

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

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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

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 Charles Wheeler of CLINIC, Amanda Baran, former Staff Attorney at Legal Momentum, and Kathryn Isom, Amy Durrence, and Kathryn Halbert, legal interns at Legal Momentum 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 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 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://niwapllibrary.wcl.american.edu/pubs/pb-gov-protectionlifeorsafetyag-1-16-01/>

- 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 residents)¹³
- 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).

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- 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 receive any

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

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

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).

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 are 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
- Mental Health Clinical Training Grants

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

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- 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
- Project-Based Voucher Program⁵⁶

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.

⁵⁶ *Id.* at 79.

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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);
- 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

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.

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- 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 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

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 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).

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. 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.

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).

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).

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

- 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
- 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

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 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

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- 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

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 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.")

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

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.

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

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

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.

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

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 mean a reduction in the chance that they will return to their abusers.

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

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),

¹⁰⁰ These documents are included in the Appendix for this section.

- 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
(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

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)

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.

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

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.

¹¹⁶ (8 USC 1642(d)).

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 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.

¹¹⁷ U.S. 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 U.S. 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. (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.

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 to 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
- 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

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.

¹²⁷ Divorce from the veteran cuts the divorced immigrant spouse off from access to these benefits.

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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 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.

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, Supplemental Nutrition Assistance Program (snap): Guidance on Non-Citizen Eligibility (June 30, 2011); see <http://niwaplibrary.wcl.american.edu/pubs/imms-snap/>

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>

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

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

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>

¹⁴⁰ INA § 213A(a)(2), 8 U.S.C. § 1183a(a)(2).

¹⁴¹ INA § 213A(a)(3), 8 U.S.C. § 1183a(a)(3).

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- 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 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

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.

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).

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

- 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;

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. 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.

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- 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.

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

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).

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).

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- 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 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

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

¹⁶⁶ PRWORA § 402(a)(7), 8 U.S.C. § 1612(a)(7).

¹⁶⁷ 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.

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 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) effective April 1, 2009.¹⁷⁴ 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

¹⁶⁸ 42 U.S.C. § 607(a)(7).

¹⁶⁹ 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).

¹⁷⁰ Jenny 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

¹⁷¹ Social Security Act title. XIX, 42 U.S.C. §§ 1396, *et seq.*

¹⁷² 42 C.F.R. Part 430, *et seq.*

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).

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
 - U visa recipients or who have received deferred action status.

Sponsor deeming rules are not applicable to noncitizen pregnant women who receive Medicaid under CHIPRA.¹⁷⁹ 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

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.

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)).

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 law.¹⁸³

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 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

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/tbl10_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 are examples of those that 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). For a state by state map see <http://www.niwap.org/benefitsmap/>

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).

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 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:

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/tbl9_state-ssi_2006-07_2007-10.pdf

¹⁸⁷ 42 U.S.C. § 1382c(a)(3).

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).

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- 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
- 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.

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.

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.)

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

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

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).

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).

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- 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

*STOP Grants*²¹²

STOP grants (Services, Training, Officers, and Prosecutors) are given to states to develop and strengthen the criminal justice response to violence against women.²¹³ including domestic violence, sexual assault, dating violence and stalking. 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.²¹⁴ At least 10% of the victim services funds are to be distributed to culturally specific²¹⁵ community based organizations whose services are

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

²¹² See Generally, U.S. Department of Justice (2013), FREQUENTLY ASKED QUESTIONS ON STOP FORMULA GRANTS available at <http://www.ovw.usdoj.gov/docs/stop-formula-faq.pdf>

²¹³ Violence Against Women Act of 2000, Pub. L. No. 103-322, § 40121. 108 Stat. 1796, 1911, codified at 42 U.S.C. § 3796gg-1.

²¹⁴ Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1103, 114 Stat. 1497.

²¹⁵ 42 U.S.C. 13925(a)(6) CULTURALLY SPECIFIC- The term 'culturally specific' means primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300u-6(g)). This section of the Public Health Service Act defines racial and ethnic minority groups to mean American Indians including Alaska Natives, Eskimos, and Aleuts; Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics. The term "Hispanic" means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.

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primarily directed toward ethnic and racial minority populations.²¹⁶ Additionally the Office on Violence Against Women is responsible for ensuring that all states administering STOP funding :

“recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund culturally specific services and activities for underserved populations are distributed equitably among those populations.”²¹⁷

By 2015 20% of the total amount of STOP funds shall be allocated for meaningful addressing sexual assault.²¹⁸ Sexual assault is defined as including stranger rape, acquaintance rape, alcohol or drug-facilitated rape, and rape within the context of an intimate partner relationship. This funding for sexual assault is to be distributed to two or more categories of funding, for example police and victim services, or prosecutors, police and victim services.²¹⁹ The program is designed ~~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.²²⁰

The STOP statute contains several provisions designed to help ensure that programs serving underserved populations in the state, culturally specific services, and programs that serve victims from diverse language backgrounds receive and can access STOP funding. State STOP administrators are required to develop and submit STOP funding plans.²²¹ In developing these plans state STOP administrators are required by statute to consult and coordinate with the following groups:²²²

- (A) the State sexual assault coalition;
- (B) the State domestic violence coalition;
- (C) the law enforcement entities within the State;
- (D) prosecution offices;
- (E) State and local courts;
- (F) Tribal governments in those States with State or federally recognized Indian tribes;
- (G) representatives from underserved populations,²²³ including culturally specific populations;
- (H) victim service providers;
- (I) population specific organizations;²²⁴ and
- (J) other entities that the State or the Attorney General identifies as needed for the planning process;

²¹⁶ 42 U.S. Code § 3796gg-1(c)(4)(C)

²¹⁷ 42 U.S. Code § 3796gg-1(e)(2)(D)

²¹⁸ 42 U.S. Code § 3796gg-1(c)(5)

²¹⁹ Id.

²²⁰ 42 U.S.C. § 3796gg (a)

²²¹ 42 U.S. Code § 3796gg-1(i)

²²² 42 U.S. Code § 3796gg-(c)(2)

²²³ 42 U.S.C. 13925(a) (39) defines underserved populations as follows “UNDERSERVED POPULATIONS- The term `underserved populations' means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, 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 Attorney General or by the Secretary of Health and Human Services, as appropriate.”

²²⁴ 42 U.S.C. 13925(a)(21) POPULATION SPECIFIC ORGANIZATION- The term `population specific organization' means a nonprofit, nongovernmental organization that primarily serves members of a specific underserved population and has demonstrated experience and expertise providing targeted services to members of that specific underserved population.

The state STOP plan submitted to the Office on Violence Against Women are required to include “documentation from the prosecution, law enforcement, court, and victim services programs to be assisted, describing—

- (i) the need for the grant funds;
- (ii) the intended use of the grant funds;
- (iii) the expected result of the grant funds; and
- (iv) *the demographic characteristics of the populations to be served, including age, disability, race, ethnicity, and language background;*

The plans must also include “demographic data on the distribution of underserved populations within the State and a description of how the State will meet the needs of underserved populations including the minimum allocation for population specific services required under subsection (c)(4)(C)”. This language highlights the importance of state stop plans identifying each of the underserved, population specific and culturally specific populations in the state and considering how the state will “recognize and meaningfully respond to”²²⁵ addressing the needs of each of these more isolated and particularly vulnerable populations within the state.

The STOP grant purpose areas directly relevant to programs serving immigrant, limited English proficient, culturally specific, population specific and underserved victims are:²²⁶

- (1) training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of domestic violence, dating violence, sexual assault, and stalking, including training on the certification process for T and U visa;
- (5) developing, enlarging, or strengthening victim and legal services²²⁷ programs, including sexual assault, domestic violence and, dating violence and stalking programs, developing or improving delivery of victim services to underserved populations, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of domestic violence, dating violence, sexual assault and and stalking;
- (10) providing assistance to victims of domestic violence, dating violence, stalking and sexual assault in immigration matters;

²²⁵ 42 U.S. Code § 3796gg–1(e)(2)(D)

²²⁶ 42 U.S.C. § 3796gg(b)

²²⁷ The ability to fund legal assistance for victims with STOP funds is particularly important for immigrant victims who need access to lawyers trained on the dynamics of domestic violence, sexual assault, dating violence and/or stalking, who are aware of and have expertise on the special legal protections for immigrant victims under immigration and public benefits laws and how these protections can benefit outcomes in the victims family court case (protection order, custody, child support or divorce)

- (14) developing and promoting legislation and policies that enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking;²²⁸
- (16) developing and strengthening policies, protocols, best practices and training for law enforcement agencies and prosecutors relating to the investigation and prosecution of sexual assault cases and the appropriate treatment of victims;²²⁹

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, sexual assault, dating violence and stalking as a serious problems 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 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. This grant programs purpose areas of particular importance to immigrant victims are:

- (15) To develop or strengthen policies, protocols, and training for law enforcement, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence, dating violence, sexual assault, and stalking against immigrant victims, including the appropriate use of applications for nonimmigrant status under subparagraphs (T) and (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).
- (16) To develop and promote State, local, or tribal legislation and policies that enhance best practices for responding to the crimes of domestic violence, dating violence, sexual assault, and stalking, including the appropriate treatment of victims.²³⁰
- (19) To develop and strengthen policies, protocols, and training for law enforcement officers and prosecutors regarding the investigation and prosecution of sexual assault cases and the appropriate treatment of victims.²³¹

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 victims who live in state that provide various forms of state funded public benefits to immigrants who

²²⁸ This is particularly helpful for the development of U visa certification policies and practices at STOP funded law enforcement and prosecution agencies.

²²⁹ With regard to immigrant and LEP victims these policies, protocols, best practices and trainings would include U visa certification, improving language access to law enforcement, prosecutors and the courts for LEP sexual assault victims, T visa endorsements, requests for continued presence and T visa certifications for lawful permanent residency applications by law enforcement and prosecutors offices.

²³⁰ For immigrant crime victims this purpose area court include trainings, promoting best practices for U visa certification and provision of access to qualified immigrants

²³¹ For immigrant survivors having U visa certification practices and policies and language access policies would be a necessary part of law enforcement's ability to both investigate and prosecute cases involving immigrant victims.

are legally present,²³² lawfully residing under color of law (PRUCOL)²³³ 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.²³⁴ Second, PRWORA gave states the ability to limit the state-funded public benefits available to qualified immigrants,²³⁵ immigrant visa holders²³⁶ and immigrants paroled into the United States for less than one year.²³⁷

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.²³⁸ 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.²³⁹ Treatment of emergency medical conditions,²⁴⁰ Short term, non-cash, in-kind emergency disaster relief;²⁴¹ and Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²⁴²

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.²⁴³ 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.²⁴⁴ Numerous states have done so, authorizing access to state-funded benefits programs for varying categories of immigrants.²⁴⁵

²³² This category includes U-visa victims and the family members included in their U-visa applications.

²³³ This category includes U-visa victims and the family members included in their U-visa applications.

²³⁴ PRWORA § 411, 8 U.S.C. § 1621(b).

²³⁵ PRWORA § 411(a)(1), 8 U.S.C. § 1621(a)(1).

²³⁶ 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).

²³⁷ 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)).

²³⁸ *Id.* at § 411(c), 8 U.S.C. § 1621(c)(1)(B).

²³⁹ See The following section of this chapter for a full discussion of programs and services necessary to protect life and safety.

²⁴⁰ PRWORA § 411(b)(1).

²⁴¹ PRWORA § 411(b)(2).

²⁴² PRWORA § 411(b)(3).

²⁴³ PRWORA at § 411(a), 8 U.S.C. § 1621(a)(3).

²⁴⁴ *Id.* at § 411(d), 8 U.S.C. § 1621(d).

²⁴⁵ 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 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.

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.²⁴⁶

- Twenty-four states have implemented replacement programs that provide state-funded medical assistance to immigrants ineligible for federally funded Medicaid.²⁴⁷
- Twenty states provide cash assistance to immigrants ineligible for the federally-funded Temporary Assistance to Needy Families (TANF),²⁴⁸
- 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,²⁴⁹
- Eight states provide food assistance to immigrants who are ineligible for federally-funded Food Stamps,²⁵⁰ and
- Six states provide cash assistance to immigrants ineligible for federally-funded Supplemental Security Income (SSI).²⁵¹

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)²⁵²

PRUCOL²⁵³ 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

²⁴⁶ The five-year bar on federal means-tested public benefits is discussed later in this chapter.

²⁴⁷ 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

²⁴⁸ 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

²⁴⁹ 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

²⁵⁰ 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

²⁵¹ 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

²⁵² 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.

²⁵³ 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 not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of

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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 state²⁵⁴ PRUCOL may include persons:²⁵⁵

- 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,²⁵⁶ persons residing legally in the United States on immigrant visas,²⁵⁷ and certain immigration parolees.²⁵⁸ However, states may not cut off or restrict state-funded public benefits for the following qualified immigrants:

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).

²⁵⁴ 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

²⁵⁵ 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).

²⁵⁶ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²⁵⁷ PRWORA § 412(a), 8 U.S.C. § 1622(a).

²⁵⁸ 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)
- 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).;

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- 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);²⁵⁹
- 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);²⁶⁰ and
- Immigrants who are veterans on active duty, or the spouses or dependent children of such persons.²⁶¹

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;²⁶²
- Short term, non-cash, in-kind emergency disaster relief;²⁶³
- Public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases;²⁶⁴
- Programs and services necessary to protect life and safety.²⁶⁵

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 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.

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- 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).

²⁵⁹ PRWORA § 412(b)(1), 8 U.S.C. § 1622(b)(1)

²⁶⁰ *Id.* at § 412(b)(2); 8 U.S.C. § 1622(b)(2).

²⁶¹ *Id.* at § 412(b)(3); 8 U.S.C. § 1622(b)(3).

²⁶² PRWORA § 411(b)(1), 8 U.S.C. § 1621(b)(1)(except organ transplants).

²⁶³ PRWORA § 411(b)(2), 8 U.S.C. § 1621(b)(2).

²⁶⁴ PRWORA § 411(b)(3), 8 U.S.C. § 1621(b)(3)

²⁶⁵ PRWORA § 411(b)(4), 8 U.S.C. § 1621(b)(4).

The United States Supreme Court, in *DeCanas v. Bica*,²⁶⁶ 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.”²⁶⁷ In other words, a state may not “regulate immigration.”²⁶⁸ 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.²⁶⁹ That is, a state statute is preempted where Congress has intended to “occupy the field.”²⁷⁰ Finally a state law cannot stand if it is “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,”²⁷¹ or if it conflicts with federal law, making compliance with both state and federal law impossible.²⁷²

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,²⁷³ 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.²⁷⁴

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:²⁷⁵

- 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 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

²⁶⁶ 424 U.S. 351 (1976).

²⁶⁷ *Id.* at 354.

²⁶⁸ 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).

²⁶⁹ *DeCanas*, 424 U.S. at 357.

²⁷⁰ *Id.* at 361.

²⁷¹ *Id.* at 363.

²⁷² See *Michigan Canners & 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.

²⁷³ “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.

²⁷⁴ *Id.* at § 411; 8 U.S.C. § 1621.

²⁷⁵ *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).

immigrants.²⁷⁶ 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.”²⁷⁷ 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.²⁷⁸ 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:²⁷⁹

- (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.²⁸⁰ 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.²⁸¹ 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.²⁸² Thus, the court believed, “it does appear that Congress has pre-empted the field determining immigrant eligibility for certain public benefits, including state benefits.”²⁸³ Thus, the court contemplates that there are benefits *not* governed by PRWORA in fields not completely occupied by the federal government.²⁸⁴

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;²⁸⁵ and

²⁷⁶ *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.”

²⁷⁷ *Id.* at 1253-54.

²⁷⁸ *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.

²⁷⁹ *Id.*

²⁸⁰ *League*, 997 F.Supp. at 1253-56.

²⁸¹ *Merten*, 305 F. Supp. 2d at 605.

²⁸² *Id.* (citing 8 U.S.C. § 1621 (d)).

²⁸³ *Id.*

²⁸⁴ 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.

²⁸⁵ 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 (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.

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- 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.”²⁸⁶ ...

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.”²⁸⁷ 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.²⁸⁸ 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.²⁸⁹ 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)²⁹⁰
- Orders issued by the U.S. Attorney General,²⁹¹

²⁸⁶ 56 Fed. Reg. 3615 (Jan. 16, 2001).

²⁸⁷ H.R. REP. NO. 104-725, at 261 (1996).

²⁸⁸ 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).

²⁸⁹ 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.

²⁹⁰ 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.

²⁹¹ 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 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.

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- The Family Violence Prevention and Services Act²⁹²
- The Fair Housing Act,²⁹³
- The McKinney Homeless Act,²⁹⁴
- PRWORA,²⁹⁵
- IIRAIRA,²⁹⁶ and
- Guidance issued by federal agencies.²⁹⁷

Two major categories remain open to all immigrants regardless of status. First, Programs that do not fall within the definition of “federal public benefits”²⁹⁸ or “state or local public benefits”²⁹⁹ under the statute remain unrestricted. Second, PRWORA also created important categories of federal public benefits³⁰⁰ and state³⁰¹ public benefits that are exempt from the statute’s immigration restrictions, including programs that are necessary for the protection of life or safety.³⁰² Other exempt programs include emergency Medicaid³⁰³, in-kind emergency disaster relief,³⁰⁴ immunizations and treatment of communicable diseases.³⁰⁵

A. FEDERALLY FUNDED PROGRAMS OPEN TO ALL IMMIGRANTS BECAUSE THEY ARE NOT CONSIDERED “FEDERAL PUBLIC BENEFITS” UNDER PRWORA

²⁹¹ PRWORA § 401(c), 8 U.S.C. § 1611(c)

²⁹² 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.

²⁹³ 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.”)

²⁹⁴ 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.

²⁹⁵ 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).

²⁹⁶ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Public Law 104-208, 110 Stat. 3009-546, Sept 30, 1996, section 576.

²⁹⁷ 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.

²⁹⁸ 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).

²⁹⁹ PRWORA § 411(c), 8 U.S.C. § 1621(c)

³⁰⁰ PRWORA § 401(b), 8 U.S.C. § 1611(b)

³⁰¹ PRWORA § 411(b), 8 U.S.C. § 1621(b)

³⁰² PRWORA § 401(b)(4), 8 U.S.C. § 1611(b)(4).

³⁰³ PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).

³⁰⁴ PRWORA § 401(b)(2), 8 U.S.C. § 1611(b)(2).

³⁰⁵ PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(3).

Although PRWORA provides a definition of the term “federal public benefit,”³⁰⁶ 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.”³⁰⁷ 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.”³⁰⁸

Several federal government agencies have published regulations and policies setting out lists of programs that each federal agency considers to be “federal public benefits.”³⁰⁹ 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 status³¹⁰ 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.³¹¹ These services are available to all immigrant victims, regardless of immigration status.³¹² HHS has provided specific guidance regarding the availability of unrestricted programs to immigrant survivors of domestic violence.³¹³ Many of these programs also provide services that can help immigrant victims of sexual assault.³¹⁴ :

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

³⁰⁶ PRWORA 401(c), 8 U.S.C. § 1611(c)..

³⁰⁷ See, e.g. 63 Fed. Reg. 41,658, 41, 659 (Aug. 4, 1998) (Department of Health and Human Services interpretation of “federal public benefit”).

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 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”).

³⁰⁹ 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.

³¹⁰ 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).

³¹¹ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

³¹² OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

³¹³ OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE.

³¹⁴ See Appendix XX for a chart of all HHS programs that are unrestricted based on immigration status.

that is to be used to serve any victim without regard to the victim's immigration status.³¹⁵ Thus, immigrant sexual assault victims whose assault occurred in the context of domestic violence³¹⁶ 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.³¹⁷ 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.³¹⁸ 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.³¹⁹

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.³²⁰ 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.³²¹

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.³²² 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 from any requirements that they verify or report the immigration status of persons seeking or receiving their services.³²³ To be exempt, programs must:

³¹⁵ 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.

³¹⁶ Family Violence Prevention and Services Act, is 42 USC § 10410.

³¹⁷ 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).

³¹⁸ 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).

³¹⁹ CSBG Program, Report to Congress, Fiscal Year 2004,

http://www.acf.hhs.gov/programs/ocs/csbg/report_grantprogram04.html.

³²⁰ 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.)

³²¹ 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).

³²² 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.

³²³ 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

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- 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.³²⁴

"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.³²⁵ 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."³²⁶

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.³²⁷ This non-exclusive³²⁸ 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 programs³²⁹
- Services and assistance relating to child protection³³⁰
- Adult protective services³³¹
- Violence and abuse prevention³³²

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.)

³²⁴ 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).

³²⁵ 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

³²⁶ Vol 66, No 10 Fed. Reg. 3615 (January 16, 2001).

³²⁷ 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.

³²⁸ 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

³²⁹ 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.

³³⁰ Including: State, local, non-profit services to child abuse, incest, and sexual assault victims, child abuse protection units.

³³¹ Including state, local non-profit services to elder abuse and neglect victims.

³³² Including sexual assault, domestic violence, child abuse, incest, elder abuse, trafficking and crime victim outreach, education and prevention activities.

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- Services to victims of domestic violence or other criminal activity³³³
- Treatment of mental illness or substance abuse³³⁴
- Programs to help individuals during periods of adverse weather conditions³³⁵
- Soup kitchens and Community food banks³³⁶
- Senior nutrition programs and other nutritional programs for persons requiring special assistance³³⁷
- Medical and public health services³³⁸
- Activities designed to protect the life and safety of workers, children, and youths or community residents³³⁹
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children.³⁴⁰

³³³ 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.

³³⁴ 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.*

³³⁵ "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>.

³³⁶ 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.

³³⁷ 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).

³³⁸ 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.

³³⁹This 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 <http://www.nationalimmigrationproject.org/HIV/2004HIVManual/2004hivmanual/> (Chapter 4 of this manual contains eligibility information about public benefits for HIV/AIDS immigrants).

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.³⁴¹

“[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.³⁴²

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.³⁴³ 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.³⁴⁴

³⁴⁰ 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.

³⁴¹ 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>.

³⁴² 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.

³⁴³ 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.

³⁴⁴ 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.³⁴⁵

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.³⁴⁶

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.³⁴⁷

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:

³⁴⁵ 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.

³⁴⁶ 42 U.S.C. § 1611(b)(1)(A); See Social Security Act, 42 USC 1396.

³⁴⁷ 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 funds³⁴⁸ or other non-Medicaid funds;
- Tuberculosis services including screening, diagnosis and treatment; and
- Sexually transmitted disease (STD) screening, diagnosis and treatment.³⁴⁹

³⁴⁸ 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.

³⁴⁹ 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>

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