January 19, 2001

Dear Providers of Services for Battered Women and their Children:

Over this past year, the Office for Civil Rights (OCR) has been contacted by several advocacy and legal services organizations concerning potential instances of immigrants being wrongfully denied access to domestic violence shelters and other federally funded benefits because of confusion about eligibility rules. We have produced the enclosed Fact Sheet on "Access to HHS funded Services for Immigrant Survivors of Domestic Violence" in an effort to educate domestic violence service providers, immigrant advocates, health and social services providers, benefits agency eligibility workers, and others regarding the complex web of eligibility rules issued by several different Federal agencies, including HHS and the U.S. Department of Justice. While battered immigrants have been specifically addressed in the 1996 immigration and welfare laws, and the Violence Against Women Act of 1994 and its recent reauthorization, there is no one source to which to refer, regarding the intersection of domestic violence, immigration law, Federal civil rights laws and eligibility for Federal public benefits.

We hope you find this Fact Sheet to be a useful resource. OCR is available to provide additional technical assistance and to answer any questions or concerns you may have related to the Fact Sheet. We tried to provide references to the appropriate policy documents, regulations and/or statutes throughout the Fact Sheet. If you have any questions or comments concerning the Fact Sheet, please feel free to contact Deeana Jang at OCR, 202-619-0403, or e-mail: mailto:djang@os.dhhs.gov

Sincerely,

/s/

Thomas E. Perez
Director

Enclosure

FACT SHEET

ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE

The welfare reform law passed in 1996[(1)] created new requirements affecting access to federally funded programs for immigrants. One vulnerable population specifically addressed in the legislation is battered immigrants and their children. A variety of different federal agencies administer programs needed by immigrant survivors of domestic violence. This Fact Sheet is intended to provide guidance to health and social service agencies and community-based organizations about eligibility for all the various programs and services funded by Department of Health and Human Services (HHS).

Are battered immigrants eligible for battered women's shelter services funded by HHS?

Yes. Battered women's shelters receive funding from a variety of Federal sources, including Family Violence Prevention and Services Act (FVPSA) funding from the Office for Community Services in the Administration for Children and Families. These funds are administered through a designated state agency. There are no immigration restrictions included in FVPSA, and HHS has not designated FVPSA monies as a federal public benefit program that requires verification of immigration status. Other important points to remember about FVPSA funding include:

- FVPSA-funded programs may not discriminate based on national origin. 42 U.S.C. 10406.
- Formula grant-funded activities must address ethnic, cultural and language-diversity issues. 42 U.S.C. 10402(a)(2)(C).
- States must document procedures that they have developed and implemented to assure the confidentiality of records pertaining to any individual provided FVPSA-funded services. 42 U.S.C. 10402(a)(2)(E). Most, if not all, states have statutes or policies protecting the confidentiality of information provided by a victim of domestic violence to a domestic violence counselor or advocate.

Do other HHS funding sources restrict immigrant eligibility for services that domestic violence victims may need?

In most cases, HHS-funded programs serving domestic violence victims are available to all immigrants who have been abused when those programs do not impose eligibility criteria, such as income. These programs include, but are not limited to, FVPSA-funded programs,

community and migrant health centers, Community Services Block Grant (CSBG), substance abuse, mental health and maternal and child health programs. See HHS' "Interpretation of 'Federal Public Benefit,'" 63 Fed. Reg. 41658 (August 4, 1998). There are some programs such as Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) that may have income and immigrant eligibility restrictions. Programs which contain eligibility criteria, such as income, are considered "Federal public benefits" and as a general rule, are only available to "qualified aliens." While many battered immigrants meet the definition of "qualified alien," discussed below, some do not. Nonetheless, the following are policies and exceptions to the general rule that permit all immigrants, including those who are abused, to access some or all of these services:

- Not-for-profit, charitable organizations are exempt from the welfare reform law's requirement to verify the immigration status of those seeking their services.
- If an immigrant meets the definition of a "battered alien," as defined in the 1996 welfare reform law, he/she would be eligible for benefits as a "qualified alien."
- The Attorney General has designated certain services necessary for the protection of life and safety that are exempt from the immigration restrictions imposed by the welfare reform law when they are delivered at the community level without regard to an individual's income or resources. These include domestic violence services such as short-term shelter[(2)] or housing assistance and other in-kind services. See AG Order No. 2353-2001, 66 Fed. Reg. 3613 (January 16, 2001).
- In addition, the final Order from the Attorney General states that "[n]either states nor other service providers may use the Act as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than the Act, benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters."
- As recipients of Federal financial assistance, shelters must comply with Title VI and other civil rights laws. Recipients of Federal financial assistance are not allowed to discriminate based on race, color or national origin. 42 U.S.C. 2000d *et seq*., 45 CFR Part 80. Protection against national origin discrimination includes persons with limited English proficiency. See HHS' "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 65 Fed. Reg. 52762 (August 30, 2000).

- Other emergency and transitional shelters receiving funding from HHS that are not devoted to serving survivors of domestic violence may also be exempt from immigration verification imposed by the 1996 laws because they are covered by the Attorney General's Order, because they are exempt as not-for-profit charitable organizations or because they provide assistance regardless of eligibility criteria (e.g., income).

Can battered immigrants get TANF, Medicaid or State Children's Health Insurance Program (SCHIP) benefits?

Maybe. It depends upon whether the state has elected to provide these benefits to "qualified aliens," whether the applicant meets the definition of "qualified alien" and whether the battered immigrant entered the country prior to 8/22/96[(3)] or has been in "qualified alien" status for five years. 8 U.S.C. 1613 and 1612(b). If a state provides TANF, Medicaid or SCHIP benefits to "qualified aliens," then otherwise eligible battered immigrants who meet the definition of "qualified alien" and who entered before 8/22/96 or who have been in a "qualified alien" status for five years should be eligible. It should be noted that while certain immigrants are not eligible for federally funded benefits such as TANF, Food Stamps, Medicaid or SCHIP because of their immigration status, or because they have entered the country on or after 8/22/96 and have not been in a "qualified alien" status for five years, states may elect to provide state-funded benefits including income maintenance, nutrition assistance, or health care.

How do battered immigrants qualify for programs such as TANF, Medicaid or SCHIP?

As noted above, battered immigrants who are determined to be "qualified aliens" may be eligible for certain types of public assistance such as TANF, Medicaid or SCHIP. "Qualified aliens" include lawful permanent residents, refugees and asylees, persons granted withholding of removal (deportation), persons paroled for at least a year, those granted conditional entry prior to 4/1/80, Cuban and Haitian entrants, and certain battered immigrants.

In order for battered immigrants to be considered "qualified aliens," the Immigration and Naturalization Service (INS) or the Executive Office for Immigration Review (EOIR or "immigration court") must make certain determinations regarding immigration status, and the benefits granting agency must make additional findings.

To be considered a "qualified alien," a battered immigrant must show he or she has an approved **OR** pending petition which makes a prima facie case for immigration status under one of the following categories:

1. A Form I-130 petition filed by their spouse, or in the case of a child, by the parent or in the case of an unmarried

adult son or daughter of a lawful permanent resident (LPR), by the parent.

2. A Form I-360 petition as a widow(er) of a United States citizen (USC) under 8 U.S.C. 1154(a)(1)(A)(ii).

3. An approved self-petition filed with the Immigration and Naturalization Service (INS) under the Violence Against Women Act (VAWA) on Form I-360 OR an I-360 pending with the INS, and INS has issued a Notice of Prima Facie Determination. In addition, a child of a self-petitioner may also derive immigration status from the self-petition. INS should include the names of any qualifying children on the Notice of Approval or Notice of Prima Facie Determination. Review of these VAWA applications includes a determination that the applicant has been subject to battery or extreme cruelty.

4. An application for VAWA cancellation of removal or suspension of deportation has been granted OR is pending and the immigration court finds that the applicant has a prima facie case for this relief. Review of VAWA applications for cancellation/suspension includes a determination that the applicant has been subject to battery or extreme cruelty.

The Notice of Approval or the Notice of Prima Facie Determination may be presented to benefits granting agencies as evidence of status as a "qualified alien." Benefits granting agencies may verify this using procedures outlined in the"Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," AG Order No. 2129-97, 62 Fed. Reg. 61366 (November 17, 1997). In order to be considered a "qualified alien," the person must demonstrate that he or she has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty. The child of a battered immigrant or the parent of a battered child (as long as the parent did not actively participate in the battery or cruelty) can also be eligible for benefits. INS or the immigration court has already made the requisite determination of abuse as part of the self-petition or VAWA cancellation in the last two categories, described above. However, abuse is not part of the adjudication in the first two categories. Therefore, the benefits granting agency must make this determination. Applicants must provide evidence of battery or extreme cruelty to themselves or their

children. Benefits providers are to consider any credible evidence of abuse that the applicant provides including, but not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel, protection orders, evidence that the applicant sought help from a battered women's shelter, photographs of injuries, affidavits from family members or others who have personal knowledge of the battery or extreme cruelty and the applicant's own credible affidavit.

In all of the above categories, benefits granting agencies must determine that there is a substantial connection between the need for benefits and the abuse and that they are no longer residing with the abuser. See "Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battering or Extreme Cruelty and Need for Specific Public Benefits," 62 Fed. Reg. 65285 (December 11, 1997), and Exhibit B to Attachment 5 of the "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," AG Order No. 2129-97, 62 Fed. Reg. 61366 (November 17, 1997).

Who is eligible to self-petition under VAWA?

The spouses and children of United States citizens (USCs) or lawful permanent residents (LPRs) may self-petition without the knowledge or cooperation of that relative. The law as recently amended permits self-petitioning by a spouse or former spouses in certain circumstances:

- A spouse or former spouse of a USC (former spouse must file within two years of divorce or legal termination of relationship which is due to the death of the USC spouse; divorce and the grounds for termination of the marriage are connected to the domestic violence; or the loss or renunciation of U.S. citizenship by the spouse within two years of self-petitioning is due to an incident of domestic violence) who has been subject to battery or extreme cruelty in the United States while residing with the abusive spouse.

- A spouse or former spouse of an LPR (former spouse must file within two years of divorce or legal termination of relationship which is due to the death of the LPR spouse; divorce and the grounds for termination of the marriage are connected to the domestic violence; or the loss or renunciation of LPR spouse's immigration status or deportation/removal within two years of self-petitioning is due to an incident of domestic violence) who has been subject to battery or extreme cruelty in the United States while residing with the abusive spouse.

The child or parent of a child of USC/LPR who has been subjected to battery or extreme cruelty perpetrated by the USC/LPR parent may self-petition for immigration status.
VAWA also contains a remedy from removal (deportation) for battered immigrants who may be in removal before EOIR. 8 U.S.C. 1229b(b)(2). See the INS website at: http://www.ins.gov for more information regarding VAWA.

Do battered immigrants have to provide Social Security numbers in order to receive TANF, non-emergency Medicaid or Medicaid expansion SCHIP benefits?

Yes. Social security numbers are required of all TANF and Medicaid applicants and recipients. However, Social Security numbers (SSNs) are required only for the persons for whom Medicaid benefits are actually sought (e.g., a mother can apply for Medicaid benefits for her children without seeking benefits for herself, in which case she is not required to provide her SSN, but she is required to provide SSNs for her children). If a non-citizen, who is not eligible for regular Medicaid, qualifies for emergency Medicaid coverage, the applicant cannot be required to provide an SSN. SSNs are not required for the stand-alone, separate SCHIP; however they are required for the Medicaid expansion SCHIP. The TANF rules regarding who is an "applicant" may vary from state to state, but generally families are required to apply for benefits as a unit. Please see "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, and accompanying "Questions and Answers" at http://www.hhs.gov/ocr/immigration/finalqa.html.
Some battered immigrants who are eligible to receive TANF and Medicaid may not yet have SSNs, particularly those waiting for INS to issue their permission to work, a process that can take many months. In this case, the benefits granting agency should help them to get a "non-work Social Security number" by providing a letter explaining why the number is needed. The Social Security Administration (SSA) has provided some guidance on what benefits granting agencies are required to include in such letters. See SSA Publication No. 05-10096, April 2000 at http://www.ssa.gov/pubs/10096.html. The agency should provide benefits while SSA is processing these applications for non-work SSNs.

Should state or local agencies administering the TANF, Medicaid or SCHIP programs "deem" the income of a battered immigrant's sponsor when determining the immigrant's eligibility?

Probably not. Battered immigrants and their children who are "qualified aliens" may be exempt from immigrant sponsor deeming rules. "Deeming" is a procedure in which a sponsor's income and resources are "deemed" to be available to the sponsored immigrant. Some benefits agencies will

count a sponsor's income and resources when determining whether the immigrant is eligible for benefits. Battered immigrants who are "qualified aliens" and who have applied for immigration benefits under VAWA are not required to file affidavits of support. 8 U.S.C. 1182(a)(4)(C)(i). Other battered immigrants may be required to file an affidavit of support,[(4)] but may be exempt from the deeming requirements for at least one year.

How might receipt of TANF, Medicaid or SCHIP benefits affect the immigration status of battered immigrants?

A law enacted on October 11, 2000 provides that persons applying for immigration benefits under VAWA who receive public benefits, including cash assistance, based on their VAWA status will not have those benefits considered by INS or the Department of State for public charge purposes. 8 U.S.C. 1182(p) added by Sec. 1505(f) of H.R. 3244. INS and the Department of State can deny an application for permanent residency or admission to anyone who is likely to become a "public charge" or primarily dependent on the government for subsistence. The agencies have clarified that current or past receipt of public cash assistance for income maintenance in and of itself is not enough to find that someone is likely to become a "public charge." "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28689 (March 26, 1999). They will consider a variety of factors including age, health, family status, assets, resources, financial status, education and skills. Other important things to consider are that:

- Medicaid, SCHIP, Food Stamps and other non-cash assistance, with the exception of long-term institutionalized care, will not be considered for public charge purposes.
- Cash assistance for income maintenance such as TANF, SSI, and General Assistance will be considered as a factor for public charge purposes.
- Cash assistance received by family members is not considered for public charge purposes, unless it is the sole source of income for the family.
- Receipt of public benefits is not considered when applying for citizenship.

For more information, contact:

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1. "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193 (August 22, 1996), as amended by the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996," P.L. 104-208 (September 30, 1996)("welfare reform law").

2. HHS has recently issued guidance that explains that shelters for homeless or battered individuals may use TANF funds to provide services to anyone who needs their help, regardless of immigration status. For more information on the details of using TANF funds in such circumstances, see the TANF Q's and A's at http://www.acf.dhhs.gov/programs/ofa/polquest/index.htm.

3. Certain "qualified aliens" who enter the U.S. on or after 8/22/96 are not eligible for certain Federal means-tested public benefits (which at HHS are Medicaid, TANF, and SCHIP) for five years from the date the individuals receive "qualified alien" status. Therefore, the eligibility of qualified aliens for Medicaid, TANF, and the SCHIP depends upon whether they physically entered prior to 8/22/96, the number of years since they obtained "qualified alien" status and their particular status. The applicant may have physically entered prior to 8/22/96, but did not attain "qualified alien" status until after 8/22/96. These persons may still be considered to have "entered prior to 8/22/96" if they can demonstrate they were continuously present in the United States from the latest date of entry prior to 8/22/96 until the date he or she obtained "qualified alien" status. Persons may still be considered to have been "continuously present" even if they have been absent from the United States for brief periods of time. DOJ Interim Guidance on Verification, 62 Fed. Reg. 61415 (November 17, 1997).

4. Some immigrants, including battered immigrants, have been petitioned for by family members to immigrate here. As part of that process, family members must also file an "affidavit of support" as well as the immigration petition. The affidavit of support is a contract the petitioner must sign promising the government to support the immigrant at 125 percent of the Federal poverty level and to repay the costs of certain benefits. If deeming is a part of determining eligibility, the income and resources of the sponsor will be considered until the immigrant naturalizes, works or can be credited with 40 qualifying quarters of work, abandons his or her lawful permanent resident status and has departed the United States, or until the death of the immigrant or the sponsor. See 8 CFR section 213a.2(e)(1)(i)(which describes these same circumstances as the basis for terminating a sponsor's support obligation). These rules apply only to affidavits of support filed on INS Form I-864 after December 1997.

Date revised: January 30, 2001