

Privacy Protections for Immigrants Victims of Domestic Violence, Sexual Assault, Human Trafficking, Child Abuse, and Other Immigrants Applying for Public Benefits^{1 2}

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Generally, federal laws do not require state and federal government employees, other than those employed by the U.S. Department of Homeland Security (DHS), to inquire into the immigration or citizenship status of individuals or participate in the enforcement of U.S. immigration laws.³ Staff that process applications for state or federal public benefits are the only state or federal agency staff that may be required under federal law in very limited circumstances to provide information about an individual's citizen or immigration status.⁴ Judges, court staff, police, prosecutors, other government agency staff and staff working at non-profit charitable or faith based organizations including legal services, victim services and community based organizations have no obligations under federal law to inquire into or report on the immigration or citizenship status of individuals whom they encounter.

However, federal law prohibits federal, state or local government staff or agencies from restricting the ability of government agency staff sending immigration to or receiving information from DHS about an individual's immigration status.⁵ As a result, some government agency staff may choose to report individuals to immigration enforcement officials. This fact sheet informs court staff, judges, police, prosecutors, and victim serving advocates and attorneys about the limited circumstances in which state and federal benefits granting agencies may request immigration status and social security number information in the context of public benefits applications for individuals living in mixed immigration status households who qualify for state or federal public benefits.

This is an area of law in which public benefits, immigration and privacy laws intersect in complex ways. National experts on the intersections of these laws summarize the relationship as follows:

“With very limited exceptions, information about benefit recipients⁶ may be used only to administer the public benefit program and may not be disclosed to federal agencies or officials for other purposes, such as the enforcement of immigration laws. Federal agencies have confirmed that these protections apply to benefit recipients even after the passage of the federal welfare and immigration laws.⁷ Although 8 U.S.C. sections 1373 and 1644 generally prohibit government agencies from restricting communications with federal immigration officials “regarding an individual’s citizenship or immigration status,” these restrictions do not apply to any other information about individuals, such as their receipt of public benefits.⁸ State agencies generally may not disclose information about public benefits recipients, if the purpose of the request is unrelated to administering public benefit programs. The federal laws protecting information about benefit recipients remain intact...⁹”

What information can state agencies ask for as part of the state and federal public benefits application process?

- State agency staff administering state, federal and/or local public benefits programs may only ask questions about the immigration status and social security numbers of family members who will be benefits recipients and may not request this information from family or household members that are not applying to be benefits recipients.¹⁰

- Title VI of the Civil Rights Act and the Privacy Act of 1974 provide limitations on how a state may make certain eligibility determinations.¹¹
- Federal laws and regulations governing specific public benefits programs and federal privacy and civil rights laws each place limitations on¹²
 - Inquiries about and collection of sensitive personal information including but not limited to questions about immigration status and social security numbers
 - What and when information collected is required to be verified with DHS
 - Whether information about benefit recipients may be used or disclosed for purposes other than eligibility determinations or administering the public benefits program.
- *Citizenship and Immigration Status*
 - States can only require disclosure of citizenship or immigration status information about family members who are seeking to be recipients of Medicaid or Medicaid expansion under SCHIP.¹³
 - Eligibility for SNAP or Food Stamp benefits are determined based upon all household members. Food stamp benefits cannot be denied to eligible citizen or immigrant household members due to the failure of household members not applying to receive SNAP or food stamp benefits to disclose information about their citizenship or immigration status.¹⁴
- *Social Security Numbers*¹⁵
 - Generally, states are prohibited from requiring individuals from disclosing their SSNs unless in the context of administering public benefits, the disclosure of SSN information is required by federal statute and/or the state has a system of records that was operational prior to January 1, 1975 that requires disclosure of an SSN.¹⁶
 - By statute¹⁷, states are required to obtain the SSN of persons applying to be recipients of Housing (public and assisted housing), Medicaid, Medicaid expansion under the (State Children’s Health Insurance Program) SCHIP, TANF and SNAP Benefits.¹⁸
 - *Requests for Social Security Numbers of Non-Applicants*
 - *Medicaid*– A state agency may, but is not required to, request a non-applicant family member’s SSN, but only if: (1) providing an SSN is voluntary; (2) the SSN is used only to determine the applicant’s eligibility for Medicaid or another insurance affordability program; and (3) the agency provides clear notice that provision of the non-applicant’s SSN is voluntary, and provides the non-applicant family member with information describing how the SSN will be used including whether it will be shared with DHS.¹⁹
 - *TANF* –Since TANF benefits are based upon the family unit, TANF benefits administrators obtain income information about all household members including those who are not seeking to receive TANF benefits. However, only household members who are applying to be TANF recipients are required to disclose their SSN. State benefits agency staff are required to inform non-applicant household members that disclosure of information about SSNs and whether or not they have an SSN is voluntary.²⁰

How is the information benefits agencies requested and received for public benefits application purposes shared?

Individual benefits such as Medicaid, Child Health Insurance Program (CHIP), Temporary Assistance to Needy Families (TANF), and the Special Supplemental Nutrition Program for

Women, Infants, a Children (WIC) have individual guidelines about how information provided as part of the public benefits application may be shared with others.²¹

- There are limited circumstances where public benefit agencies may have an obligation to make reports to federal immigration authorities. Both Supplemental Nutrition Assistance Program (SNAP) and TANF program administrators are required to report to DHS about an immigrant only if they know²² that an immigrant who is not lawfully present is applying for the benefits for his or her own use.²³
- The “knowing” standard is met under the TANF²⁴ and SNAP²⁵ programs only if all three of the following conditions are met:
 1. The immigrant is seeking TANF or SNAP for the immigrant’s own use;
 2. The TANF or SNAP agency has made a formal finding of fact or conclusion of law that the immigrant is unlawfully present, subject to administrative review; **and**
 - i. Note that a response from the DHS SAVE system showing no record regarding an individual is not sufficient to meet the “knowing” standard;²⁶ **and**
 3. There is a determination of unlawful presence made by DHS or an immigration judge (e.g. a final order of deportation) that supports the TANF or SNAP agency’s finding.

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² For further information on immigrant eligibility for public benefits by immigration status *see*, Jordan Tacher and Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation* (April 17, 2013), <http://niwaplibrary.wcl.american.edu/pubs/vawa-eligibility-process>; Jordan Tacher and Leslye E. Orloff, *Trafficking Victim Benefits Eligibility Process* (March 2, 2018), <http://niwaplibrary.wcl.american.edu/pubs/bchcrd-trafficking-victim-benefits-eligibility-process>; and Jordan Tacher, Aditi Kumar, and Leslye E. Orloff, *U-Visa Victim Benefits Eligibility Process* (Oct. 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-benefits-benchcard>; and to identify by state which immigrant victims are eligible for which state and federal public benefits *see* NIWAP’s Guide to the Public Benefits Map for Survivors of Crime (June 11, 2019) <https://niwaplibrary.wcl.american.edu/pubs/benefits-map-guide>.

³ Two significant resources that describe federal law requirements in detail are: National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs –Table (February 21, 2018) and National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018) both available at https://www.nilc.org/issues/economic-support/privacy-protections-in-selected-federal-benefits-programs/#_ftnref2.

⁴ National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February, 2018), 2, <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf>

⁵ 8 U.S.C. 1373; 8 U.S.C. 1644; National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018), 2, <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf>

⁶ Under federal public benefits laws the terms recipient and applicant are defined as follows: The term “recipient” means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits. 42 U.S.C § 1786(m)(10)(C). The term “applicant” means a public housing agency or any other agency responsible for administering assistance under this section. 42 U.S.C § 1437f(x)(5)(A).

⁷ National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018), note 1, <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf> (“The U.S. Department of Health and Human Services (HHS) clarified that existing restrictions on exchanging information about a person’s Medicaid or Aid to Families with Dependent Children status continue in effect without change, despite 8 U.S.C. § 1373. See Letter from Sally K. Richardson, Center for Medicaid and State Operations, to State Medicaid Directors (Dec. 17, 1997); Letter from Lavinia Limón, Director of the Office of Family Assistance, to State TANF Directors (Dec. 17, 1997) (on file with the National Immigration Law Center).”)

⁸ National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018), note 2, <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf> (“Washington State’s Attorney General issued guidance that reminded state agencies about the limitations of 8 U.S.C. § 1373 emphasizing that federal law does not require agencies to share information, does not require them to collect information about immigration status, and applies only to information regarding citizenship or immigration status. Similarly, it does not prohibit state and local agencies from adopting privacy policies protecting other information, such as a person’s address, place of birth, household members, or the types of benefits or services received. Guidance Concerning Immigration Enforcement (Washington State Office of the Attorney General, Apr. 2017), <http://www.atg.wa.gov/immigrationguidance>. The guidance also notes that states and localities may have authority under their police powers to offer broader confidentiality protections, which could cover information about citizenship and immigration status. The application of 8 U.S.C. § 1373 may be further constrained, e.g., if citizenship or immigration status is “essential to the performance” of state or local government functions and the information would “be difficult or impossible” to obtain “if some expectation of confidentiality is not preserved.” *Id.*, citing *City of New York v. United States*, 179 F.3d 29, 36-37 (2d Cir. 1999); *Printz v. United States*, 521 U.S. 898 (1997).”)

⁹ See NAT’L IMMIGRATION LAW CENTER, *Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix* (February 2018), note 3, <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf> (“There are other strong arguments why these federal statutes remain fully intact, protecting all information about recipients of public benefits, despite 8 U.S.C. § 1373. Implicit repeals of federal statutes are disfavored under federal law. Thus, a U.S. Department of Justice memo concluded that 8 U.S.C. § 1373 did not repeal federal statutory prohibitions on disclosure to immigration officials of information collected for the U.S. Census. *Memorandum from Dept. of Justice, Office of Legal Counsel, to General Counsel, Dept. of Commerce*, “Relationship Between Illegal Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information” (May 18, 1999). Subsequent laws, such as the Affordable Care Act (ACA), which protect specific information, similarly remain in force. And, where possible, laws must be construed to avoid conflicts with constitutional provisions, such as a state’s rights under the Tenth Amendment.”)

¹⁰ See NAT’L IMMIGRATION LAW CENTER, *Privacy Protections in Selected Federal Benefits Programs*, (Hereinafter “Privacy Protections Table”), (2018) <https://www.nilc.org/wp-content/uploads/2018/03/privacy-protections-fed-programs-tbl-2018.pdf>

¹¹ See generally, Cecilia Olavarria, Amanda Baran, Leslye Orloff, & Grace Huang, *Chapter 04.2 Public Benefits Access for Battered Immigrant Women and Children*, at 31, (July 10, 2013), in BREAKING BARRIERS MANUAL, <http://niwaplibrary.wcl.american.edu/pubs/ch4-2-public-bens-access-battered-immigrants/>; National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs – Table (February 21, 2018) and National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018) both available at https://www.nilc.org/issues/economic-support/privacy-protections-in-selected-federal-benefits-programs/#_ftnref2

¹² National Immigration Law Center, Privacy Protections in Selected Federal Benefits Programs, Model Comments and Appendix (February 2018) 1 <https://www.nilc.org/wp-content/uploads/2018/03/Model-Letter-on-Privacy-Rules-Federal-Programs-2018.pdf>

¹³ DEP’T OF HUM.SERVS., *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* (hereinafter “Policy Guidance”), at 2-3, (last updated Mar. 24, 2006) https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/origin/triagencyq%26as_pdf.pdf

¹⁴ Policy Guidance, at 4.

¹⁵ Immigrant self-petitioner, human trafficking victims and some other immigrants may be eligible for state or federal public benefits programs (e.g. public and assisted housing) that require that the immigrant receiving the public benefit obtain a social security number. Victims eligible for benefits can be granted a non-work social

security number to be able to continue receiving state and/or federal public benefits. For information about how victims apply for non-work social security numbers, *see* Limayli Huguet and Leslye E. Orloff, Obtaining Non-work Social Security Numbers Needed by VAWA Self-Petitioners to Maintain Public and Assisted Housing (Section 214 Housing) (November 7, 2019) <https://niwaplibrary.wcl.american.edu/pubs/non-work-ssns-vaawa-self-petitioners>.

¹⁶ Policy Guidance, at 1.

¹⁷ *See* 42 U.S.C. § 1320b-7(a). For information on obtaining access to a non-work SSN *See* Limayli Huguet & Leslye E. Orloff, *Obtaining Non-work Social Security Numbers Needed by VAWA Self-Petitioners to Maintain Public and Assisted Housing (Section 214 Housing)* (Nov. 7, 2019), <http://niwaplibrary.wcl.american.edu/pubs/non-work-ssns-vaawa-self-petitioners-2-5-20-1h>; Advocates and attorneys should also review the following document for a list of the documents that a VAWA self-petitioner should take with them to apply for public and assisted housing from the Public Housing Authority (PHA). *See* Benish Anver, Alexandra Brown, and Leslye E. Orloff, *How to Advocate for Public and Assisted Housing for Your Battered Immigrant or Trafficking Survivor Client* (June 22, 2014 updated February 8, 2017), <http://niwaplibrary.wcl.american.edu/pubs/pub-asst-housing-advocacy/>

¹⁸ For some benefits programs (e.g. LIHEAP) although the U.S. Department of Health and Human Services cannot under federal privacy laws require that states administering LIHEAP ask Social Security Number information, some states may request this information from persons applying to receive LIHEAP benefits. *See* HHS, HHS Guidance on the Use of Social Security Numbers (SSNs) and Citizenship Status Verification for Assistance by LIHEAP Grantees' Program, (December 12, 2014) <https://www.acf.hhs.gov/ocs/resource/liheap-im-hhs-guidance-on-the-use-of-social-security-numbers-ssns-and-citizenship-status-verification>

¹⁹ 42 C.F.R. § 435.907(a); 435.907(e)(2); § 435.907(e)(3); and § 435.910(e)(3); and 42 C.F.R. § 435.4.

²⁰ Policy Guidance, at 5-6.

²¹ *See generally*, NAT'L IMMIGRATION LAW CENTER, *Privacy Protections in Selected Federal Benefits Programs*, (2018) <https://www.nilc.org/wp-content/uploads/2018/03/privacy-protections-fed-programs-tbl-2018.pdf>

²² *See* Privacy Protections Table, at 8.

²³ Privacy Protections Table, at 3, 5.

²⁴ 42 U.S.C. § 608(g); 65 Fed. Reg. 58301 (Sep. 28, 2000).

²⁵ 7 C.F.R. § 273.4(b)(2); 65 Fed. Reg. 58301 (Sep. 28, 2000).

²⁶ All VAWA self-petitioners who are qualified immigrants and eligible for many federal and state public benefits will receive a “no-match” response in the SAVE system. This occurs because they are one of the groups of immigrants who are legally eligible under public benefits laws to access public benefits before their immigration case has advanced to the point at which they are granted legal work authorization which is generally the trigger that leads to an immigrant being listed in the SAVE system. A benefits eligible VAWA self-petitioner may be eligible for public benefits for a number of years before they are entered into the SAVE system. For this reason the Department of Homeland Security and the Department of Housing and Urban Development issued special guidance on how public housing authorities are to verify eligibility for access to public and assisted housing for VAWA self-petitioners. *See*, HUD Notice PIH 2017-02 (HA), Violence Against Women Act (VAWA) Self-Petitioner Verification Procedures (Jan. 19, 2017), <https://www.hud.gov/sites/documents/PIH2017-02.PDF>. Human trafficking who are benefits eligible for public benefits and bona fide T visa applicants or recipients of continued presence who have received certification from the U.S. Department of Health and Human Services, may also receive no-match letters in the SAVE verification system and still be eligible to receive state and federal public benefits.