;¹¹

⁷ If an immigrant needs a number for tax purposes and s/he is not authorized to work in the U.S., s/he can apply for an Individual Taxpayer Identification Number (ITIN) from the Internal Revenue Service (IRS). They can visit the IRS in person or call the IRS toll-free number, 1-800-TAXFORM (1-800-829-3676), and request Form W-7, Application For An Individual Taxpayer Identification Number. *See generally* Individual Taxpayer Identification Numbers (ITIN), INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-%28ITIN%29>

⁸ POMS RM 10211.615 Invalid Nonwork Reasons for SSN Assignment, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110211615>.

⁹ POMS RM 00203.001(C)(1), (D)(1), (D)(3). Applicants should take their completed SSN application and original documents to their local Social Security office. All documents must be either originals or copies certified by the issuing agency. Social Security offices cannot accept photocopies or notarized copies of documents. Social Security offices may use one document for two purposes. For example, they may use the applicant's DHS work permit as proof of both his/her identity and work authorized immigration status. An applicant's birth certificate and passport may serve as proof of age. Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>. Refugees, parolees, asylees, and victims of a severe form of trafficking (VSFT) may submit only one document as evidence of age, identity, and lawful alien status. For additional information, see POMS RM 10210.020D, in this section.

¹⁰ 20 C.F.R. § 422.107(b). SSN applicants must present their foreign birth certificate if they have it or can get it within 10 business days. If not, SSA can consider other documents, such as the individual's passport or a document issued by DHS, as evidence of the applicant's age. Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>. Other evidence of age are: an original family bible or family record; school records; census records; a statement signed by the physician or midwife who was present at applicant's birth; insurance policies; a marriage record; an employment record; a delayed birth certificate, your child's birth certificate. 20 C.F.R. 404.716(b).

- U.S. Citizenship or Work Authorized Lawful Immigrant Status.¹²

In order to be authorized to work in the United States, an immigrant must be one of the following classes of immigrants:¹³

- An immigrant who is a lawful permanent resident;¹⁴
- An immigrant admitted to the United States as a lawful temporary resident;¹⁵
- An immigrant admitted to the United States as a refugee;¹⁶
- An immigrant paroled into the United States as a refugee for the period of time in that status;¹⁷
- An immigrant granted asylum under section 208 of the Immigration and Nationality Act (“the Act”);¹⁸
- An immigrant admitted to the United States as a nonimmigrant fiancé or fiancée, or an immigrant admitted as the child of such immigrant;¹⁹
- An immigrant admitted as a parent (N-8) or dependent child (N-9) of an immigrant granted permanent residence under section 101(a)(27)(I) of the Act;²⁰
- An immigrant admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS);²¹

¹¹ 20 C.F.R. § 422.107(c). The document must contain sufficient information to identify the applicant, including the applicant's name and (1) the applicant's age, date of birth, or parents' names; and/or (2) a photograph or physical description of the individual. A birth record is not sufficient evidence to establish identity for these purposes.

¹² 20 C.F.R. § 422.107(d)

¹³ 8 C.F.R. § 274a.12. This list also includes temporary workers or trainees; information media representatives; exchange visitors; intra-company transferees; persons having extraordinary ability in the sciences, arts, education, business, or athletics; athletes, artists, and entertainers; person engaged in business activities under North Atlantic Free trade Agreement (“NAFTA”).

¹⁴ 8 C.F.R. § 274a.12(a)(1)

¹⁵ 8 C.F.R. § 274a.12(a)(2)

¹⁶ 8 C.F.R. § 274a.12(a)(3); POMS RM 10211.185, Evidence for an SSN Card for a Refugee.

¹⁷ 8 C.F.R. § 274a.12(a)(4); RM 10211.190, Evidence for an SSN Card for a Parolee.

¹⁸ 8 C.F.R. § 274a.12(a)(5); RM 10211.205, Evidence for an SSN Card for an Asylee.

¹⁹ 8 C.F.R. § 274a.12(a)(6)

²⁰ 8 C.F.R. § 274a.12(a)(7)

- An immigrant granted withholding of deportation;²²
- An immigrant who has been granted extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State;²³
- An immigrant granted Temporary Protected Status;²⁴
- An immigrant granted voluntary departure by the Attorney General under the Family Unity Program established by section 301 of the Immigration Act of 1990;²⁵
- Foreign government officials and their employees;²⁶
- A non-immigrant student seeking on campus employment, part time off campus employment or curricular practical training;²⁷
- A representative of an international organization and their personal employees;²⁸
- An international cultural exchange visitor or an immigrant having a religious occupation;²⁹
- NATO armed services officers and personnel and their attendants, servants, and personal employees;³⁰
- Deferred Action for Childhood Arrival (DACA) recipient.³¹

It is important for advocates to determine whether their clients fit into any of the above categories of work authorized immigrant status. If the client does not fit one of these categories, then she may be eligible to apply for a nonwork SSN.

Non-Working Social Security Number³²

In order to obtain a non-work social security number the applicant must prove the following:³³

²¹ 8 C.F.R. § 274a.12(a)(8)

²² 8 C.F.R. § 274a.12(a)(10)

²³ 8 C.F.R. § 274a.12(a)(11)

²⁴ 8 C.F.R. § 274a.12(a)(12)

²⁵ 8 C.F.R. § 274a.12(a)(13)

²⁶ 8 C.F.R. § 274a.12(b)(1)-(5)

²⁷ 8 C.F.R. § 274a.12(b)(6)(i)-(iii)

²⁸ 8 C.F.R. § 274a.12(b)(7)-(8)

²⁹ 8 C.F.R. § 274a.12(b)(15)-(16)

³⁰ 8 C.F.R. § 274a.12(b)(17)-(18)

³¹ Social Security Number — Deferred Action For Childhood Arrivals, SSA, available at:

http://www.socialsecurity.gov/pubs/deferred_action.pdf.

³² All non-work social security numbers state: “not authorized for work purposes” in bold letters on the face of the card.

- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital records or birth, or a passport;³⁴
- Identity, through documents including, but not limited to, driver's license, identity card, school record, medical record, marriage records, passport, or DHS document;³⁵
- Current alien status;³⁶ and
- Original letter from the appropriate government entity that explains the need for the SSN – The only acceptable documentation of a valid nonwork reason is a letter from the government entity. The letter cannot be a generic application, form letter or a photocopy and must be dated and on letterhead stationery. It must specifically identify the alien, the nonwork reason for which an SSN is required, the relevant statute or regulations requiring the SSN as a condition to receive the benefit or service, or if the state government requires a social security number to administer statutes governing the issuing of driver's licenses, the registration of motor vehicles, and the issuance of divorce decrees, child support orders, paternity actions,³⁷ and the name and telephone number of an official to contact so that the information provided may be verified. It should state that the alien meets all the requirements to receive the benefit/service except for an SSN.³⁸

III. Obtaining a SSN for U.S.-born Children

The Social Security Administration automatically assigns social security numbers to children at birth under its Enumeration at Birth (EAB) Project, regardless of whether or not the parents have a valid social security number.³⁹ Some Social Security Administration Staff have been erroneously advising parents who do not have social security numbers themselves that they cannot apply for a social security number for their US citizen children. If your immigrant client is going to have a child, they should be informed that their child will be assigned a social security number regardless of whether your client has one. If the hospital does not mention this, she should speak to the hospital worker who fills out the form for the birth certificate.

In order to obtain a SSN for a U.S.-born child, the parent or guardian must show original documents proving the child's:

³³ POMS RM 00203.001(C)(2), D)(2), (D)(4)

³⁴ 20 C.F.R. § 422.107 (b)

³⁵ 29 20 C.F.R. § 422.107(c)

³⁶ POMS RM 10211.600(A)(2). If the alien resides outside the U.S. and requests an SSN at a Foreign Service Post, he or she does not need to provide evidence of alien status.

³⁷ 20 C.F.R. § 422.107(e). The traditional legal requirements for non-work SSNs have not included state statutes requiring social security numbers for the issuance of divorce decrees, child support orders, and paternity actions. These requirements, however, are a logical extension of the use of non-work SSNs, because they are located in the same state statutes, and fulfill the same purpose, as the legal requirement of a SSN as a prerequisite for driver's licenses and motor vehicle registration.

³⁸ See POMS RM 00203.510B. for valid reasons for SSA to assign an SSN. See POMS RM 00203.510C.

for examples of invalid nonwork reasons.

³⁹ EM-00058; POMS RM 00202.142 SSA Program Operations Manual System, Records Manual 00202.142, available at <http://policy.ssa.gov/poms.nsf/lnx/0100202142!opendocument>.

- U.S. citizenship;
- Age; and
- Identity.

The Social Security Administration has instructed its employees that an identity document and a birth record must be shown when an application for a SSN is being filed for a child. A birth record alone is not sufficient evidence to establish identity. However, where the applicant is a child under 6 years of age applying for an original social security number card and there is no documentary evidence of identity available, the requirement for evidence of identity will be waived if there is no reason to doubt the validity of the birth record, the social security number application, and the existence of the individual.⁴⁰

Acceptable identity documents for children over six years old are:⁴¹

- Driver's license;
- U.S. State issued non-driver Identity card;
- Passport;
- Certificate of Naturalization or Certificate of Citizenship;
- Adoption decree;
- School record;
- Medical record;
- Health insurance or Medicaid card;
- Life insurance policy;
- Religious record;
- Marriage record;
- DHS document, or;

⁴⁰ 20 C.F.R. § 422.107 (c)

⁴¹ 20 C.F.R. § 422.107 (c); RM 10210.420 Priority List of Acceptable Evidence of Identity Documents, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110210420>.

- Other similar document serving to identify the individual. The document should contain the applicant's signature for comparison with his or her signature on the application for a social security number.

IV. Replacement Cards for Undocumented Immigrants

Once your client obtains a non-work SSN, you must, as an advocate, stress that she should keep the card in a safe place and not lose it. For battered immigrants, the original nonwork SSN card must be kept at the home of a trusted relative or friend or kept for her by her advocate or attorney. This will ensure that the card will be in a place where the abuser cannot take it away from her or destroy it. The Social Security Administration will not issue replacement non-work social security cards for undocumented immigrants. If your client's nonwork SSN number has been lost, stolen, or destroyed and she needs evidence of her social security number for an allowed purpose including payment of a federally funded benefit, obtaining a driver's license, or filing for divorce you should contact the Social Security Administration and provide them with the name and phone number of the benefits case worker, the court clerk, or the third party agency who needs to know your client's social security number. The Social Security Administrations will then contact the third party agency and notify them of your client's social security number.

**D. Evidence List for an Undocumented Immigrant
and/or Child to Obtain Social Security Numbers**

Evidence List for an Undocumented Immigrant and/or Child to Obtain Social Security Numbers

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively in obtaining social security numbers. Many federal and state benefits agencies require a social security number in order to issue the cash benefit. Therefore, battered immigrants who do not have a USCIS issued work authorization will need to apply for a non-work social security number.

Advocates are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are not denied non-work SSNs by caseworkers who do not fully understand the process and eligibility requirements involved in issuing non-working SSNs.

1. NON-WORKING SOCIAL SECURITY NUMBER

To obtain a non-work social security number, the applicant must be able to prove the following:

A. DOCUMENTS TO PROVE AGE

Exists	Brought in	
		Birth certificate ¹ or hospital birth record recorded before age 5; or a religious record which shows that the date of birth and was recorded before age 5.
		Passport
		DHS issued document indicating age
		Other ²

B. TO PROVE IDENTITY

Exists	Brought in	
		Driver's license
		U.S. State issued non-driver identity card
		School record
		Medical record
		Marriage record
		Passport
		DHS document

C. CURRENT ALIEN STATUS

Exists	Brought in	
		DHS document

¹ SSN applicants must present their foreign birth certificate if they have it or can get it within 10 business days. If not, SSA can consider other documents, such as the individual's passport or a document issued by DHS, as evidence of the applicant's age. Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>.

² Other evidence of age are: an original family bible or family record; school records; census records; a statement signed by the physician or midwife who was present at applicant's birth; insurance policies; a marriage record; an employment record; a delayed birth certificate, your child's birth certificate. 20 C.F.R. 404.716(b).

D. PROOF OF LEGAL REQUIREMENT

Exists	Brought in	
		Original letter or form letter from the government entity to document a valid nonwork reason – stating client is eligible to receive the benefits but is required to obtain a non-work social security number in order to receive these benefits.

2. WORK AUTHORIZED SOCIAL SECURITY NUMBER

To receive a work eligible social security number the immigrant must show that she has been authorized to work in the United States by DHS. If the client does not have proof of work authorized immigration status, she may be eligible for a non-work social security number.

The applicant must be able show at least two original documents to prove the following:³

A. DOCUMENTS TO PROVE AGE

Exists	Brought in	
		Birth certificate ⁴ or hospital birth record recorded before age 5; or a religious record which shows that the date of birth and was recorded before age 5.
		Passport
		DHS issued document indicating age
		Other ⁵

B. DOCUMENTS TO PROVE IDENTITY⁶

Exists	Brought in	
		DHS document <ul style="list-style-type: none"> • Form I-551 Permanent Resident Card • Form I-94 • Form I-766, Employment Authorization card • Admission stamp

³ POMS RM 00203.001(C)(1), (D)(1), (D)(3). Applicants should take their completed SSN application and original documents to their local Social Security office. All documents must be either originals or copies certified by the issuing agency. Social Security offices cannot accept photocopies or notarized copies of documents. Social Security offices may use one document for two purposes. For example, they may use the applicant’s DHS work permit as proof of both his/her identity and work authorized immigration status. An applicant’s birth certificate and passport may serve as proof of age. Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>. Refugees, parolees, asylees, and victims of a severe form of trafficking (VSFT) may submit only one document as evidence of age, identity, and lawful alien status. For additional information, see POMS RM 10210.020D, in this section.

⁴ SSN applicants must present their foreign birth certificate if they have it or can get it within 10 business days. If not, SSA can consider other documents, such as the individual’s passport or a document issued by DHS, as evidence of the applicant’s age. Social Security Numbers for Noncitizens: Does a noncitizen need a Social Security number?, SSA Publication No. 05-10096 (Aug. 2013), available at: <http://www.ssa.gov/pubs/EN-05-10096.pdf>.

⁵ Other evidence of age are: an original family bible or family record; school records; census records; a statement signed by the physician or midwife who was present at applicant’s birth; insurance policies; a marriage record; an employment record; a delayed birth certificate, your child’s birth certificate. 20 C.F.R. 404.716(b).

⁶ RM 10210.420 Priority List of Acceptable Evidence of Identity Documents, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110210420>.

		Passport
		Driver's license
		U.S. State issued non-driver identity card
		School record
		Medical record
		Health insurance or Medicaid card showing a photo or DOB
		Life insurance policy showing age or DOB
		Marriage record
		U.S. military record or identification card

C. DOCUMENTS PROVING WORK AUTHORIZED IMMIGRATION STATUS

Exists	Brought in	
		Proof of lawful permanent resident or conditional resident status (I-551) ⁷
		Employment Authorization Document (I-766)
		Evidence that client was granted refugee status
		Evidence that client was granted asylum status
		Non-immigrant visa which authorizes client to work
		Evidence that client was granted temporary protective status
		Non immigrant student seeking on campus employment, part time off campus employment or curricular practical training

3. OBTAINING A SOCIAL SECURITY NUMBER FOR A CHILD

If a child is a United States Citizen, the Social Security Administration must issue a social security number to that child regardless of whether the parents are documented immigrants.

The applicant must be able to prove the following:

A. PROOF OF U.S. CITIZENSHIP STATUS

Exists	Brought in	
		U.S. Birth certificate
		U.S. Passport
		Certificate of Naturalization or Certificate of Citizenship

B. PROOF OF AGE

Exists	Brought in	
		U.S. Birth certificate or U.S. hospital birth record recorded before age 5; or a religious record which shows that the date of birth and was recorded before age 5.
		U.S. Passport
		Certificate of Naturalization or Certificate of Citizenship

⁷ RM 10211.025 Evidence of Lawful Permanent Resident (LPR) Status for an SSN Card, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110211025>.

C. PROOF OF IDENTITY⁸

→FOR CHILDREN UNDER 6

Exists	Brought in	
		U.S. State issued non-driver identity card
		U.S. Passport
		Certificate of Naturalization
		Childcare facility, pre-school, or school record (for the current or prior year)
		Medical record showing age or DOB
		Health insurance or Medicaid card showing a photo or DOB
		Life insurance policy showing age or DOB
		Religious records showing age, DOB, or parent's name
		Final adoption decree

→FOR CHILDREN OVER AGE 6 THROUGH 17

Exists	Brought in	
		Driver's license
		U.S. State issued non-driver identity card
		Passport
		Certificate of Naturalization
		School record (for the current or prior year)
		Medical record showing age or DOB
		Health insurance or Medicaid card showing a photo or DOB
		Life insurance policy showing age or DOB
		Religious records showing age, DOB, or parent's name
		Final adoption decree

⁸ RM 10210.420 Priority List of Acceptable Evidence of Identity Documents, available at: <https://secure.ssa.gov/poms.nsf/lnx/0110210420>.

Part VI: Screening and Eligibility

A. Public Benefits Access For Battered Immigrant Women and Children

PUBLIC BENEFITS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN¹

Eligibility For Documented And Undocumented Immigrants

Although the law denies public benefits to many immigrants, some immigrants, including battered immigrants, may still be able to receive certain public benefits as "qualified immigrants." Battered women may require some form of public assistance in order to be able to leave their abusers. Even undocumented battered immigrants may receive some public benefits if they have filed a case with the Department of Homeland Security (DHS) and can prove a "substantial connection" between the abuse and the need for public assistance. When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and "qualified immigrant" children may receive certain public benefits even when their parents cannot. If a battered immigrant who is not a "qualified immigrant" is questioned about her immigration status while applying for public benefits for their children, she should tell the public benefits agency, "I am not applying for public benefits for myself." In addition, non-profit charitable organizations that help battered immigrants are not required to determine a woman's immigration status.

Who Are Qualified Immigrants?

- Lawful permanent residents (including conditional permanent residents)
- Refugees
- Asylees
- Persons granted withholding of deportation
- Persons granted cancellation of removal
- Cuban/Haitian entrants
- Veterans

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- Person granted conditional entry
- Amerasians
- Persons paroled into the United States for a year or more
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS

What Benefits Can Qualified Immigrants Receive?

Advocates should be aware that immigrant eligibility for certain benefits depends in part on the immigrant's date of entry into the United States. Immigrants who are or become "qualified immigrants" and who entered the U.S. before August 22, 1996, are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, except for SSI and Food Stamps. *Immigrants who become "qualified immigrants" and who entered the United States on or after August 22, 1996, however, are barred from receiving federal means-tested benefits during the first five years after obtaining qualified immigrant status.*²

Battered immigrants may, however, receive federal public benefits during this five-year period that are not deemed to be "federal means-tested public benefits."³ The immigrant groups that qualify for an **exemption** of the five-year bar include: refugees, people granted asylum, Amerasians, Cuban and Haitian entrants, veterans and immigrants on active military duty, and immigrants granted cancellation of removal (stops the deportation process).

The Federal "Means-Tested" Public benefits that these immigrants can receive include:

- Temporary Assistance for Needy Families (TANF)
- Medicaid and Medicare
- Food Stamps
- Supplemental Security Income (SSI)
- Social Security Disability Insurance

² Some states cover battered immigrants for certain means-tested benefits during the five-year bar. For a list of these states and what they cover please visit the National Immigration Law Center website at http://nilc.org/pubs/Guide_update.htm.

³ Please see the last page of this fact sheet.

- Administration on Developmental Disabilities (ADD) (direct services only)
- Child Care and Development Fund
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low-Income Home Energy Assistance Program (LIHEAP)
- Postsecondary Education Loans and Grants
- Public Housing
- Refugee Assistance Programs
- Section 8 Subsidized Housing
- State Children’s Health Insurance Program (CHIP)
- Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”)
- Title XX Social Services Block Grant Funds

Access to Food Stamps used to be very restrictive until Congress passed the Farm Security and Rural Investment Act (Farm Bill) in 2002. The bill restored food stamp eligibility to qualified immigrants who have lived in the U.S. in qualified status for at least five years; qualified immigrant children, regardless of date of entry; and qualified immigrants who are receiving disability-related assistance, regardless of date of entry.⁴

Access to Supplemental Security Income (SSI) is still severely restricted. Very few battered immigrants and children can are eligible.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status. DHS cannot consider any public benefits received by battered immigrants after August 22, 1996, in determining whether an individual will become a public charge.⁵ This means that they will not decide a battered immigrant woman will be a burden to society (which can cause DHS to deny lawful permanent resident status) based on the fact that she has received public benefits.

How Do Battered Immigrants Become Qualified Immigrants?

Documented and undocumented battered immigrants are “qualified immigrants” if they meet the following requirements:

⁴ Some states offer food and nutrition benefits during the five-year bar. For a list of these states and what they cover please visit the National Immigration Law Center website at <http://nilc.org/immspbbs/fnutr/index.htm>

⁵See, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689 (May 26, 1999).

The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse or parent's family member living in the same household. (The other immigrant spouse or parent must not have actively participated in the abuse.)

AND

The battered immigrant has an approved family-based petition or Violence Against Women Act (VAWA) petition;

OR the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card);

OR an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also known as a prima facie determination);

AND

The battered immigrant or child no longer lives with the abuser. (Note that the benefits agency must decide if the battered immigrant is eligible for benefits before she leaves the abuser.)

What is "Substantial Connection"?

To receive these benefits, the applicant must also show a "substantial connection" between the abuse and the need for the public benefit. The following are considered appropriate conditions for establishing this connection:

- To help the victim of abuse be able to support herself economically without help from the abuser and/or the abuser's community.
- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse.
- To help the victim take care of the children when fear of the abuser interferes with child care.
- To meet nutritional needs resulting from the abuse or separation.

- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services that was lost because of the separation from the abuser.

Exemptions From Deeming Requirements

When an immigrant's family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant's sponsor. When an immigrant with a sponsor affidavit filed on her behalf applies for public benefits, deeming rules require that the benefits granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse's income. Some battered immigrants can now be excused from "deeming" requirements for 12 months if there is a connection between the abuse and the need for the benefit. Extensions of the 12-month time period are available. Immigrants excused from deeming include:

- VAWA self-petitioners
- VAWA cancellation of removal or suspension of deportation applicants
- Battered immigrants whose spouses or parents filed family based visas for them
- Immigrants who obtained their green card through a family based visa petition and who were battered before and/or obtaining lawful permanent resident status⁶
- Immigrants who filed new affidavits of support (I-864) after 12/5/1999

In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:

- Persons who have become U.S. citizens
- Persons with 40 quarters work history⁷

⁶ Please note, however, that battered immigrants whose abusers filed old affidavits of support and whose immigration interviews were scheduled on or before 12/17/1997 are subject to deeming for the first three years after they receive their green card.)

⁷ This is equivalent to about 10 years of work.

- Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history⁸
- Immigrants facing hunger or homelessness
- Immigrants whose sponsor is dead
- Refugees
- Persons granted asylum (i.e. – asylees)

Benefits Available to All Immigrants

Fortunately, certain federal public benefits are available to both documented and undocumented immigrants. The 1996 Welfare Reform Act authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status.⁹ To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, not based on the individual's income or resources, and necessary to protect life or safety. These benefits may be particularly useful for domestic violence victims who do not qualify for VAWA immigration relief and are listed here:

- Crisis counseling and intervention programs
- Services and assistance relating to child protection
- Adult protective services
- Violence and abuse prevention
- Victims of domestic violence or other criminal activity
- Treatment of mental illness or substance abuse
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens
- Community food banks
- Senior nutrition programs and other nutritional programs for persons requiring special assistance

⁸ These quarters do not count after divorce.

⁹ See A.G. Order No. 2353-2001, Jan. 5, 2001 (published in the Federal Register on January 16 as "Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation", 66 Fed. Reg. 3,613-16 (Jan. 16, 2001)).

- Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety
- Activities, designed to protect the life and safety of workers, children and youths or community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

Part VII. Additional Government Documents Relevant to Access to Public Benefits and Services for Immigrant Crime Victims

**A. Department of Justice Memorandum on :
Motions for “Prima Facie” Determination and
Verification Requests for Battered Spouses and
Children**



United States Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2545
Falls Church, Virginia 22041

MEMORANDUM TO: All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Support Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 97-9:
Motions for “Prima Facie” Determination and Verification
Requests for Battered Spouses and Children

TABLE OF CONTENTS

<u>Subject</u>	<u>Page</u>
I. INTRODUCTION.....	1
II. VERIFICATION OF APPROVED APPLICATIONS FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(3).....	2
III. MOTION FOR PRIMA FACIE DETERMINATION.....	3
IV. GRANTING AN APPLICATION FOR SUSPENSION OF DEPORTATION OR CANCELLATION OF REMOVAL.....	5

I. INTRODUCTION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) made significant changes in aliens’ eligibility for public assistance and benefits. Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended section 431 of the PRWORA by adding certain aliens who have been subjected to battery or extreme cruelty to the

definition of “qualified aliens” who are able to receive public benefits. Section 431 of the PRWORA has two basic criteria:

(1) The alien must have been battered or subjected to extreme cruelty by a spouse or a 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 there is a substantial connection between the battery or cruelty and the need for the public benefits; and

(2) The alien has been approved for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (INA)(as in effect prior to April 1, 1997) or has a petition pending which sets forth a prima facie case for certain immigrant visa classifications or for suspension of deportation under section 244(a)(3) of the (INA)(as in effect prior to April 1, 1997) or section 240A(b)(2) of the INA.

The Immigration Court’s role in implementing section 501 of IIRIRA is limited to providing information, upon request, to benefit-providing agencies that an alien has or has not been granted suspension of deportation as a battered spouse or child and to making a determination whether an alien who has a pending application for suspension of deportation or cancellation of removal as a battered spouse or child has established a “prima-facie” case for relief. An alien may apply for public benefits if an Immigration Judge makes such a finding. This Operating Policy Procedure Memorandum (OPPM) concerns the procedures for handling a verification process to identify those aliens whose applications for suspension of deportation have been granted under section 244(a)(3) of the INA (as in effect prior to April 1, 1997) (hereafter referred to as section 244(a)(3)) and the procedures for handling a motion for prima facie determination for those aliens, who have a pending application for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA before an Immigration Judge. There will be a regulation issued which implements section 501 of IIRIRA. For questions concerning identification of battered spouses and children and limitations on public disclosure of information refer to OPPM 97-7: Procedures For Identifying Potential Battered Spouse/Battered Child Cases.

II. VERIFICATION OF APPROVED APPLICATIONS FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(3)

Presently, there are no procedures used that differentiate between grants of suspension of deportation under section 244(a)(3) and grants of suspension of deportation under sections 244(a)(1) and 244(a)(2) of the INA (as in effect prior to April 1, 1997). An alien, who has been granted suspension of deportation under section 244(a)(3) and is seeking public benefits, may require verification from the Immigration Court that his or her application was granted under section 244(a)(3). The verification process will not be necessary in the case of aliens who will be granted suspension of deportation or cancellation of removal as a battered spouse or child after the date of this OPPM. The order granting suspension of deportation or cancellation of removal will be modified to and/or the

Immigration Judge must specify whether the alien was granted relief under section 244(a)(3) or section 240A(b)(2) of the INA.

A. General

Under the verification process, a benefit-providing agency will either fax or mail a standardized verification request to the Immigration Court. See Attachment A.¹ The verification request must include a statement, signed by the alien, which waives the limitations on disclosure of information and any supporting documents for certain battered aliens. See section 384 of IIRIRA. Upon receipt of the verification request from the benefit-providing agency, the Court Administrator must ascertain, through the Automated Nationwide System for Immigration Review (ANSIR), whether the alien was granted suspension of deportation, determine whether the grant is administratively final and follow the procedures below.

B. Administratively Final Decisions on Applications for Suspension of Deportation

In any situation in which an Immigration Judge issued an administratively final order on an application for suspension of deportation, the following procedure applies. If the Court Administrator determines that the alien has an administratively final grant of suspension of deportation, he or she must immediately obtain the record of proceedings and forward it to the appropriate Immigration Judge. The appropriate Immigration Judge is the Judge who entered the decision; if that Judge is unavailable, the appropriate Judge is the Liaison Judge; if the Liaison Judge is unavailable, the ACIJ must be contacted. The Immigration Judge must then review the record of proceedings and determine whether the alien's application for suspension of deportation was approved under section 244(a)(3). The Immigration Judge will then sign an order which verifies whether the alien was granted suspension of deportation under section 244(a)(3). See Attachment B. This order may be faxed or mailed to the benefit-providing agency which initiated the request.

If the Board of Immigration Appeals issued the final order on an application for suspension of deportation, the Court Administrator must forward the verification request either by mail or fax to the Clerk of the Board of Immigration Appeals. The Court Administrator must notify the benefit-providing agency which initiated the request that he or she forward the verification request to the Board.

¹Section 5973(b) of the recently signed Balanced Budget Act of 1997 amended section 384 of IIRIRA to "authorize the Attorney General to disclose information to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Act of 1996." Responding to a verification request from a benefit-providing agency does not, therefore, require a signed waiver from the alien.

C. Pending Applications for Suspension of Deportation with the Board of Immigration Appeals

If the system indicates that an appeal of the Immigration Judge's decision on the application for suspension of deportation is pending before the Board of Immigration Appeals, the Court Administrator must forward the verification request either by mail or fax to the Clerk of the Board of Immigration Appeals. The Court Administrator must notify the benefit-providing agency which initiated the request that the verification request was forwarded to the Board.

III. MOTION FOR PRIMA FACIE DETERMINATION

Any alien, who has a pending application for suspension of deportation under section 244(a)(3) and seeks a determination that he or she is a "qualified" alien for purposes of receiving public benefits, may file a motion, in writing, under 8 C.F.R. § 3.23(a), with the Immigration Judge requesting a finding that he or she is "prima facie" eligible for suspension of deportation. An applicant for cancellation of removal under section 240A(b)(2) of the INA may also request a "prima facie" determination.

A. Required Documentation

In order to file a motion for prima facie determination, the alien must have filed or is filing concurrently a completed application for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA. The alien may attach to the written motion any additional statements or evidence concerning prima facie eligibility. In order for the alien to satisfy the good moral character criteria and the requirement that he or she not be deportable on criminal grounds, the alien must attach a signed statement, under penalty of perjury, stating whether he or she has been convicted of a crime and, if so, any details about the offense(s). The alien must also attach a certificate of service to the INS District Counsel.

B. Ruling on the Motion

The Immigration Judge will review the completed application for suspension of deportation or cancellation of removal, the motion, and the statement submitted by the alien. Because the goal of section 431 of the PRWORA is to allow battered spouses and children to leave the batterer's residence as soon as possible, a prompt decision on the motion is necessary. Upon filing of the motion, the Immigration Judge shall require the INS to respond within five business days. The Immigration Judge must rule on the motion within ten business days of receipt. The Immigration Judge will either grant or deny the motion in writing. See Attachment C.

C. Grant of the Motion

The finding of the Immigration Judge that the alien has a prima facie case for suspension of

deportation or cancellation of removal as a battered spouse or child will be valid until 30 days after the date of the merits hearing. See Attachment C. The Immigration Judge must specify that date on the line following the clause “This determination shall be valid to”. An Immigration Judge must not reset the merits hearing to a later date on his or her own initiative, if a prima facie determination has been made, unless he or she has consulted with his or her ACIJ. In the rare event the Immigration Judge subsequently resets the merits hearing to a later date, he or she must, sua sponte, issue another order finding prima facie eligibility and 30 days after the reset date will be the date the prima facie determination expires.

Following a merits hearing, if an Immigration Judge reserves decision, he or she must reevaluate whether the alien is prima facie eligible for suspension of deportation or cancellation of removal. If the Immigration Judge is satisfied that the alien has a prima facie case for suspension of deportation or cancellation of removal, he or she must issue another order finding prima facie eligibility, which will be valid for not more than 180 days. In the event either party appeals the Immigration Judge’s decision, jurisdiction over a motion for prima facie determination will then rest with the Board of Immigration Appeals.

Once an application for suspension of deportation or cancellation of removal has been granted and is administratively final, the alien may present the Immigration Judge’s or the Board’s order directly to the benefit-providing agency. It will no longer be necessary for the alien to request a prima facie determination.

D. Denial of the Motion

If the Immigration Judge denies the motion for prima facie determination and he or she reserves a decision on the application for suspension of deportation or cancellation of removal, the Immigration Judge may reconsider his or her decision on or after the date of the merits hearing.

IV. GRANTING AN APPLICATION FOR SUSPENSION OF DEPORTATION OR CANCELLATION OF REMOVAL

In the case of any grants of applications for suspension of deportation under section 244(a)(3) or cancellation of removal under section 240A(b)(2) of the INA issued on or after the date of this OPPM, the Immigration Judge’s order must note that the application was granted under section 244(a)(3) or section 240A(b)(2) of the INA. The system has been modified accordingly.

If there are any questions regarding these matters, please contact my Counsel, Michael Straus, at (703) 305-1716.

Michael J. Creppy
Chief Immigration Judge

B. Field Guidance Re: Prima Facie Review of Form 1-360 when filed by a Self-Petitioning Battered Spouse/Child



U.S. Department of Justice
Immigration and Naturalization Service

HQADN/70/6.1P

425 I Street NW
Washington, DC 20536

MAR 27 1998

MEMORANDUM FOR Paul Novak
Acting Director, Vermont Service Center
Regional Directors
District Directors
Officers In Charge

FROM: 
Jacquelyn A. Bednarz
Acting Assistant Commissioner for Adjudications

SUBJECT: Field Guidance Re: Prima Facie Review of Form I-360
when filed by a Self-Petitioning Battered Spouse/ Child

This field guidance is directed specifically to the Vermont Service Center, the direct mail location for Form I-360 when filed by self-petitioning battered spouses or children. However, these instructions provide important information for dissemination to the public and should be distributed to appropriate personnel, and especially to the designated Points of Contact for issues related to the Violence Against Women Act (VAWA).

On November 13th, 1997, the Service published an interim rule in the Federal Register, *Prima Facie Review of Form I-360 When Filed by a Self-Petitioning Battered Spouse/Child* (copy attached). This interim rule, which became effective on the date of publication, enables the Service to consider and determine whether a self-petitioner has established a *prima facie* ("at first view") case for immigration status as the battered spouse or child of a USC or LPR.

Such determinations have become critical as a result of Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The new law amends the definition of "qualified alien" to include battered aliens who have an **approved** self-petition, or who have **filed** a self-petition. A favorable prima facie review of Form I-360 allows certain battered spouses or children to be regarded as "qualified aliens" for the purpose of establishing eligibility for public assistance.

Review of Form I-360 for prima facie determination focuses on the following:

A *Notice of Prima Facie Case* (NPFC) is not a benefit or immigration status for which petitioners may apply and it is solely at the discretion of the Service to issue the Notice.

Self-petitioners **must** be physically resident in the United States to obtain the *Notice of Prima Facie Case*. Self-petitioners who are outside the United States are not eligible for public assistance benefits and should await the adjudication of the I-360 petition.

The decision to issue a *Notice of Prima Facie Case* is based upon an initial review of the I-360 petition and supporting documentation. It is **not** an adjudication of the petition. Officers should ascertain that the applicant has addressed each of the required elements. However, self-petitioners need not provide all of the supporting evidence which might or must be submitted prior to the final adjudication.

The NPFC will be printed on Form I-797 and valid for 150 days from the date of issuance. In nearly all cases this will be sufficient time to adjudicate the I-360. During that time, the self-petitioner will have the opportunity to improve the petition by submitting additional evidence and documentation. In those instances where the adjudication of the petition can not be completed within that time frame, the Adjudicating Officer may issue an extension of the NPFC.

Self-petitioners who are unable to establish a *prima facie* case in the first instance will be notified of the deficiencies of the petition with a request for additional evidence or documentation. Upon receipt of the second submission, the adjudicating officer may determine that the I-

Memorandum for See Distribution
Subject: Prima Facie Review of Form I-30

Page 3

360 now meets the *prima facie* standard, and may issue an NPFC for the self-petitioner's use while the I-360 is adjudicated.

Where the self-petitioner has failed to respond to the Service's request for additional documentation the NPFC will expire. To extend the validity of the NPFC under such circumstances, the applicant must submit a written request to the Service for an extension and include a copy of the initial NPFC. Instructions to this effect are contained within the Notice of Prima Facie Case. Adjudications officers may either issue an extension of the NPFC or decide to complete the adjudication of the petition and not extend the NPFC. The NPFC will only be extended for an additional 60 days.

A Notice of Prima Facie Case will not be issued for I-360 petitions which are approveable upon initial review. The approval notice serves the same purpose of establishing qualified alien status for petitioners seeking public assistance.

The issuance (or non-issuance) of a NPFC Case **must not** be considered or weighed in the adjudication of the I-360.

In those cases where the I-360 is denied, the NPFC will not be re-issued or extended, this includes denied cases which are on appeal. Filing an appeal does not entitle the applicant to a NPFC, nor does it extend the validity of an existing NPFC.

If you have any questions concerning the interim rule and guidance provided in this memorandum or any other aspect of the VAWA provisions, please contact Karen FitzGerald, Headquarters, Adjudications, (202) 514-5014, or by fax at (202) 514-8661.

Attachment

**C. Department of Homeland Security
Memorandum on Extension of Validity Period for
Notices of Prima Facie Case Issued in Connection
with a Form 1-360 Filed by a Self-petitioning
Battered Spouse/Child**



U.S. Citizenship
and Immigration
Services

HQOPRD 70/8.1/8.2

Interoffice Memorandum

To: Paul Novak
Director
Vermont Service Center

From: William R. Yates
Director
Operations

Date: APR - 8 2004

Re: Extension of Validity Period for Notices of Prima Facie Case Issued in Connection with a Form I-360 Filed by a Self-Petitioning Battered Spouse/Child

The following instructions provide supplemental guidance to the Vermont Service Center (VSC) regarding the handling of *Notices of Prima Facie Case* (NPFC) issued in connection with Form I-360 self-petitions for immigrant status filed by spouses and children of abusive United States citizens (USCs) and lawful permanent residents (LPRs). These instructions should be distributed to appropriate personnel, and especially to the designated Points of Contact for issues related to the Violence Against Women Act (VAWA).

The VSC issues a *Notice of Prima Facie Case* on the basis of an initial review of the Form I-360 and supporting documentation shortly after its receipt. It is not an adjudication of the petition. A favorable *prima facie* determination allows certain battered spouses or children to be regarded as "qualified aliens" for the purpose of establishing eligibility for public assistance, and enables them to receive public assistance during the pendency of their Form I-360. On March 27, 1998, field guidance entitled "Field Guidance Re: Prima Facie Review of Form I-360 when Filed by a Self-Petitioning Battered Spouse/Child," established a 150-day validity period for NPFCs issued in connection with a self-petition filed by a spouse or child of an abusive USC or LPR. It further provided the NPFC should only be extended for an additional 60 days.

At the time the original guidance was published, the 150-day validity period for the NPFC was sufficient because the VSC did not have a backlog in processing VAWA self-petitions and could complete a full adjudication of the Form I-360 within that time period. Similarly, the 60-day extension of the NPFC provided sufficient time to request additional evidence and complete the full adjudication.

Currently, however, the VSC has a considerable backlog that has resulted in a ten-month delay in full adjudication of the Form I-360. As a result, the NPFC has expired by the time the self-petition is adjudicated. In most cases, a 60-day extension is insufficient to continue coverage for the time necessary to reach a full adjudication. For these reasons, the initial validity period of the NPFC may now be set for 180 days. The length set for the validity period of an extension of NPFC shall be at the discretion of the VSC, taking into consideration any backlog and the anticipated completion time. However, under no circumstances should this validity period of the extension notice be greater than 180 days. Should any additional extensions be required, they may only be issued in 60-day increments. At the same time, the VSC VAWA unit will begin issuing requests for evidence (RFEs) at the time the *prima facie* determination is made. It is believed that this will help decrease the number of RFEs the adjudication officers must issue and, in turn, will help decrease the current backlog. The implementation of this new procedure will be examined after one year in order to determine its effects on the processing of VAWA self-petitions.

The guidance in this memorandum is effective immediately and supplements any existing guidance regarding *prima facie* determinations. If you have questions regarding this memorandum or other VAWA-related issues, please contact Laura Dawkins through electronic mail.

D. Interim Guidance On Verification Of Qualified Immigrant Status For Benefits Purposes

Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997), *available at* http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/c_FR-1997%20interim%20verif%20guidance%20DOJ_OVW%2011.15.04.pdf/view

Summary: Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) requires the Attorney General, by February 1998, to promulgate regulations requiring verification that an applicant for federal public benefits is a qualified alien eligible to receive federal public benefits under the Act. Amendments to the PRWORA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also require the Attorney General, within the same time period, to establish fair and nondiscriminatory procedures for applicants to provide proof of citizenship. Amendments to the PRWORA by the Balanced Budget Act of 1997 require the Attorney General, by November 3, 1997, to issue interim verification guidance that sets forth procedures that benefit providers can use to verify citizenship, qualified alien status, and eligibility under Title IV of the PRWORA prior to issuance of the final regulations. In accordance with this last statutory requirement, the Attorney General, in consultation with federal benefit-granting agencies, has developed this interim guidance

E. [AG Order No. 2097-97]: Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits

24. Individual Irrigators, Dolores Project, Colorado: The United States proposes to lease up to 1,500 acre-feet of project water declared surplus under the authority of the Warren Act of 1911. Contract actions completed:

1.(c) Dr. Henry Estess: Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 30 acre-feet of M&I water from Blue Mesa Reservoir for augmentation to replace evaporative losses from a fishery/wildlife area on his property.

1.(d) Crested Butte South Metropolitan District: Aspinall Unit, CRSP, Colorado: Contract for 13 acre-feet for domestic, municipal, and irrigation (including irrigation of lawns and golf course).

17. Highland Conservation District, Provo River Project, Utah: Water transfer agreement between District and Highland City involving change of use from irrigation to M&I.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone 406-247-7730.

New contract actions:

29. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

30. Glendo Unit, P-SMBP, Wyoming: Initiate negotiations for renewal of long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company. The current contracts expire in 1998.

31. Glendo Unit, P-SMBP, Nebraska: Initiate negotiations for renewal of long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID. The current contracts expire in 1998.

32. Belle Fourche Unit, P-SMBP, South Dakota: Basis of negotiation has been submitted requesting deferment of the Belle Fourche ID's 1997 construction payment and also reduction of the District's annual payment.

Contract actions modified:

12. Enders Dam, Frenchman-Cambridge Division, Frenchman Unit, Nebraska: Repayment contract for proposed SOD modifications to Enders Dam for repair of seeping drainage features. Estimated cost of the repairs is \$632,000. Approval has been obtained

to modify the repayment period of the SOD costs for up to 10 years. Repayment contracts for the SOD repairs have been signed.

17. Canyon Ferry Unit, P-SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997. Basis of negotiation completed for renewal of existing contract for an additional 10 years. A temporary contract has been issued pending negotiation of the long-term contract for water service.

18. P-SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Pub. L. 104-326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

Dated: July 17, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.
[FR Doc. 97-19440 Filed 7-23-97; 8:45 am]

BILLING CODE 4310-94-P

DEPARTMENT OF JUSTICE

[AG Order No. 2097-97]

Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits

AGENCY: Department of Justice.

ACTION: Notice of Determination with request for comments.

SUMMARY: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be qualified under this provision an alien must demonstrate, among other things, that there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought. The PRWORA vests in the Attorney General the authority to determine under what circumstances there is a substantial connection between the battery or extreme cruelty suffered by an alien seeking federal, state, or local public benefits and the specific benefits sought by the alien. Through this notice, the Attorney General is declaring what circumstances demonstrate such a substantial connection.

DATES: This Determination is effective July 17, 1997.

ADDRESSES: Comments should be submitted to Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, United States Department of Justice, 950 Pennsylvania Ave., Washington, DC 20530, (202) 616-8894.

FOR FURTHER INFORMATION CONTACT: Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, 950 Pennsylvania Ave., Washington, DC 20530, (202) 616-8894.

SUPPLEMENTARY INFORMATION: Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. 104-193, as added by the Illegal Immigration Reform and Immigrant, Responsibility Act of 1996, Pub. L. 104-208, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be a qualified alien under this provision, an alien must demonstrate that: (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien or the alien's child under one of several subsections of the Immigration and Nationality Act, or has found that a pending petition or application sets forth a prima facie case; (2) the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty; (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and (4) the battered alien or child no longer resides in the same household as the abuser.

The Attorney General has the responsibility for determining the circumstances under which an alien has demonstrated a substantial connection between the battery or extreme cruelty and the alien's need for particular benefits. This Determination sets forth the circumstances that, in the Attorney General's opinion, demonstrate the requisite substantial connection. Under PRWORA, the Attorney General's opinion is not subject to review. When drafting this Determination, the Attorney General consulted with federal benefit-granting agencies that will be implementing section 431(c) of

PRWORA and with other interested parties.

Benefit providers and all other interested parties are requested to provide comments on this Determination. Should these comments indicate that further refinements to the Determination are necessary, it will be revised accordingly.

Delay in the effectiveness of this Determination would necessarily cause further delays in the availability of federal, state, and local public benefits to aliens for whom there is a substantial connection between the battery or extreme cruelty and the need for those public benefits. It would be unnecessary and contrary to the public interest to impose further delays on the availability of such public benefits in these circumstances. Accordingly, I find that there is good cause to exempt this Determination from prior public notice and comment and delay in effective date. This Determination is not a "significant regulatory action" under Executive Order 12866 and is not a "major rule" under 5 U.S.C. 804.

Determination of Situations That Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits

By virtue of the authority vested in me as Attorney General by law, including section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, I hereby determine that an alien applying for federal, state, or local public benefits who (or whose child) has been battered or subjected to extreme cruelty demonstrates that there is a substantial connection between the battery or extreme cruelty suffered by the alien (or the alien's child) and the need for the public benefit(s) sought under any one or more of the following circumstances:

(1) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

(2) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

(3) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

(4) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings

relating thereto (including resulting child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

(5) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(6) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the aliens' ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

(7) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

(8) Where the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien or his or her child, and/or to care for any resulting children; or

(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

In the event that the facts presented by the alien are different from the situations described above, but the benefit provider or the applicant nevertheless believes that the applicant satisfies the substantial connection requirement, either the benefit provider or the applicant should obtain a determination from the Department of Justice as to whether, in the Attorney General's opinion, the applicant's need for the benefit is substantially connected to the battery or cruelty. Benefit providers or applicants requiring such a determination should contact the Violence Against Women Office, U.S. Department of Justice, the Director of which is hereby authorized to issue such determinations.

Dated: July 17, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-19431 Filed 7-23-97; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on June 23, 1997, a proposed Consent Decree in *United States v. Town of Cheshire*, Civil No. 97cv30141-MAP (D. Mass.), was lodged with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns violations by the Town of Cheshire, Massachusetts, of the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the National Primary Drinking Water Regulations, 40 CFR Part 141, and the provisions of the EPA Administrative Order issued to the Town on September 30, 1994. The violations alleged in the complaint include the failure by the Town to install filtration treatment (or to switch to use of a groundwater source not under the direct influence of surface water) within 18 months, i.e., by June 29, 1993, as required by the Surface Water Treatment Rule (the "SWTR"), Section 1412(b)(7), 42 U.S.C. § 300g-1(b)(7), and 40 CFR § 141.70-141.75; the failure to comply with the turbidity requirements of the SWTR, 40 CFR § 141.71(c)(2); the failure to comply with monitoring and reporting requirements at 40 CFR §§ 141.74, 141.75, and the failure to comply with public notification requirements at 40 CFR §§ 141.32(a)(1) (i) and (ii) and 141.31(d).

Under the terms of the Consent Decree, the defendant will pay a total civil penalty of \$18,500 for its past violations. In addition, the Consent Decree requires the Town to design and construct a new gravel-packed well to supply drinking water to the users of its public system and to comply with all applicable federal and state drinking water laws and regulations in accordance with an expeditious schedule.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Town of Cheshire*, D.J. Ref. 90-5-1-1-4361.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts.

F. [AG Order No. 2131-97]: Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits

[Federal Register Volume 62, Number 238 (Thursday, December 11, 1997)]

[Notices]

[Pages 65285-65287]

From the Federal Register Online via the Government Printing Office [www.gpo.gov]

[FR Doc No: 97-32438]

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DEPARTMENT OF JUSTICE

[AG Order No. 2131-97]

Guidance on Standards and Methods for Determining Whether a
Substantial Connection Exists Between Battery or Extreme Cruelty and
Need for Specific Public Benefits

AGENCY: Department of Justice.

ACTION: Notice of guidance; rescission of prior order.

SUMMARY: The Personal Responsibility and Work Opportunity
Reconciliation Act of 1996 ('`PRWORA''), as amended by the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996, provides
that certain categories of aliens who have been subjected to battery or
extreme cruelty in the United States are

[[Page 65286]]

``qualified aliens'' eligible for certain federal, state, and local
public benefits. To be qualified under this provision, an alien must
demonstrate, among other things, that there is a substantial connection
between the battery or extreme cruelty and the need for the public
benefit sought. As initially enacted, the PRWORA vested in the Attorney
General the authority to determine whether a substantial connection
exists between the battery or extreme cruelty suffered by the alien or
alien's child and the specific benefits sought by the alien. The
Attorney General exercised that authority in Attorney General Order No.
2097-97. Subsequent to the issuance of that Order, Congress passed the
Balanced Budget Act of 1997, which amended the PRWOR to vest the
authority for making substantial connection determinations in benefit
providers, rather than the Attorney General. The Balanced Budget Act
also requires the Attorney General to issue guidance to benefit
providers on the standards and methods to be used in making substantial
connection determinations. Pursuant to the Balanced Budget Act, this
Notice rescinds Attorney General Order No. 2097-97 and provides
guidance to benefit providers regarding substantial connection
determinations.

DATES: This Notice is effective November 23, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Rosenfeld, Senior Counsel, The

Violence Against Women Office, United States Department of Justice, 950 Pennsylvania Ave., Washington, D.C. 20530, (202) 616-8894.

SUPPLEMENTARY INFORMATION: Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ('`PRWORA''), Public Law 104-193, as added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, and amended by sections 5571-72 and 5581 of the Balanced Budget Act of 1997, Pub. L. 105-33, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are ``qualified aliens'' eligible for certain federal, state, and local public benefits. To be a qualified alien under this provision, an alien must demonstrate that: (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien, the alien's child, or the alien child's parent under one of several subsections of the Immigration and Nationality Act (INA), or has found that a pending petition or application sets forth a prima facie case for relief under the applicable provision of the INA; (2) the alien, the alien's child, or the alien child's parent has been battered or subjected to extreme cruelty in the United States: (a) In the case of an abused alien, by the alien's 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 consents to or acquiesces in such battery or cruelty; (b) in the case of an alien whose child is abused, by the alien's 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 consents to or acquiesces in such battery or cruelty and the alien did not actively participate in the battery or cruelty; (c) in the case of an alien child whose parent is abused, by the parent's spouse or a member of the spouse's family residing in the same household as the parent and the spouse consents to or acquiesces in such battery or cruelty; (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought and (4) the battered alien, child, or parent no longer resides in the same household as the abuser.

As originally enacted, section 431(c) of the PRWORA vested in the Attorney General the responsibility for determining whether an alien applicant for benefits had demonstrated a substantial connection between the battery or extreme cruelty and the applicant's need for particular benefits. The Attorney General exercised that authority in Attorney General Order No. 2097-97, Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Benefits, 62 FR 39874 (July 24, 1997). In drafting this Determination, the Attorney General consulted with federal benefit-granting agencies that are implementing section 431(c) of PRWORA and with other interested parties.

Subsequently, Congress enacted the Balanced Budget Act of 1997, which amended section 431(c) of the PRWORA to require that benefit providers, rather than the Attorney General, determine whether an applicant for benefits under this section has demonstrated a substantial connection between battery or extreme cruelty and the need for the particular benefit sought. Although section 5571 of the Balanced Budget Act transfers the authority to make substantial connection determinations from the Attorney General to the benefit provider, it directs the Attorney General to issue guidance to benefit providers on the standards and methods for making such determinations.\1\ That guidance is set forth below.

\\1\ Section 5571 also requires the Attorney General to issue guidance on the meaning of the terms ``battery'' and ``extreme cruelty'' as employed in the PRWORA, as amended. That information can be found in Exhibit B to Attachment 5 of the Interim Verification Guidance.

This Notice of guidance is an ``interpretive rule'' and therefore is not subject to the notice and comment or delay in effective date requirements of 5 U.S.C. 553. This Determination is not a ``significant regulatory action'' under Executive Order 12866 and is not a ``major rule'' under 5 U.S.C. 804.

Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits

By virtue of the authority vested in me as Attorney General by law, including section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, I hereby issue the following guidance to federal, state, and local public benefit providers concerning the standards and methods to be used in determining whether an alien applicant for benefits demonstrates that there is a substantial connection between the battery or extreme cruelty suffered by the alien, the alien's child, or (in the case of an alien child) the alien's parent and the need for the public benefit(s) sought. The following list sets forth the circumstances under which I would find the existence of a substantial connection. Although this guidance is not binding upon benefit providers, it is intended to assist benefit providers in developing standards by which to make substantial connection determinations.

(1) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to become self-sufficient following separation from the abuser;

(2) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent from the abuser;

(3) Where the benefits are needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or (in the case of an alien child) his or her parent's separation from the abuser;

[[Page 65287]]

(4) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support or child custody disputes) cause the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to lose his or her job or require the applicant, the applicant's child, and/or (in the case of

an alien child) the applicant's parent to leave his or her job for safety reasons;

(5) Where the benefits are needed because the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(6) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's and/or (in the case of an alien child) the applicant's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

(7) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

(8) Where the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent and/or to care for any resulting children; or

(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant, the applicant's child, and/or (in the case of an alien child) the alien's parent had when living with the abuser.

Dated: November 23, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-32438 Filed 12-10-97; 8:45 am]

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