

Overview of Federal and State Public Benefits: Access For Immigrant Survivors and Their Children

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Introductions

- Leslye Orloff
 - National Immigrant Women's Advocacy Project
- Benish Anver
 - National Immigrant Women's Advocacy Project

Learning Objectives

By the end of this training, you will be better able to:

- Recognize and know how to use tools to research what state and federal public benefits immigrant survivors can access based on the immigration status pursued
- Screen for VAWA, T or U visa immigration relief eligibility to help survivors become “lawfully present”
- Help immigrant survivors who are qualified immigrants gain access to public benefits
- Review strategies for accompanying survivors when they apply for benefits for themselves or their children

How does obtaining legal immigration status help immigrant survivors?

Why is early screening important?

- Victims with legal immigration status have more benefits and services available to them.
- Immigrant victims of domestic violence, sexual assault, human trafficking or other U-visa eligible crimes who file immigration cases:
 - Receive enhanced protection from deportation
 - Can access more publicly funded benefits and services

Overview of Barriers for Immigrant Survivors

- Language access
- More legal rights tools needed for:
 - Benefits staff
 - Victim advocates and attorneys
- Immigration law and public benefits law are related and intersect in complex ways
- Not enough help for survivors filing for immigration protections
- Survivors afraid to seek benefits
 - VAWA 2013 (public charge exception)
- Apparent conflict between state laws/policies and federal benefits and services access laws

Access to Benefits and Services Grow As Victims Pursue Immigration Relief

- Filing immigration case leads to
 - PRUCOL
 - Lawful presence
 - Continued presence/HHS certification or eligibility letter
 - State benefits access to some programs in some states
- Prima facie in VAWA , T visa bona fide; and approval of SIJS case leads to Qualified Immigrant Status
 - Federal public benefits
 - Federal Means tested public benefits (5 year bar)
 - State funded benefits
- Health care open to undocumented persons continues to be available to all

Why is early screening important?

- Survivors who are lawfully present or have certain forms of legal immigration status may be able to purchase healthcare through:
 - Federal Exchange/Marketplace or
 - State exchanges.
- Immigration status may also help survivors access state funded healthcare subsidies

Immigrant Benefits Classifications

- Citizens
- “Qualified Immigrants”
 - Entering U.S. before Aug. 22, 1996
 - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
 - Can access federal public benefits that are not means tested (e.g. public and assisted housing, FAFSA student grants/loans)
- Lawfully Present
 - Health care access is provided and states can opt to offer certain federal or state funded benefits to lawfully residing immigrants (most often prenatal and child health care)
- PRUCOL (Permanently Residing Under Color of Law)
- Undocumented Immigrants

Application for VAWA, T, U, SIJS improves immigrant access to public benefits

- Screen for eligibility
- Lawful Presence
 - Screening + Filing
 - Prima facie determination VAWA
 - Case pending SIJS
 - Screening + Filing +
 - Bona Fide (T)
 - Conditional Approval (U)
- During processing some survivors become qualified immigrants with access to federal public benefits
 - VAWA battered prima facie determination
 - T visa bona fide
 - SIJS approval

Immigration Options and Benefits Available

VAWA self-petition

- PRUCOL upon filing
- Prima facie = Qualified Immigrant
- Self-petitioner and children

Battered spouse waiver

- Qualified Immigrant
- Can avoid deeming

T visa

- PRUCOL upon filing
- Benefits access like refugees (7 years) need HHS certification
- Qualified Immigrant with bona fide determination

Continued Presence

- Benefits access like refugees
- Need HHS certification

U visa

- PRUCOL upon filing
- Lawfully present upon conditional approval

Family Based Visa Petition Approved + Battering or Extreme Cruelty

- Qualified Immigrant
- Not required to file for VAWA

Special Immigrant Juvenile

- Lawfully Present upon filing
- Qualified Immigrant upon approval and receipt of lawful permanent residency

Deferred Action for Childhood Arrival (DACA)

- PRUCOL upon filing
- No access to exchanges or subsidies

Lawful Presence =Immigrants Who Are

- Qualified immigrants
 - VAWA upon prima facie or approval
 - T upon bona fide or approval
- Persons granted nonimmigrant status
 - Approved U and T visas
 - Work visas
 - Student visas
- Children who have applied for special immigrant juvenile status
- Deferred action
 - Includes U visa conditional approvals on wait list
 - DOES NOT include DACA
- Humanitarian parole
- Temporary Protected Status (TPS)
- Persons with approved visa petitions
 - E.g. student visas, work visas

***Immigrant Survivors' Legal
Rights to Access Benefits,
Housing, Legal Services, Victim
Services and Protections***

VAWA 2013

Public Charge Exemption

- VAWA self-petitioners and U and T visa holders
- Can access public benefits and services with no impact on any future immigration case
- USCIS was accepting waivers to public charge for VAWA, U and T visas

Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
 - Which benefits they can access depends on:
 - Immigration status
 - When they entered the United States
 - Whether they meet heightened program requirements for some programs
 - What benefits are offered by the state

State Funded Benefits

Activity 1: Identify Benefits Available in Your State

- Participants will access NIWAP's interactive public benefits map to find their home state
- List the benefits available and to whom they are available
- If your state does not provide benefits to immigrant survivors, determine what federal baseline benefits they can access

Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
 - “federal public benefits” or
 - “federal means-tested public benefits”

Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
 - Grants
 - Contracts
 - Loans
 - Professional or commercial licenses
 - Drivers licenses
- **Federally Funded Benefits for**
 - Retirement
 - Welfare
 - Health
 - Disability
 - Postsecondary education
 - Public or assisted housing
 - Food assistance or
 - Unemployment

Only considered a Federal Public Benefit if:

- Payment made or assistance provided directly to:
 - An individual
 - A household
 - A family eligibility unit

Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

How do *immigrant survivors* prove that they are “qualified immigrants”?

- Family-based immigration cases
 - Prima facie determination in VAWA self-petition or cancellation
 - Approved VAWA self-petition or VAWA suspension/cancellation
 - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
 - Prima facie determination in a T visa case
 - Approved T visa
 - Continued Presence
- Special Immigrant Juvenile Status
 - Upon receipt of lawful permanent residency status through SIJS

Additional requirements for a battered immigrant spouse or child to be a “qualified immigrant”:

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser.

“Substantial Connection” Exists When

- Access to benefits helps ensure the safety of the survivors, their children or a parent
- A survivor had to leave her job for safety reasons
- The survivor loses a dwelling or a source of income following separation
- The survivor needs medical attention or mental health counseling or has become disabled
- The survivor’s fear of the abuser jeopardizes the survivor’s ability to take care of her children

“Substantial Connection” Exists When Public Benefits Are Needed...

- To alleviate nutritional risk or need resulting from the abuse or following separation
- When the survivor has lost her job or earns less because
 - of the battery or cruelty or
 - because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.

Survivors of Human Trafficking

- To be eligible for benefits, survivors of trafficking:
 - Must receive certification from the Office of Refugee Resettlement (ORR) that they are eligible for benefits as victims of trafficking; *Or*
 - Have received bona fide determinations in their T visa case making them qualified immigrants
- Benefits agencies must accept ORR certification letter in place of typical Immigration documentation
- Also eligible for refugee programs

Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Adoption assistance
- Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

Education

- DHS does not require universities to ask about immigration status of applicant or enrolling students
- Immigrants eligible for student federal student loans
 - VAWA self-petitioners and their children
 - Permanent residents including SIJS
 - Trafficking victims
 - Refugees/asylees

Post secondary educational grants and loans

- Battered immigrant self-petitioners and their children are qualified immigrants eligible to receive DOE funded grants and loans
- Universities are to accept DHS/Immigration Judge
 - Documentation of VAWA self-petition/cancellation status
- On FAFSA check “eligible noncitizen” and provide “A” number
- Explains no-match with DOE/DHS computer system and
 - DOES NOT require verification
- DHS documents must be current at each time of re-application
- Students remain eligible after age of majority unless
 - VAWA case is denied

Federal Means-Tested Public Programs

Have Most Limited Immigrant Access:

- **TANF**
 - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
 - Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996
 - Refugee
 - Trafficking victim
 - Veteran and “qualified immigrant” spouses, children
- **Food Stamps**
 - “Qualified Immigrants” 5 year bar post August 22, 1996 and children
- **Medicaid and Child Health Insurance Program**
 - Health Care reform opened up access to immigrants who are “lawfully present”

The Five Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for “federal means-tested public benefits” for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar including: refugees, persons granted asylum, Amerasian immigrants, Cuban/Haitian entrants, immigrants granted withholding of deportation and victims of trafficking.

Food Stamps

- Qualified immigrant children under 18 regardless of date of entry
- Qualified immigrants who receive a disability benefit, regardless of date of entry
- Qualified immigrants living in the US for five years

SSI

- Persons already receiving SSI before 8/22/96 or whose SSI apps were pending
- Persons who are blind or have disabilities who were lawfully residing in the U.S. on 8/22/96 and are now “qualified”
- LPRs with 40 quarters of work
- LPRs who entered after 8/22/96 have the additional burden of being “qualified” for 5 years

Immigrants and Health Care Reform

- Naturalized citizens same as U.S. Born Citizens
- Legal Immigrants
 - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
 - May purchase from state insurance exchanges (no wait)
 - Eligible for tax credits & cost-sharing reductions (no wait)
 - Eligible for state's temporary high risk pools and basic health plans
 - 5 year bar to Medicaid for qualified immigrants low income non-pregnant adults
 - State option to provide Medicaid to lawfully present pregnant women and children

Health Care Reforms No Effect For

- Undocumented immigrants
 - Exempt from individual mandates
 - Cannot purchase from state insurance exchanges & no tax credit
 - No Medicare, Medicaid or CHIP
 - Only
 - HHS funded unrestricted health care
 - Emergency Medicaid
 - VOCA

Immigrants and Health Care Reform

- Citizen or lawfully present children of undocumented immigrant parents
 - May purchase child-only coverage on state insurance exchanges
 - Are eligible for premium tax credits and reduced cost-sharing
 - May be eligible for Medicaid or CHIP

State Option -- Medicaid and CHIP for “lawfully residing” children and pregnant women

- Lawfully present + Medicaid state residency rules
- Lawfully present =
 - Lawful permanent residency
 - Approved visa petition + application for lawful permanent residency filed
 - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants)
 - Humanitarian immigrants (e.g. Cuban Haitian Entrants, TPS, DED, Deferred Action Status)
 - U visa conditional approvals
 - Parolees (lawfully present) if parole for 1yr + (also qualified immigrants)

Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

Child Care Development Fund

- Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
- Open to “qualified immigrants” and victims of trafficking and their children
- CCDF child care open to all without immigration restrictions if
 - Subject to public educational or Head Start standards, or
 - Eligibility determined by a non-profit organization
- CCDF parents have the right to choose their child care provider, (e.g. relative, a family child care home, or child care center)
- Provider may be required to have an SSN
- State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

TANF Funded Child Care

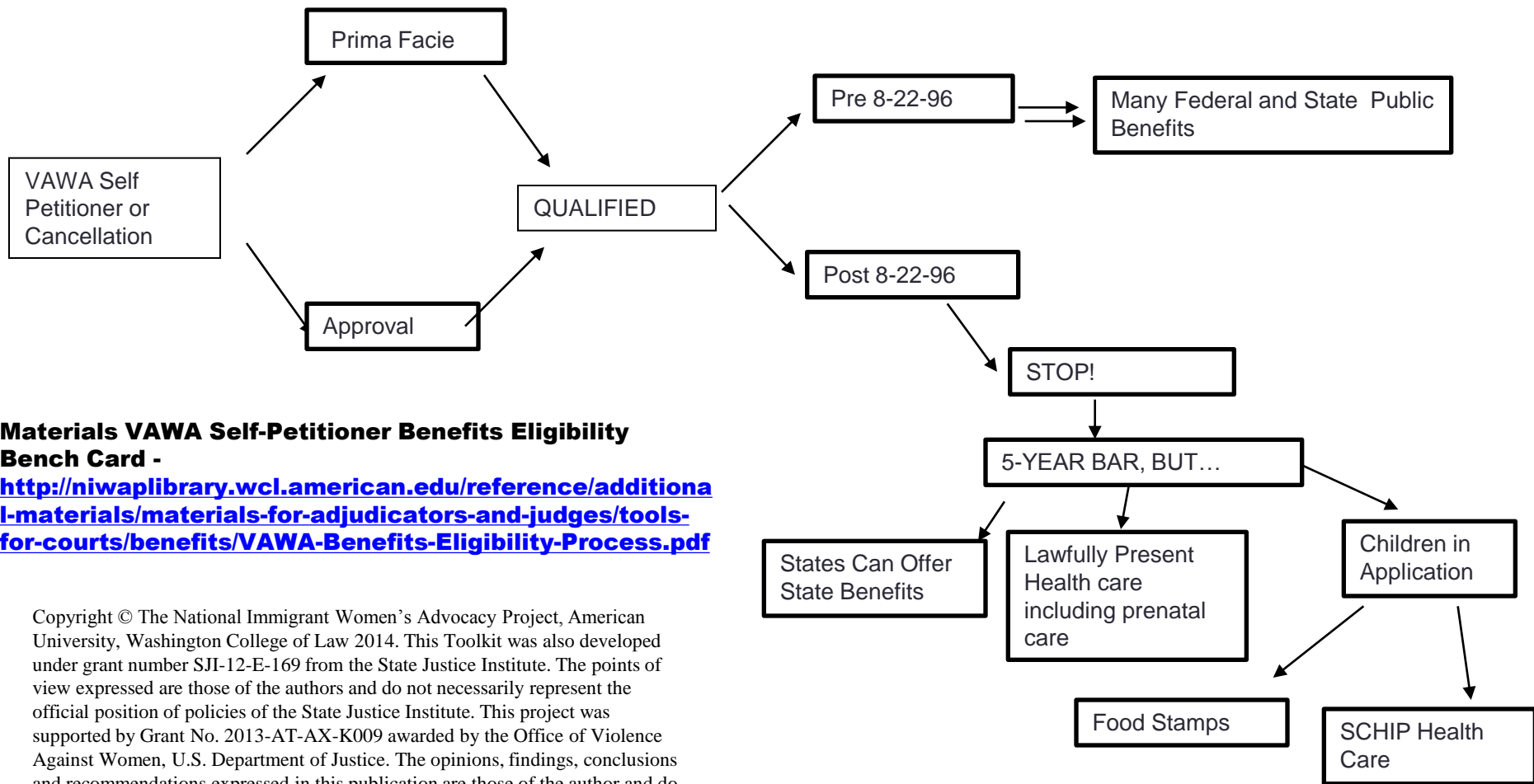
- “Qualified immigrants” who entered the U.S. before Aug. 22, 1996.
- 5 year bar applied to all other qualified immigrants
- Refugees and asylees
- Persons granted withholding of removal
- Amerasian immigrants
- Cuban/Haitian entrants
- Survivors of trafficking and their children
- Veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are “qualified” immigrants

Helping immigrants applying for federal or state funded public benefits

Access to Federal and State Public Benefits for Battered Immigrant Spouses and Children of U.S. Citizens or Lawful Permanent Residents

Abused Family Members Who Have/Will Not Or Do Not Qualify to File Self-Petitions and Parents Abused By 21+ Year Old Sons or Daughters

Services necessary to protect life and safety, shelter, transitional housing, soup kitchens, victim services, police assistance, justice system access, emergency Medicare, Public Health Clinics

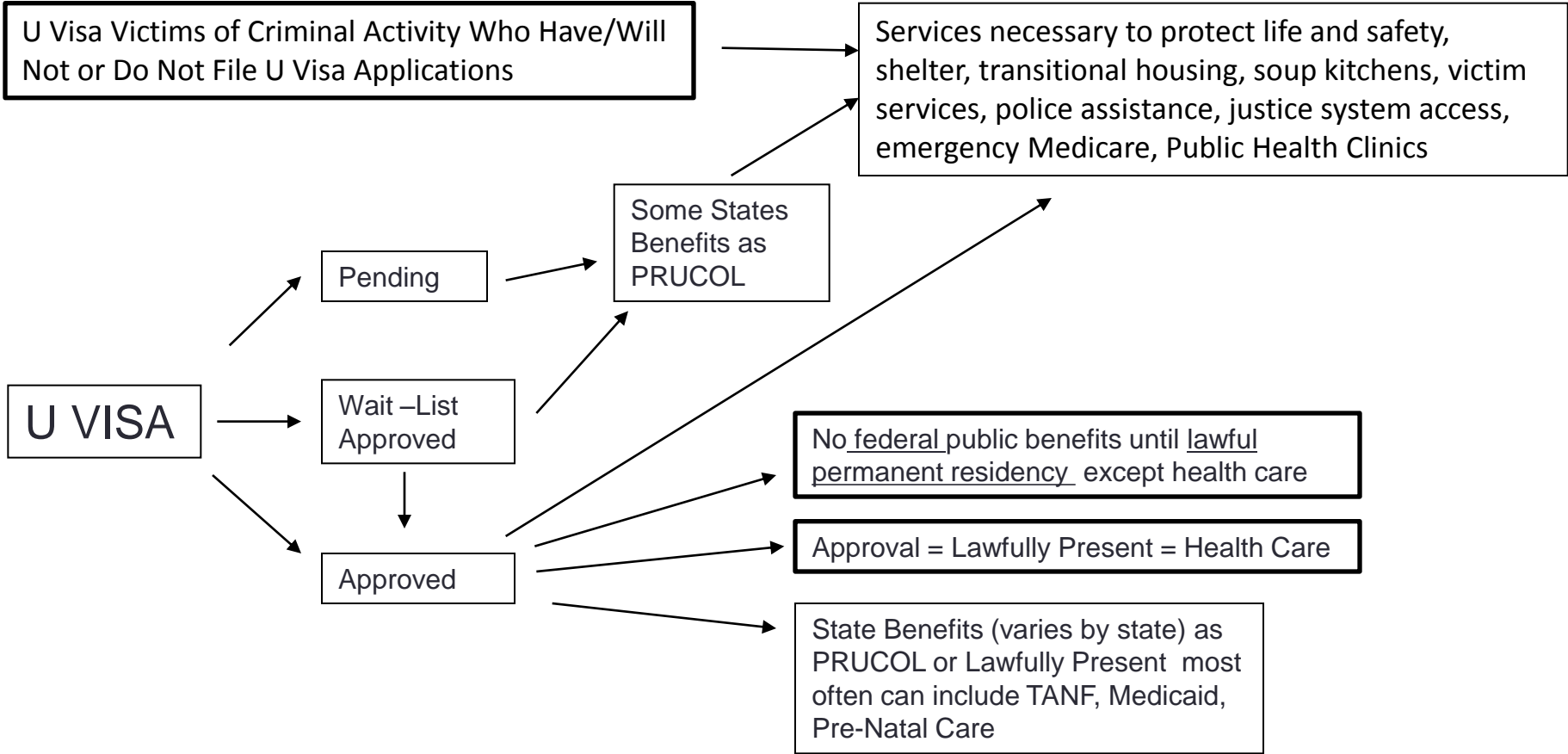


Materials VAWA Self-Petitioner Benefits Eligibility Bench Card -

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/VAWA-Benefits-Eligibility-Process.pdf>

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Access to Federal and State Public Benefits for U Visa Victims

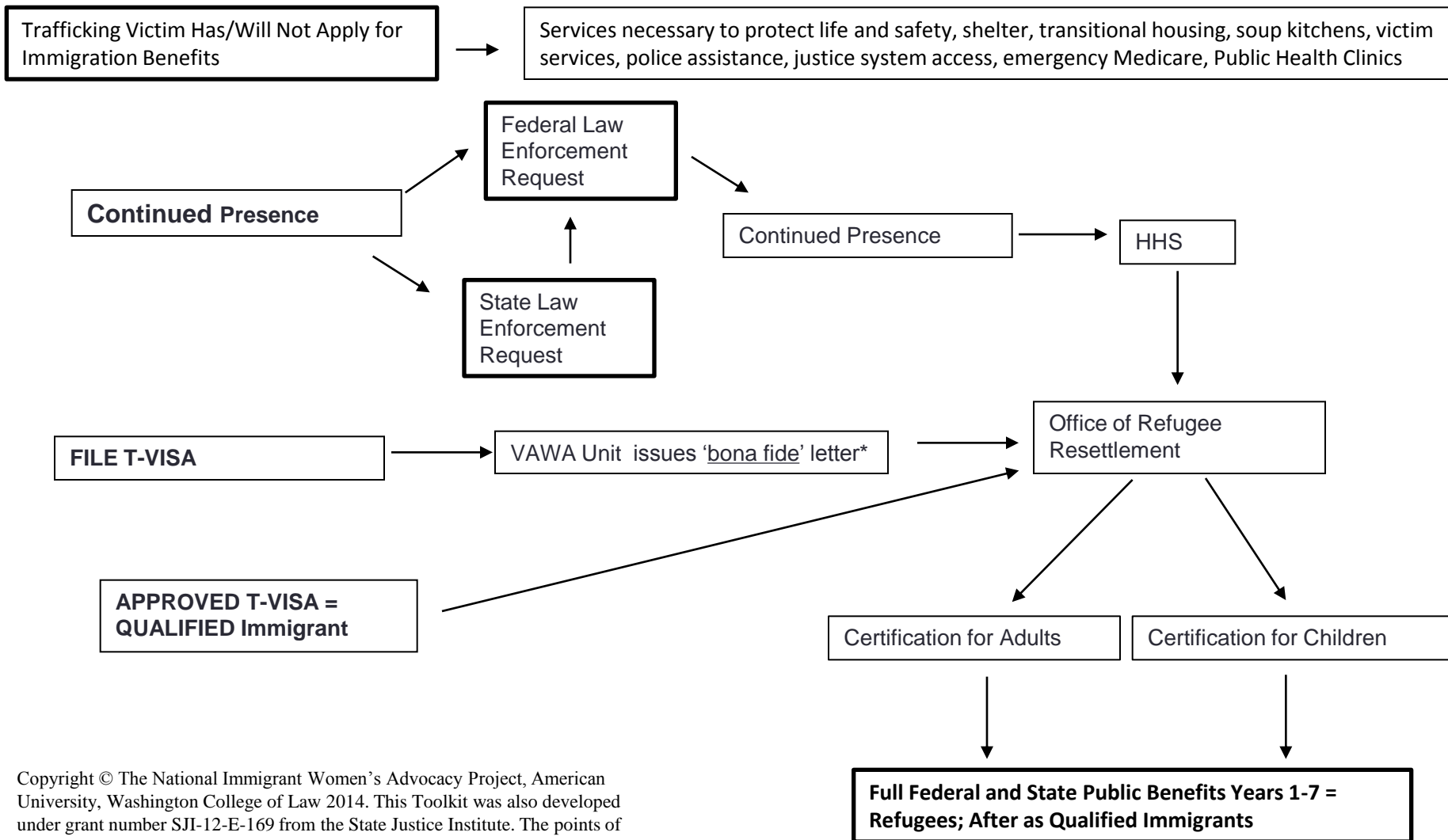


Materials U Visa Benefits Eligibility Bench Card -

<http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf>

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Access to Federal and State Public Benefits for Victims of Human Trafficking

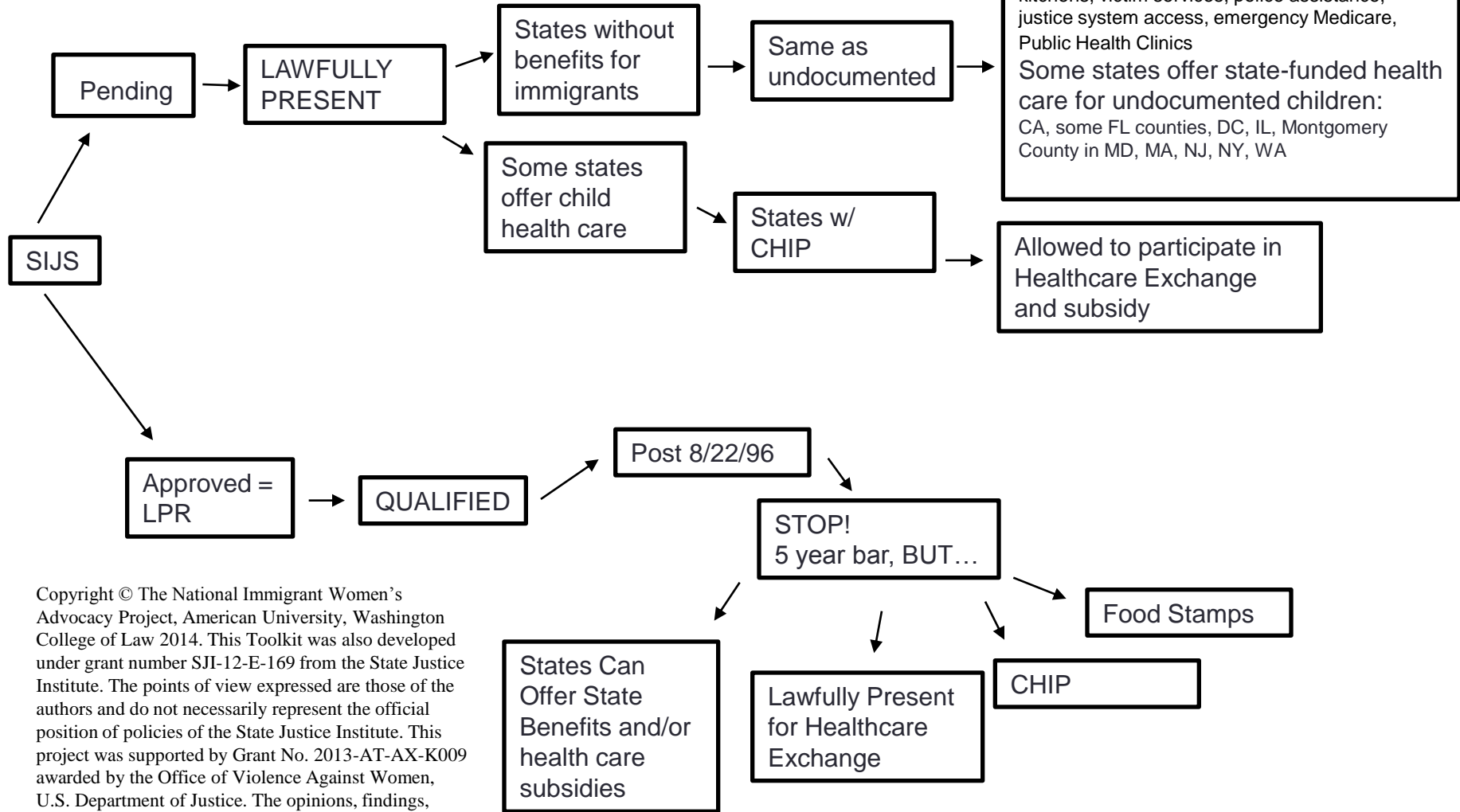


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Materials T Visa Benefits Eligibility Bench Card -
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Trafficking-Victims-Benefits-Eligibility-Process.pdf>

Access to Federal & State Public Benefits for Special Juvenile Immigrant Status (SIJS) Victims

SIJS Victims Who Have/Will Not or Do Not File SJIS Applications



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Activity 2: If you are in a state that does not provide state benefits

- What federal baseline benefits
 - Can survivors access
 - Can their children access

Access to Housing for Immigrant Survivors of Domestic Violence and Sexual Assault

Qualified Battered Immigrant Eligibility for Public and Assisted Housing

- At least one eligible family member
 - Can be a citizen child
- Mixed Families
- Proration
- Advocacy required for qualified battered immigrant access

Battered Immigrants and Access to Public Housing

- 8 U.S.C. 1641(c)
- Battered immigrants
 - who establish prima facie cases
 - who have approved VAWA applications or family-based petitions
- Are “qualified immigrants” for the purposes of receiving federal public benefits, including Public and assisted housing

Federal Housing Programs

- Public Housing
- HUD subsidized
- Low Income Housing Tax Credit
- Housing Vouchers

What To Bring With You to Advocate

- 8 U.S.C. 1641(c)
- 2003 Budget Bill Report Language
- Letter from DHS to HUD 2007

Mixed Families and Proration

- At least one person in the household must be eligible, based on his or her immigration status, to reside in the housing (can be a minor child)
- Household members ineligible for housing assistance based on their immigration status may live in an assisted unit, but the household's subsidy will be prorated

Be Prepared to Advocate...

- For survivor and children remaining in the unit when perpetrator removed
- Based on a child's or the survivor's legal status to avoid proration and include the survivor as a qualified immigrant in the subsidy

Social Security Numbers

- Are not required to apply for public housing
- Refusal to provide a social security number that has not been issued is not grounds for rejecting the application

Activity 3: How Does Status Impact Access to Benefits?

- Participants will be divided into 4 groups, representing each of the following:
 - VAWA Self-Petitioners,
 - U Visa
 - T Visa
 - SIJS children
- Work as a group to identify
 - all of the federal public benefits client and your client's children are eligible for
 - Identify challenges your client may face with the benefits granting agency
- Use workshop slides and handouts provided

Groups Report Back

- Each group reports back
 - Benefits available
 - Challenges

Large group discussion of how benefits access affects

- Immigration options chosen
- Survivor/Victim safety

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!