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Public Benefits Access for Battered Immigrant Women and Children^{1,2}

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Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Immigration Status and the Eligibility of Battered Immigrants for Public Benefits

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

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

The law distinguishes between three kinds of immigrants:

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

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

WHO ARE “QUALIFIED IMMIGRANTS”?

“Qualified immigrants” are:⁹

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

⁹PRWORA § 431(b), 8 U.S.C. § 1641(b).

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

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

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

BATTERED IMMIGRANT CATEGORY

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

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

Requirements for Benefits Applications Based Upon Pending or Approved Applications:

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

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

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

¹³IIRAIRA § 501.

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

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

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

¹⁷Which a spouse or parent must have previously filed.

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the immigrant can qualify for benefits.

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

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

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

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

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

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

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

The “Substantial Connection” Element of Proof

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

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

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

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

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

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

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

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

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

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

Evidence of separation from the abuser could include:

- “Civil Protection Order” (CPO) removing the abuser from her home;
- CPO ordering the abuser to stay away from her home;
- Letter from the landlord stating that the abuser no longer resides there;
- Letters from family members, friends, neighbors, or victim advocates stating that the abuser no longer resides in her household;
- Affidavit from victim asserting that abuser no longer resides with her;

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

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

²³*Id.* at 61,370.

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- New lease agreement evidencing that she is not residing with abuser;
- Utility bills evidencing that she is no longer living in abuser's home.

Other Considerations Relevant to Public Benefits Eligibility

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

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

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

Immigrants who become "qualified immigrants" and who entered the United States *on or after* August 22, 1996, however, are barred from receiving federal means-tested benefits during the first five years after obtaining qualified immigrant status. They may, however, receive, during this five-year period, federal public benefits that are not deemed to be "federal means-tested public benefits." With respect to both federal public benefits and federal means-tested public benefits, most immigrants are subject to income deeming rules that may continue to make them ineligible for such benefits (see discussion on sponsor deeming and the battered women's exception below).²⁵

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

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

INDEFINITE, TEMPORARY, AND OPTIONAL BAR ON BENEFITS ELIGIBILITY

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

THE INDEFINITE BAR TO SSI

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

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

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

THE TEMPORARY FIVE-YEAR BAR TO “MEANS-TESTED PUBLIC BENEFITS”

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

OPTIONAL STATE BAR

The optional state bar exists in two forms. First, PRWORA gave states the option to deny TANF, Medicaid, and the Title XX Social Services Block Grant to qualified immigrants. The exceptions to this optional state bar are identical to the exceptions to the permanent bar on SSI and Food Stamps.²⁸ As a result of this bar, states may deny benefits under TANF, Medicaid, and the Social Services Block Grant to qualified immigrants even when those immigrants have surpassed the five-year bar on accessing federal means-tested public benefits.

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

“SPONSOR DEEMING”

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

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

- Qualified battered immigrant spouses and children (with certain limitations discussed below);

²⁶8 U.S.C. § 1612(a)(2).

²⁷*Id.* § 1613.

²⁸*Id.* § 1612(b)(2).

²⁶ *Id.* § 1621(d).

³⁰Immigration 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).

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

THE BATTERED IMMIGRANT DEEMING EXEMPTION

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

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

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

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

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

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

Judicial determinations of abuse that would be sufficient to meet this requirement might be made in a protection

³¹8 U.S.C. § 1253.

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

³³Interim 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).

³⁴*Id.*

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

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order case, a criminal case, a custody case, a divorce and property division case, a self-petitioning or battered spouse waiver immigration case, a suspension of deportation case, or a cancellation of removal case.³⁶

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

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

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

COUNTING OF 40 QUARTERS OF EMPLOYMENT IN THE UNITED STATES

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

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

Any work done by a parent prior to the applicant’s eighteenth birthday may be counted. Similarly, if the immigrant is married or widowed, any work done by the spouse during the marriage may be counted toward

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

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

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

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

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establishing a qualifying quarter. However, after divorce, immigrant spouses lose the ability to count quarters earned by their spouses during the marriage.

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

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

QUICK TIPS

- Meeting the 40-quarter requirement depends upon the number of years worked. Determine how many years the battered immigrant, the battered immigrant's spouse (during their marriage if still married, or if spouse is deceased, but not if the spouses are divorced), or the battered immigrant's parents (while the alien was under 18 years of age) lived or worked in this country. If the answer is a total of less than five to ten years, the alien cannot meet the 40-quarter requirement.⁴⁰
- A battered immigrant who has resided in the United States for over five years may be able to meet the 40 quarter requirement if she was married during the entire five-year period and both she and her spouse worked and earned sufficient money each of those five years to count towards 40 quarters. The five years of work credit of the spouse and the five years of work credit of the immigrant may be added together to equal ten years of work credit as long as the battered immigrant and her spouse remained married. Similarly, if the marriage was for seven years and the spouse had four quarters of work credit for each of the seven years and the immigrant spouse had an additional 12 quarters (three years) of work credit during those seven years, she could also claim a total of 40 quarters. The immigrant, however, loses the ability to count the spouse's quarters once she and the spouse are divorced
- The term "quarter" means the three-calendar-month period ending on March 31, June 30, September 30, or December 31 of any year.⁴¹
- Social Security credits called "quarters of coverage" are earned by working at a job or as a self-employed individual as long as Social Security taxes are paid to SSA (either through employer withholding or direct payment by the immigrant). Each earner can be credited with a maximum of four quarters each year.⁴²
- Credits are based solely upon the total yearly amount of earnings. (For example, in 2001 a qualifying

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

⁴¹*Id.* at 61,413.

⁴²*Id.*

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quarter totaled \$830).⁴³ Thus, an immigrant would qualify for four quarters in 2001 if at any time during 2001 the immigrant earned a total of \$3320.00.

- The current quarter may be included in the 40-quarter computation.⁴⁴
- Qualifying quarters must be verified by the benefits-granting agency through the Social Security Administration.
- The law provides that the worker's own quarters and quarters worked by a parent while the immigrant was under age 18, by a spouse during the marriage if the immigrant remains married to the spouse or the marriage ended by the death of the spouse, may also be credited to the individual in determining the number of qualifying quarters.
- A battered immigrant who relies on her husband's forty quarters of work credit may only use these quarters if they are still married when she applies for benefits.
- If they divorce after qualifying for benefits, a battered immigrant will be able to continue receiving benefits only until she is required to recertify her ongoing qualification for benefits. At recertification, she can no longer count her husband's quarters.

What Benefits May Battered Immigrants Receive?

The types of *federal* benefits available to battered immigrants can be divided into three categories: (1) "federal means-tested public benefits," (2) "federal public benefits," and (3) other federally funded social service programs that do not fall within the definition of "federal public benefit" or "federal means-tested public benefits". These categories are listed according to the severity of their immigrant eligibility rules (from most to least restrictive):

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

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

FEDERAL MEANS-TESTED PUBLIC BENEFITS

Federal means-tested public benefits consist mostly of cash, cash-equivalent or medical services provided directly to individuals and are generally the most difficult benefits to access. Under PRWORA, qualified immigrants who entered the country on or after August 22, 1996, are ineligible for this category of benefits for a period of five years,⁴⁵ unless they meet certain specified exceptions.⁴⁶ Immigrants entering the United States before August 22,

⁴³*Id.*

⁴⁴*Id.*

⁴⁵PRWORA § 403, 8 U.S.C. § 1613.

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

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1996, who are or later become qualified immigrants, are eligible for federal means-tested public benefits to the same extent as U.S. citizens (except for SSI), subject to deeming rules and state restrictions.⁴⁷

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

The HHS programs that constitute federal means-tested public benefits under PRWORA are Medicaid and TANF,⁵² while the Food Stamp program and the food assistance block grant program in the U.S. territories are the only programs that USDA has determined to be federal means-tested public benefits.⁵³ HUD has concluded that none of its programs falls within the definition of federal means-tested public benefit,⁵⁴ while SSA has identified only one program, SSI, that constitutes a federal means-tested public benefit.⁵⁵ Advocates should be aware that, although SSI is, as a federal means-tested public benefits, theoretically available to qualified immigrants who are new entrants after the five-year bar has elapsed, in fact, a separate bar on SSI permanently prohibits non-exempt qualified immigrants from receiving assistance under these programs. (See chart on federal means-tested public benefits below.)

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

- Emergency Medicaid,
- Short-term in-kind emergency disaster relief,
- Assistance under the National School Lunch Act or the Child Nutrition Act of 1966,
- Public health assistance for immunizations and for testing and treatment of communicable diseases,
- Foster Care and Adoption Assistance (if the parent is a qualified alien),
- Programs and services at the community level necessary for the protection of life and safety designated by the U.S. Attorney General (see below),
- Student assistance under Title IV, V, IX, and X of the Higher Education Act and Title III, VII, and VIII of the Public Health Service Act,
- Means-tested programs under the Elementary and Secondary Education Act,
- Head Start, and
- Benefits under Title I of the Workforce Investment Act of 1998.⁵⁶

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

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

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

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

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

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

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

⁵⁴Eligibility Restrictions on Noncitizens: Inapplicability of Welfare Reform Act Restrictions to Federal Means-Tested Public Benefits, 65 Fed. Reg. 49,994, at 49,994 (Aug. 16, 2000).

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

⁵⁶8 U.S.C.S. § 1613(c).

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

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

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

Temporary Assistance to Needy Families (TANF)⁵⁷

- Persons who first entered the United States on or after August 22, 1996, are barred for the first five years after they become “qualified immigrants,” unless “exempt.”⁵⁸

Medicaid⁵⁹

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

SSI

- Benefits are open only to those qualified immigrants who entered the United States before August 22, 1996 and who are “exempt.” However, qualified immigrants who entered before August 22, 1996 and who were reviving SSI on August 22, 1996 or who are or subsequently become disabled are also eligible.⁶⁰
- Theoretically, individuals who entered the UNITED STATES on or after August 22, 1996 are barred for the first five years after they become “qualified immigrants,” unless “exempt.” However, a separate, permanent bar on SSI also applies to non-“exempt” qualified immigrants who are post-August 22, 1996, entrants, making them ineligible.

⁵⁷Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of “Federal Means-Tested Public Benefits,” 62 Fed. Reg. 45,256 (Aug. 26, 1997).

⁵⁸Exempt groups include: veterans and active duty military personnel and their spouses, unremarried surviving spouses or children; refugee categories: persons who have one of the following immigration statuses refugee, asylee, withholding or removal/deportation, Amerasian immigrants, and Cuban or Haitian Entrants; individuals who meet the 40 quarters exemption; and Native Americans born outside of the United States.” NATIONAL IMMIGRATION LAW CENTER, IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS, Chart (Dec. 1998). See www.nilc.org for more information.

⁵⁹*Id.*

⁶⁰Balanced Budget Act of 1997 § 5301, Pub. L. No. 105-33, 11 Stat. 251. See also, Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, 32, 112 Stat. 2926.

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FEDERAL PUBLIC BENEFITS

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

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

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

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

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

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

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

⁶² *Id.* at 18.

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

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

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

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

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

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

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

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

FEDERALLY FUNDED SOCIAL SERVICES AVAILABLE TO NON-QUALIFIED IMMIGRANTS

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

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

⁶⁴ *Id.*

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

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

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

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

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

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

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

Some Significant Federal Public Benefit Programs Available to All Qualified Immigrants⁷²

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

Federally Funded Programs

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

- Emergency Medicaid;⁷⁵

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

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

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

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

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

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

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

Nonprofit and Charitable Organizations Providing Services.

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

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

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

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

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

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

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

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

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

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

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

Attorney General's List

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

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

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

According to the Attorney General,

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

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

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

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

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

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

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

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

STATE AND LOCAL PUBLIC BENEFITS

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

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

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

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

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

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

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

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

⁹⁰*Id.* § 411(d), 8 U.S.C. § 1621(d).

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

⁹²*Id.* § 412(b), 8 U.S.C. § 1622(b).

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

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

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

Specific Rules For Some Important Federal Benefit Programs

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

SUPPLEMENTAL SECURITY INCOME (SSI)

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

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

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

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

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

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

FOOD STAMPS

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

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

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

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

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

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

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

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

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

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

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

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

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

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

MEDICAID

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

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

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

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

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

¹⁰⁴ 42 U.S.C. § 607(a)(7).

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

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

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

Emergency Medicaid

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

PUBLIC HOUSING FOR QUALIFIED BATTERED IMMIGRANT WOMEN¹¹⁰

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

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

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

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

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

¹⁰⁹42 U.S.C. § 1396b(v)(3).

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

¹¹¹8 U.S.C. § 1641(c)(2)(A).

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

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

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

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

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

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

Housing Options Open to "Not-Qualified" Battered Immigrants

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

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

¹¹³ For more information, please contact NIWAP.

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

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

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

Nutrition Programs

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

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

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

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

EDUCATION

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

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

¹¹⁶*Id.*

¹¹⁷HUD Reg. § 5.501(c).

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

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

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

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

¹²²*Id.*

¹²³8 U.S.C. § 1643(a)(2).

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

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

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

Public Charge Concerns

As a general rule, an immigrant who is likely at any time to become a “public charge” is ineligible to be granted lawful permanent residency in the United States.¹²⁶ However, VAWA 2013 exempts self-petitioners and T/U visa petitioners from the “public charge exception” to admissibility, whereby a petitioner was previously deemed inadmissible to the United States because s/he might become a public charge, a person who is primarily dependent on the U.S. government for subsistence.¹²⁷ Below is a history of how public charge inadmissibility was applied in the past.

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, CIS or immigration judge must determine that the person is likely to become a public charge *in the future*. A number of factors must be considered including age, health, family status, assets, resources and financial status, education, skills, and the totality of the applicant’s circumstances.¹²⁸ Note that, although public charge is a “future-looking” determination, the regulations permit consideration of a number of present and past factors in making the public charge determination. Recent immigration and welfare reform laws have generated considerable confusion and concern about whether a non-citizen who is eligible to receive certain federal, state, or local public benefits may face adverse immigration consequences of being considered a public charge for having received public benefits.

On May 26, 1999, the Immigration and Naturalization Service issued proposed regulations and field guidance on the issue of public charge.¹²⁹ The field guidance was to go into effect immediately. While overall these regulations are helpful (i.e., not relevant to battered immigrants specially) to a certain extent for some battered immigrants, CIS has not issued final regulations and is still considering whether or not battered immigrants who apply for relief under VAWA will be exempt from or subject to the overall public charge ground of inadmissibility.¹³⁰ Until this issue is resolved attorneys representing battered immigrants should become familiar with the public charge proposed regulations and field guidance that apply to all immigrants.

Subsequent to publication of the proposed regulations, which are discussed in greater detail below, Congress amended the Violence Against Women Act to clarify the effect of the public charge provisions on battered

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

¹²⁵20 U.S.C. § 1232(g).

¹²⁶INA § 212(a)(4)(A)

¹²⁷ See 8 U.S.C. § 1182(a)(4)(E) INA § 212(a)(4) and Section 804 of VAWA

¹²⁸INA § 212(a)(4)(B); Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rules and Notice, 64 Fed. Reg. 28,676, at 28,682, § 212.104 (May 26, 1999).

¹²⁹*Id.* at 28676 *et. seq.*

¹³⁰Immigration and Naturalization Service, *Questions and Answers -- Public Charge, Question 32*, at http://www.ins.usdoj.gov/public_affairs/news_releases/public_cqa.htm.

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immigrant women.¹³¹ The statutory language guarantees that if an applicant for lawful permanent residence through adjustment of status or an immigrant visa has an approved VAWA self-petition, and that applicant has received or is receiving post-August 22, 1996, benefits, then CIS and consular officials are barred from considering the receipt of those benefits for public charge purposes. Evidence of use of IIRAIRA-authorized benefits must not be solicited, accepted, or considered by CIS officers or consular officials adjudicating adjustment of status or visa applications from self-petitioners or abused widows with approved self-petitions (I-360s). IIRAIRA-authorized benefits require that the applicant prove that she is a domestic violence victim, and that the need for benefits is substantially connected to the abuse (see above).

Because the VAWA amendments were enacted after the CIS issued the proposed public charge regulations, the proposed rule does not reflect these changes. The proposed regulation, however, does clarify the circumstances under which any non-citizen can receive public benefits without becoming a public charge. The only benefits that are to be relevant to the public charge determination are public cash assistance for income maintenance, and institutionalization for long-term (but not short-term) care at government expense.¹³² Benefits that fit under this definition for public charge purposes are SSI, TANF, state and local cash assistance for income maintenance and government-paid costs for institutionalization for long-term care.¹³³

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not to be considered in making a public charge determination.¹³⁴ Although some of these programs may provide cash benefits, they are not relevant to the public charge determination if the purpose of such benefits is not for income maintenance but to avoid the need for on-going cash assistance for income maintenance. Examples of public benefits that cannot be considered for public charge purposes include, but are not limited to: Food Stamps, Medicaid, State Children's Health Insurance Program, nutrition programs, housing benefits, child care services, energy assistance transportation vouchers, educational assistance, and job training programs.¹³⁵

The rule and the guidance also state that an alien's receipt of cash assistance for income maintenance, or being institutionalized for long-term care, which are among the criteria for being deemed public charge, does not *automatically* make her or him inadmissible, ineligible to adjust status to legal permanent residence, or deportable on public charge grounds. The law requires that CIS and Department of State (DOS) officials consider several additional issues as well,¹³⁶ including the totality of the applicant's circumstances,¹³⁷ the duration and, on a case-by-case basis, circumstances under which benefits were received,¹³⁸ and whether the immigrants spouse, parent or child received public benefits.¹³⁹ Therefore, temporary reliance on public benefits does not necessarily result in a determination that the battered immigrant is a public charge, even if the assistance received was provided based on eligibility that was not related to the domestic violence.¹⁴⁰ Cash benefits received by a child or other relative will not be attributed to a battered immigrant or other immigrant unless the benefits represent the sole support for the family.¹⁴¹

Though self-petitioning, battered immigrant women are exempt from the requirement of providing an affidavit of support, and CIS is not allowed to consider post-August 22, 1996, benefits use, until further regulations are issued by CIS that specifically address public charge in the cases of battered immigrant women, such individuals may be required to show that they are not likely to become a public charge in the future. Under the proposed CIS rule, they will need to show that they have not become or are not likely to become "primarily dependent on the

¹³¹Pub. L. No. 106-386, § 1505(f), 114 Stat. 1464 (2000).

¹³² Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,676, at 28,685 (May 26, 1999).

¹³³Immigration and Naturalization Service, *Questions and Answers—Public Charge, Question 6, at* http://www.ins.gov/graphics/publicaffairs/factsheets/public_cfs.htm.

¹³⁴ Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,676, at 28,681-82, §§ 212.102, 212.103(c), 212.105 (May 26, 1999).

¹³⁵*Id.* at 28,682, § 212.105.

¹³⁶*Id.* at 28,678.

¹³⁷*Id.* at 28,682, § 212.104.

¹³⁸*Id.* at 28,683, § 212.106(b).

¹³⁹*Id.* § 212.109(a). Benefits provided to a family member will not make an alien inadmissible unless the evidence shows that the alien individually is likely to become a public charge.

¹⁴⁰*Id.* § 212.106(b).

¹⁴¹*Id.* at 28,683 & 28,686, §§ 212.109(b) & 237.18(b).

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government for subsistence as demonstrated by receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."¹⁴²

Until the Justice Department issues further regulations that incorporate the new statutory changes regarding public charge and battered immigrants, when battered immigrants cannot clearly meet the exceptions to the public charge definition set out in the proposed public charge rule and the VAWA 2000 amendments, attorneys working with battered immigrants should assist them to use benefits and move off welfare as quickly as possible. It is best if battered immigrants can show some work history and some ability to sustain themselves and their children. Once the client's self-petition has been approved by the CIS, the battered immigrant should move quickly to obtain work authorization and employment by the date of her adjustment interview.

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

Applications on Behalf of Children Who Qualify for Benefits

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

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

Under federal law, states are required to establish the citizenship and immigration status of applicants for Medicaid (except emergency Medicaid), SCHIP, TANF and Food Stamps. However, states may not require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigration status.¹⁴³

This policy permits all eligible members of an immigrant family to apply for and receive benefits without fearing that their actions will jeopardize the immigration status or lead to the deportation of immigrant family members. It also specifically allows immigrant parents who are ineligible for public benefits to apply for benefits that their

¹⁴²*Id.* at 28,677.

¹⁴³Department of Health and Human Services and Department of Agriculture, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/triagency.html> (last modified Sept. 21, 2000).

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

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

States that require non-applicants to reveal their citizenship or immigration status when such information is not legally required risk violating Title VI of the Civil Rights Act, which prohibits discrimination based upon race, color, or national origin by recipients of federal funds.¹⁴⁴ According to the HHS-USDA guidance,

to the extent that states' application and requirements and processes have the effect of deterring eligible applicants and recipients who live in immigrant families from enjoying equal participation in and access to these benefit programs based on their national origin, states inadvertently may be violating Title VI.¹⁴⁵

Meanwhile, Section 7 of the Privacy Act of 1974 generally prohibits states from denying benefits to individuals who refuse to disclose their SSNs, unless the disclosure is required by federal statute.¹⁴⁶ Only a few federal benefits programs require that applicants for benefits have SSNs. Although federal law requires applicants for Medicaid,¹⁴⁷ SCHIP, TANF, and Food Stamps to provide their SSNs, states risk violating the Privacy Act if they require non-applicants to disclose their SSNs as a condition for approving the applicant's eligibility for the benefits. While states are not prohibited from requesting the SSNs of non-applicants, states that do so are required under the Privacy Act to inform the non-applicant whether the disclosure is voluntary or mandatory and what uses will be made of any SSN provided.¹⁴⁸

Although federal policy, Title VI, and the Privacy Act all govern state inquiries into citizenship, immigration status, and SSNs, actual application procedures vary from program to program and state to state. For example, as a general rule, Medicaid and SCHIP allow individual children to apply for, and receive, benefits. For these programs, therefore, states must require disclosure of the citizenship, immigration status, or SSN only of the person for whom benefits are being sought, and the immigration status of other household members is irrelevant to the applicant's eligibility.¹⁴⁹

On the other hand, under TANF and Food Stamps, families or households are generally required to apply for benefits as a unit. Under Food Stamps, if a household member does not establish his or her citizenship or immigration status, or provide a SSN, that household member is determined to be ineligible to receive benefits, but the state agency cannot deny benefits to otherwise-eligible household members. The amount of the benefit

¹⁴⁴42 U.S.C. § 2000d, *et seq.*

¹⁴⁵Department of Health and Human Services and Department of Agriculture, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/triagency.html> (last modified Sept. 21, 2000).

¹⁴⁶Department of Health and Human Services, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, at <http://www.hhs.gov/ocr/immigration/finalqa.html>, (last modified Sept. 20, 2000).

¹⁴⁷This requirement is for Medicaid, not Emergency Medicaid.

¹⁴⁸Department of Health and Human Services, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, <http://www.hhs.gov/ocr/immigration/finalqa.html>, (last modified Sept. 20, 2000).

¹⁴⁹*Id.*

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will be reduced to reflect a smaller family size or household unit, and the benefit that the household or family will ultimately receive will be less than if all family or household members qualified. Similar voluntary or mandatory opt-out provisions are available under TANF in some states.¹⁵⁰ In other words,

in Medicaid, SCHIP and Food Stamps, states cannot deny benefits to otherwise eligible family or household members because other family or household members have failed to disclose their immigration status or provide an SSN. In TANF, states have the flexibility to adopt policies and procedures to ensure that eligible family members are not denied benefits because ineligible family members do not disclose this information.¹⁵¹

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

Obtaining Work-Related And Non-Work Social Security Numbers¹⁵²

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

If an individual is not authorized to work in the United States but has a valid non-work reason for applying for a number, the Social Security Administration will issue a non-work social security number. Such social security numbers may be required for undocumented battered immigrants or lawfully present battered immigrants without work authorization to apply for public benefits. A SSN may be assigned for a non-work purpose to an immigrant who cannot provide evidence of immigrant status that allows them to work under 20 C.F.R. § 422.107(e), if the immigrant meets certain conditions, including proof of residence either in or outside the United States, or a territory of the United States, and proof that a social security number is required by law as a condition of the immigrant receiving a federally funded benefit to which the immigrant has an established entitlement.¹⁵³

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

Advocates need to understand the process by which an undocumented immigrant can obtain a non-work SSN in order to better serve undocumented battered immigrant women and their children who qualify for benefits under VAWA based on a *prima facie* determination or an approved petition. In general, if an applicant for Medicaid, TANF, or Food Stamps does not have a social security number, the state agency must assist the individual in

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² We wish to gratefully acknowledge the contribution of Edna Yang of American University's Washington College of Law in preparation of this section.

¹⁵³ Non-work social security numbers are also issued to immigrants if the state government requires a social security number to administer statutes governing the issuing of a driver's licenses and the registering of motor vehicles. It can also be argued that in jurisdictions where the courts ask for social security numbers of parties applying for divorce, child support, paternity, and marriage licenses, non-work social security number should be issued. See *Memorandum regarding §466(a)(13) of the Social Security Act*. See also SSA Program Operations Manual System, Records Manual 00203.510, available at <http://policy.ssa.gov/poms.nsf/lnx/0100203510!opendocument>.

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applying for one.¹⁵⁴ Advocates, however, are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are actually provided a non-work SSN, because caseworkers may not fully understand the process and eligibility requirements involved in issuing non-work SSNs, and may have no knowledge of battered immigrant eligibility under VAWA.

ELIGIBILITY

A non-work SSN will be processed for undocumented immigrants who are entitled to the following public benefits:¹⁵⁵

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

A SSN will not be processed for any undocumented immigrant who:¹⁵⁶

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

APPLICATION PROCEDURES

Work-Authorized SSN

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

- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital record for birth, or a passport;¹⁵⁷
- Identity, through documents including, but not limited to, a driver’s license, identity card, school record, medical record, marriage records, passport, or Immigration and Naturalization Service document;¹⁵⁸
- U.S. citizenship or work authorized lawful immigrant status.¹⁵⁹

Non-Work SSN

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

¹⁵⁴*Id.*

¹⁵⁵*Id.* at 00203.560(A)(2), available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>.

¹⁵⁶*Id.* at 00203.560, available at <http://policy.ssa.gov/poms.nsf/lnx/0100203560!opendocument>.

¹⁵⁷20 C.F.R. § 422.107(b).

¹⁵⁸*Id.* § 422.107(c).

¹⁵⁹*Id.* § 422.107(d). Approved VAWA self-petitioners with deferred action status and work authorization from BCIS have “work authorized lawful immigrant status.”

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- Age, through documents including, but not limited to, a birth certificate, a religious record showing age or date of birth, a hospital record for birth, or a passport;¹⁶⁰
- Identity, through documents including, but not limited to, a driver's license, an identity card, a school record, a medical record, marriage records, a passport, or an Immigration and Naturalization Service document;¹⁶¹
- The legal requirement for a SSN as a condition of the applicant receiving a federally funded benefit or service;¹⁶² OR
- That the state government requires a SSN to administer statutes governing the issuing of driver's licenses, the registration of motor vehicles, and the issuance of divorce decrees, child support orders, and paternity actions.¹⁶³

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

LOSS OF NON-WORK SOCIAL SECURITY CARD

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

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

SSNs FOR U.S.-BORN CHILDREN

With respect to SSNs for the U.S.-born children of battered immigrant clients, advocates should be aware that the Social Security Administration automatically assigns a Social Security Number (SSN) to children at birth under its "Enumeration at Birth" (EAB) Project, *regardless* of whether or not the parents have a valid social security number.¹⁶⁴ Some Social Security Administration staff members have been erroneously advising parents who do not have social security numbers themselves that they cannot apply for a social security number for their U.S. citizen children. If an immigrant client is going to have a child, she should be informed that her child can and should be assigned a social security number regardless of whether she has one. If the hospital does not mention

¹⁶⁰ *Id.* § 422.107(b).

¹⁶¹ *Id.* § 422.107(c).

¹⁶² *Id.* § 422.107(e). The traditional legal requirements for non-work SSNs have not included state statutes requiring social security numbers for the issuance of divorce decrees, child support orders, and paternity actions. These requirements, however, are a logical extension of the use of non-work SSNs, because they are located in the same state statutes, and fulfill the same purposes, as the legal requirement of a SSN as a prerequisite for driver's licenses and motor vehicle registration.

¹⁶³ *Id.*

¹⁶⁴ SSA Program Operations Manual System, Records Manual 00202.142, available at <http://policy.ssa.gov/poms.nsf/lnx/0100202142!opendocument>.

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this, she should speak to the hospital worker who fills out the form for the birth certificate.

Conclusion

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

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