Access to State-Funded Public Benefits in South Dakota for Survivors, Based on Immigration Status

By: Daniel Enos and Leslye E. Orloff (With Updates by Mary Ann McLean and Emily Gorney)

May 21, 2019 (Updated March 18, 2024)

Deferred
Undocumented

Special
Immigrant
Juvenile Status
(SIJS)

U Visa, bona
fide, or wait list
approval.

U Visa
Applicants

Undocumented

<table>
<thead>
<tr>
<th>TANF (Cash Assistance)</th>
<th>VAWA Self-Petitioners, Battered Spouse Waivers,¹</th>
<th>Lawful Permanent Residents, and Naturalized Citizens</th>
<th>Refugee, Asylee, T Visa,² Afghans,³ Ukrainians ⁴</th>
<th>T Visa⁵/Continued Presence⁶</th>
<th>Deferred Action for Childhood Arrivals (DACA)⁷</th>
<th>Special Immigrant Juvenile Status (SIJS)⁸</th>
<th>U Visa, bona fide, or wait list approval,⁹</th>
<th>U Visa Applicants</th>
<th>Limited Benefits Eligibility¹⁰</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualified Immigrant²</td>
<td>HHS Certification</td>
<td>Lawfully Present</td>
<td>FEDERALLY FUNDED PUBLIC BENEFITS ARE IN NON-ITALICIZED TYPEFACE AND STATE-FUNDED PUBLIC BENEFITS ARE ITALIZED.</td>
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<tr>
<td>TANF (Cash Assistance)</td>
<td>VAWA: Eligible with prima facie determination, subject to five-year bar for those who arrived on or after August 22, 1996 ¹¹ (After the first)</td>
<td>Refugee/Asylee: Eligible for TANF regardless of date of entry,¹⁶</td>
<td>Human trafficking victims eligible: with HHS Certification (based on continued presence or a bona fide determination on a T visa application)</td>
<td>Not eligible.²²</td>
<td>Eligible after receiving lawful permanent residency, subject to five-year bar for those who arrived on or after August 22, 1996,²³</td>
<td>Eligible after receiving lawful permanent residency, subject to five-year bar for those who arrived on or after August 22, 1996 ²⁵</td>
<td>No federal eligibility.²⁷</td>
<td>Not eligible. ²⁸</td>
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</table>

¹ Federally funded public benefits are in non-italicized typeface and state-funded public benefits are italicized.

² The chart shows eligibility based on immigration status. Applicants must also meet all other program eligibility requirements, such as income/resource limits. Children and other family members included in an individual’s immigration application receive the same access to public benefits as the applicant. When children qualify for federal or state public benefits, immigrant parents can file child-only benefits applications on their children’s behalf. Congress exempted from the public charge ground of inadmissibility immigrant victims applying for immigration relief and lawful permanent residency through the following immigration benefits programs: VAWA self-petitioning (as defined in footnote “d”); VAWA cancellation of removal, VAWA suspension of deportation, U visas, and T visas. For technical assistance on benefits access for immigrant survivors please contact the National Immigrant Women’s Advocacy Project, American University, Washington College of Law (202) 274-4457 or info@niwap.org NIWAP would like to thank Michelle Aronowitz and Dean’s Fellows Alexandra Brown and Sandeep Purewal for their work in developing these state public benefits charts.

³ © National Immigrant Women’s Advocacy Project, American University, Washington College of Law 2018. This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. This project was supported by Grant No 15JOVW-21-GK-02208-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

⁴ See 8 U.S.C. § 1641(a)-(c) (Qualified immigrants are: lawful permanent residents (LPRs); refugees; asylees; persons granted withholding of deportation/removal, conditional entry (as in effect prior to Apr. 1, 1980), humanitarian parolee; Cuban/Haitian entrants; and certain battered immigrants. A battered immigrant is someone who: (1) has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or LPR spouse, parent or step-parent or member of the spouse/parent/step-parent’s family residing in the same household as the immigrant and the spouse/parent/step-parent consented to or acquiesced in such battery or cruelty, and there is a substantial connection between the battery or cruelty and the need for the public benefits, and (b) has been approved or has a petition or self-petition pending which sets forth a prima facie case for certain immigrant visa classifications, suspension of deportation, or cancellation of removal; or (2) is a victim of trafficking or a family member of a trafficking victim who has been granted T visa status or whose T visa application sets forth a prima facie case.). For discussion of prima facie determinations by immigration judges in suspension of deportation and cancellation of removal cases for battered immigrants, see Office of the Chief Immigration Judge, U.S. Dep’t of Justice, Operating Policy and Procedure Memorandum 97-9: Motions for “Prima Facie” Determination and Verification Requests for Battered Spouses and Children, http://niwaplibrary.wcl.american.edu/pubs/prima-facie-verification-requests/ (last visited Mar. 2, 2018).

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American University, Washington College of Law
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(o) 202.274.4457 ® info@niwap.org ® http://niwaplibrary.wcl.american.edu/
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<th>VAWA Self-Petitioners, Battered Spouse Waivers, Lawful Permanent Residents, and Naturalized Citizens</th>
<th>Refugee, Asylee, T Visa, Afghans, Ukrainians</th>
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<td><strong>TANF</strong></td>
<td>12 months may be subject to deeming). Lawful permanent residents: Eligible subject to five-year bar for those who arrived on or after August 22, 1996 (may be subject to deeming)</td>
<td>determination, eligible under the Victims of Trafficking and Violence Protection Act (TVPA) of 2000 to the same extent as refugees.</td>
<td>or with HHS eligibility determination (under 18). These human trafficking victims are eligible to the same extent as refugees and thus are eligible regardless of date of entry.</td>
<td>(may be subject to deeming).</td>
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<td><strong>Naturalized citizens:</strong> Eligible without restrictions.</td>
<td>At the state’s discretion, T visa holders or applicants eligible as qualified immigrants with prima facie (bona fide) determination, subject to five-year bar for those who entered on or after August 22, 1996.</td>
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<tr>
<td><strong>Child Care</strong></td>
<td>Children who are asylees or refugees are eligible for CCDF-funded child care and TANF-funded child care. T visa: Eligible for CCDF-funded child care and TANF-funded child care under the Victims of Trafficking and Violence Protection Act of 2000 to</td>
<td>Human trafficking victims with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or an HHS eligibility determination (under 18) are eligible for CCDF-funded child care and TANF-funded child care.</td>
<td>Eligible for CCDF-funded child care open to all immigrants, when:</td>
<td>Eligible for CCDF-funded child care open to all immigrants, when: (1) Child care is provided in settings subject to public educational standards, including public or private pre-kindergarten or public and private child care provided</td>
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<td>Refugee, Asylee, T Visa, Afghans, Ukrainians</td>
<td>T Visa&lt;sup&gt;5&lt;/sup&gt;/ Continued Presence&lt;sup&gt;6&lt;/sup&gt;</td>
<td>Deferred Action for Childhood Arrivals (DACA)&lt;sup&gt;7&lt;/sup&gt;</td>
<td>Special Immigrant Juvenile Status (SIJS)&lt;sup&gt;8&lt;/sup&gt;</td>
<td>U Visa, bona fide, or wait list approval.&lt;sup&gt;9&lt;/sup&gt;</td>
<td>U Visa Applicants</td>
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<td>Child Care</td>
<td>immigrates who entered on or after August 22, 1996.&lt;sup&gt;30&lt;/sup&gt;</td>
<td>the same extent as refugees.&lt;sup&gt;33&lt;/sup&gt;</td>
<td>Family members with T visa status eligible for CCDF-funded child care and TANF-funded child care, no need for HHS Certification or eligibility determination.&lt;sup&gt;37&lt;/sup&gt;</td>
<td>public and private child care provided after school or during school holidays; (2) Childcare is subject to Head Start performance standards; or (3) Eligibility for child care services is determined by a nonprofit charitable organization.&lt;sup&gt;39&lt;/sup&gt; Upon receiving lawful permanent residency, eligible as for CCDF-funded child care.&lt;sup&gt;40&lt;/sup&gt; Also eligible for TANF-funded child care subject to five-year bar for those who entered on or after August 22, 1996.&lt;sup&gt;35&lt;/sup&gt;</td>
<td>after school or during school holidays; (2) Childcare is subject to Head Start performance standards; or (3) Eligibility for child care services is determined by a nonprofit charitable organization.&lt;sup&gt;42&lt;/sup&gt; Upon receiving lawful permanent residency, eligible as for CCDF-funded child care.&lt;sup&gt;43&lt;/sup&gt; Also eligible for TANF-funded child care subject to five-year bar for those who entered on or after August 22, 1996.&lt;sup&gt;41&lt;/sup&gt;</td>
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<td>Naturalized citizens:</td>
<td>Eligible without restrictions.&lt;sup&gt;31&lt;/sup&gt;</td>
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<td>SNAP (Food Stamps)&lt;sup&gt;47&lt;/sup&gt;</td>
<td>Eligible with VAWA prima facie determination or lawful permanent residence, subject to an additional condition, e.g.: five years residency, younger than 18, elderly, (if lawfully residing in the U.S. on 8/22/96 disabled, or if Lawful Permanent Resident with 40 qualifying work quarters).&lt;sup&gt;50&lt;/sup&gt;</td>
<td>Refugee/Asylee: Eligible with no additional conditions.&lt;sup&gt;50&lt;/sup&gt;</td>
<td>Human trafficking victims are eligible: with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or with an HHS eligibility determination (under 18).&lt;sup&gt;53&lt;/sup&gt;</td>
<td>Not eligible.</td>
<td>Eligible upon receiving lawful permanent residency, subject to an additional condition, e.g.: under 18, five years residency, 40 qualifying work quarters, or disabled.&lt;sup&gt;59&lt;/sup&gt;</td>
<td>Eligible upon receiving lawful permanent residency, subject to an additional condition, e.g.: under 18, five years residency, 40 qualifying work quarters, elderly, or disabled.&lt;sup&gt;55&lt;/sup&gt;</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
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<td>SNAP</td>
<td>VAWA Self-Petitioners, Battered Spouse Waivers,1 Lawful Permanent Residents, and Naturalized Citizens</td>
<td>Refugee, Asylee, T Visa,2 Afghans,3 Ukrainians4</td>
<td>T Visa5/ Continued Presence6</td>
<td>Deferred Action for Childhood Arrivals (DACA)7</td>
<td>Special Immigrant Juvenile Status (SIJS)8</td>
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<td>quarters of work credit.48 Naturalized citizens: Eligible without restrictions.49</td>
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<td>Protection Act to the same extent as refugees.52</td>
<td>without HHS certification or eligibility determination.54 These human trafficking victims are eligible to the same extent as refugees and thus are eligible with no additional conditions.55</td>
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<td>SNAP</td>
<td>The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides Federal grants to States for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk, without regard to immigration status or naturalized citizenship.67 Applicants must live in the state in which they apply, but are not required to live there for a certain amount of time in order to meet the WIC residency requirement.68 Applicants must also have an income at or below an income level or standard set by the State agency or be determined automatically income-eligible based on participation in certain programs (TANF, SNAP benefits, Medicaid).69</td>
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<td>Purchase Health Insurance on Exchanges6</td>
<td>Eligible with VAWA prima facie determination,72 as a lawful permanent resident,73 or naturalized citizen.74</td>
<td>Refugees: Eligible.73 Asylee: Eligible; applicants eligible if granted work authorization; applicants under 14 eligible if application pending at least 180 days.76</td>
<td>Human trafficking victims eligible: with an HHS Certification (based on continued presence or a bona fide determination on a T visa application), or with an HHS eligibility</td>
<td>Not eligible.82</td>
<td>Eligible upon filing SIJS application.82</td>
<td>Eligible upon U visa, bona fide determination,83 or wait list approval.84</td>
<td>Not eligible.85</td>
<td>Not eligible.86</td>
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<tr>
<th>Health Insurance Exchanges</th>
<th>Refugee, Asylee, T Visa, Afghans, Ukrainians</th>
<th>T Visa(^5/) Continued Presence(^6)</th>
<th>Deferred Action for Childhood Arrivals (DACA)(^7)</th>
<th>Special Immigrant Juvenile Status (SIJS)(^8)</th>
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<td>T visa: Eligible with prima facie (bona fide) determination on T visa application.(^77)</td>
<td>T visa: with HHS certification or eligibility determination, immediately eligible under the Victims of Trafficking and Violence Protection Act of 2000 to the same extent as refugees.(^94)</td>
<td>Family members with T visa status eligible without HHS certification or eligibility determination.(^79)</td>
<td>These human trafficking victims are eligible to the same extent as refugees and thus are eligible regardless of date of entry.(^80)</td>
<td>Eligible for emergency Medicaid regardless of immigration status.(^100)</td>
<td>Eligible upon receiving lawful permanent residency, subject to five-year bar for those who arrived on or after August 22, 1996.(^101)</td>
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<td>Refugee/Asylee: Eligible, exempt from five-year bar.(^93)</td>
<td>Refugee/Asylee: Eligible as qualified immigrants, subject to five-year bar for</td>
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<td>Eligible with VAWA prima facie determination or lawful permanent residence if arrived prior to August 22, 1996 and subject to five-year bar for those who arrived on or after August 22, 1996.(^88)</td>
<td>In SD, if entered on or after Aug. 22, 1996,</td>
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<td>CHIP</td>
<td>only eligible for subsidized health care through CHIP after attaining lawful permanent residency and after accruing 40 quarters of work credit.\textsuperscript{91}</td>
<td>those who arrived on or after August 22, 1996.\textsuperscript{95}</td>
<td>These human trafficking victims are eligible to the same extent as refugees and are exempt from five-year bar.\textsuperscript{98}</td>
<td>after the SIJS recipient child attains lawful permanent residency and after accruing 40 quarters of work credit.\textsuperscript{103}</td>
<td>Exception: an SIJS recipient child with lawful permanent residency who is a veteran, active duty military or the spouse, unmarried surviving spouse or child of a veteran or a person on active military duty is eligible without any accrual of work quarters requirement.\textsuperscript{104}</td>
<td>In SD, if entered on or after Aug. 22, 1996, only eligible for subsidized health care through CHIP after the U visa holder child attains lawful permanent residency and after accruing 40 quarters of work credit.\textsuperscript{108}</td>
<td>Exception: a U visa holder child with lawful permanent residency who is a veteran, active duty military or the spouse, unmarried surviving spouse or child of a veteran or a person on active military duty is eligible without any accrual of work quarters requirement.\textsuperscript{109}</td>
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<td>Full-Scope Medicaid\textsuperscript{112}</td>
<td>Eligible with VAWA prima facie determination or lawful permanent residence if arrived prior to August 22, 1996 and subject to five-year bar for those who arrived on or after August 22, 1996.\textsuperscript{113}</td>
<td>Refugee/Asylee: Eligible, exempt from five-year bar.\textsuperscript{119} T visa: with HHS certification or eligibility determination, immediately eligible under the Victims of Trafficking and Violence Protection</td>
<td>Human trafficking victims are eligible with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or eligibility</td>
<td>Eligible for emergency Medicaid regardless of immigration status.\textsuperscript{129}</td>
<td>Eligible for emergency Medicaid regardless of immigration status.\textsuperscript{131}</td>
<td>Eligible for emergency Medicaid regardless of immigration status.\textsuperscript{136}</td>
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\textsuperscript{2} T Visa
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\textsuperscript{4} Ukrainians.
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\textsuperscript{113} Eligible with VAWA prima facie determination or lawful permanent residence if arrived prior to August 22, 1996 and subject to five-year bar for those who arrived on or after August 22, 1996.
\textsuperscript{119} Refugee/Asylee: Eligible, exempt from five-year bar.
\textsuperscript{119} T visa: with HHS certification or eligibility determination, immediately eligible under the Victims of Trafficking and Violence Protection
\textsuperscript{129} Human trafficking victims are eligible with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or eligibility
\textsuperscript{131} Eligible for emergency Medicaid regardless of immigration status
\textsuperscript{136} Eligible for emergency Medicaid regardless of immigration status.
\textsuperscript{142} Eligible for emergency Medicaid regardless of immigration status.\textsuperscript{144}
<table>
<thead>
<tr>
<th>VAWA Self-Petitioners, Battered Spouse Waivers, Lawful Permanent Residents, and Naturalized Citizens</th>
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<th>T Visa(^5/) Continued Presence(^6)</th>
<th>Deferred Action for Childhood Arrivals (DACA)(^7)</th>
<th>Special Immigrant Juvenile Status (SIJS)(^8)</th>
<th>U Visa, bona fide, or wait list approval.(^9)</th>
<th>U Visa Applicants</th>
<th>Undocumented</th>
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<tbody>
<tr>
<td>Full-Scope Medicaid</td>
<td>Naturalized citizens eligible.(^{114})</td>
<td>Eligible for emergency Medicaid regardless of immigration status or citizenship status.(^{115})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration or citizenship status.(^{116})</td>
<td>In SD, if entered on or after Aug. 22, 1996, only eligible for Medicaid subsidized health care after the VAWA self-petitioner attains lawful permanent residency or any immigrant becomes a lawful permanent resident and after accruing 40 quarters of work credit.(^{117})</td>
<td>If arrived on or after August 22, 1996, eligible upon receiving lawful permanent residency, subject to five-year bar.(^{136})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration status.(^{139})</td>
<td>Without regard to immigration status.(^{143})</td>
</tr>
<tr>
<td>Act of 2000 to the same extent as refugees.(^{120})</td>
<td>T visa holders and T visa applicants with prima facie (bona fide) determinations eligible as qualified immigrants, subject to five-year bar for those who arrived on or after August 22, 1996.(^{121})</td>
<td>Family members with T visa status eligible without HHS Certification or eligibility determination.(^{124})</td>
<td>These human trafficking victims are eligible to the same extent as refugees and are exempt from five-year bar.(^{125})</td>
<td>In SD, if entered on or after Aug. 22, 1996, only eligible for subsidized health care through Medicaid after the SIJS recipient attains lawful permanent residency and after accruing 40 quarters of work credit.(^{134})</td>
<td>Exception: an SIJS recipient with lawful permanent residency who is a veteran, active duty military or the spouse, unmarried surviving spouse or child of a veteran or a person on active military duty is eligible without any accrual of work quarters requirement.(^{135})</td>
<td>Without regard to immigration status.(^{145})</td>
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<tr>
<td>Determination (under 18).(^{123})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration status.(^{122})</td>
<td>Without regard to immigration status.(^{130})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration status.(^{132})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration status.(^{113})</td>
<td>In SD, prenatal care available while pregnant without regard to immigration status.(^{139})</td>
<td>Without regard to immigration status.(^{143})</td>
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<td>Exception: a VAWA self-petitioner with lawful permanent residency and any lawful permanent resident who is a veteran, active duty</td>
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<tr>
<td>Medicaid</td>
<td>VAWA Self-Petitioners, Battered Spouse Waivers, 1 Lawful Permanent Residents, and Naturalized Citizens</td>
<td>Refugee, Asylee, T Visa, 2 Afghans, 3 Ukrainians 4</td>
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<td>military or the spouse, unmarried surviving spouse or child of a veteran or a person on active military duty is eligible without any accrual of work quarters requirement. 118</td>
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<td></td>
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<td>on active military duty is eligible without any accrual of work quarters requirement. 141</td>
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</table>

| Victims of Crime Act (VOCA) Compensation | The Victims of Crime Act provides compensation to crime victims for costs associated with the crime victimization. Costs covered by VOCA include compensation for medical bills, lost wages, counseling sessions, crime scene clean up, and reimbursement for many other expenses. VOCA compensation is available to crime victims without regard to immigration status or naturalized citizenship. 146 |

| Family Medical Leave Act – State Law | South Dakota has no state Family Medical Leave Act (FMLA). Federal FMLA law applies. 147 |

| Education - Federal Benefits: Federal Student Aid, Grants and Loans 148 | VAWAs with prima facie determinations and all lawful permanent residents eligible. 149 Naturalized citizens, eligible. 150 | Refugees, Asylees, and T visa holders or T visa applicants with prima facie (bona fide) determination, an HHS Certification or eligibility letter are eligible for federal student aid. 151 Human trafficking victims eligible: with an HHS Certification (based on continued presence or a bona fide determination on a T visa application), or with an HHS eligibility determination (under 18), and family members with T visa status, are eligible for federal student aid. 152 Not eligible for federal student aid. 153 Eligible for federal student aid upon receipt of lawful permanent residency. 154 Eligible for federal student aid upon receipt of lawful permanent residency. 155 Not eligible for federal student aid. Not eligible for federal student aid. |

<p>| Education - State Law | All children, without regard to immigration status or citizenship are eligible to attend public elementary and secondary (K-12) schools. State schools may not request citizenship or immigration status information and may not bar students from enrolling in public elementary or secondary schools based on the citizenship or immigration status of the student, their parent or their guardian. 156 Eligible to apply for and enroll in state funded colleges and universities without regard to immigration status. 157 Although eligible to apply for and enroll in state funded colleges and universities without regard to immigration status, 158 students who are not qualified immigrants (e.g. lawful permanent residents, refugees, asylees, T visa holders, T visa applicants with bona fide determinations, VAWA self-petitioners) are not eligible in South Dakota for state funded post-secondary educational grants and loans. 159 |</p>
<table>
<thead>
<tr>
<th>Supplemental Security Income (SSI)</th>
<th>VAWA Self-Petitioners, Battered Spouse Waivers, Lawful Permanent Residents, and Naturalized Citizens</th>
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<th>T VisaContinued Presence</th>
<th>Deferred Action for Childhood Arrivals (DACA)</th>
<th>Special Immigrant Juvenile Status (SIJS)</th>
<th>U Visa, bona fide, or wait list approval</th>
<th>U Visa Applicants</th>
<th>Undocumented</th>
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</thead>
<tbody>
<tr>
<td>Eligible with VAWA prima facie determination or lawful permanent residence if received SSI on August 22, 1996, or lawfully residing in the U.S. as of that date and now disabled. May also be eligible with a prima facie determination if currently receiving SSI based on an application filed before 1979.</td>
<td>Refugees/Asylees: Eligible during first seven years after the status was granted. Trafficking victims: Eligible under the Victims of Trafficking and Violence Protection Act of 2000 to the same extent as refugees. T visa: Eligible as a qualified immigrant with prima facie (bona fide) determination on T visa application if receiving SSI on August 22, 1996, or lawfully residing in the U.S. as of that date and now disabled.</td>
<td>Human trafficking victims: with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or with an HHS eligibility determination (under 18), or family members with T visa status (no need for HHS certification or eligibility determination) are eligible to the same extent as refugees.</td>
<td>Not eligible.</td>
<td>Eligible upon receiving lawful permanent residency if credited with 40 quarters of work, subject to five-year bar for those who arrived on or after August 22, 1996.</td>
<td>Eligible upon receiving lawful permanent residency if credited with 40 quarters of work, subject to five-year bar for those who arrived on or after August 22, 1996; or if receiving SSI as of August 22, 1996; or if lawfully residing in U.S. as of that date and now disabled.</td>
<td>Not eligible.</td>
<td>Not eligible.</td>
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<td>Naturalized citizens, eligible.</td>
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<td>Not eligible.</td>
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| Driver’s License | Under the REAL ID Act, evidence of “lawful status” or naturalized citizenship is required for a driver’s license to be accepted by a federal agency for official purposes. The Department of Homeland Security (DHS), by regulation, lists specific documents that will provide satisfactory evidence of lawful status. All documentation for REAL ID compliant ID’s will be submitted through the Systematic Alien Verification for Entitlements Program (S.A.V.E.). DHS will also approve acceptance of other documentation issued by DHS or other Federal agencies demonstrating lawful status, as determined by USCIS. In addition, DHS permits states to establish an “Exception Process” and consider “Alternative Documents.” | | | | | Not eligible. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
Deferred Action for Childhood Arrivals (DACA)

*In South Dakota, only permanent residents are eligible for a driver’s license.*

- Two documents to prove residency in South Dakota.
- Proof of lawful status in the United States
  - Required documents include: non-expired passport/passport card, certificate of citizenship/naturalization, permanent resident card, *employment authorization card* or foreign passport with U.S. visa/I-94.
- Proof of Social Security Number

No state laws or policies regarding immigrant access to professional or occupational licenses including whether or not work authorization is sufficient or required.

Certain federally assisted programs providing services necessary to protect life or safety must make those services available without regard to immigration status or naturalized citizenship and may not withhold those services based on immigration status. Programs considered necessary for the protection of life or safety include, but are not limited to: short term shelter or transitional housing for the homeless; or for victims of domestic abuse, sexual assault, stalking, dating violence, or human trafficking; or for runaway, abused or abandoned children; crisis counseling and intervention programs; services and assistance relating to victims of domestic violence or other criminal activity, child protection, adult protective services, or violence and abuse prevention; soup kitchens, community food banks, senior nutrition programs and other nutritional programs for persons requiring special assistance (e.g., WIC); medical and public health services; mental health, disability, or substance abuse assistance necessary to protect life or safety; activities designed to protect the life or safety of workers, children and youths, or community residents; programs to help individuals during periods of adverse weather conditions.

The South Dakota Housing Development Authority administers the Emergency Solutions Grant (ESG) to assist in emergency shelters, homelessness prevention, rapid re-housing assistance and the homeless management information system.

**Source:**

American University, Washington College of Law
<table>
<thead>
<tr>
<th>Public and Assisted Housing and LIHTC</th>
<th>VAWA Self-Petitioners, Battered Spouse Waivers, Lawful Permanent Residents, and Naturalized Citizens</th>
<th>Refugee, Asylee, T Visa, Afghans, Ukrainians</th>
<th>T Visa(^5/) Continued Presence(^6)</th>
<th>Deferred Action for Childhood Arrivals (DACA)(^7)</th>
<th>Special Immigrant Juvenile Status (SIJS)(^8)</th>
<th>U Visa, bona fide, or wait list approval.(^9)</th>
<th>U Visa Applicants</th>
<th>Undocumented</th>
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<tr>
<td>self-petitions,(^1) so should be eligible for all USDA rental housing unless and until a final determination of eligibility. Regardless of immigration status, eligible for USDA Section 515 Rural Rental Housing (without Rental Assistance),(^197) and USDA Section 514/516 Farm Labor Housing if immediate family member of eligible tenant.(^198) Upon filing self-VWA self-petition, remaining household member of eligible domestic farm laborer eligible to continue to occupy USDA Section 514/516 Farm Labor Housing unit.(^199) Lawful permanent residents are eligible for public and assisted housing(^200) and for USDA Section 514/516 Farm Labor Housing;(^201)</td>
<td>member(^10) or remaining household member(^211) of eligible domestic farm laborer. Upon receiving lawful permanent residency USDA Section 514/516 Farm Labor Housing.(^212) In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^213)</td>
<td>determination),(^214) are eligible for: HUD public and assisted housing(^215) and USDA rental housing.(^216) In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^217)</td>
<td>In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^220) for HUD(^224) and USDA(^225) rental housing.(^226) In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^227)</td>
<td>In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^237)</td>
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<td><strong>Public and Assisted Housing and LIHTC</strong></td>
<td>VAWA Self-Petitioners, Battered Spouse Waivers,(^1) Lawful Permanent Residents, and Naturalized Citizens</td>
<td>Refugee, Asylee, T Visa,(^2) Afghans,(^3) Ukrainians(^4)</td>
<td>T Visa(^5)/Continued Presence(^6)</td>
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<td></td>
<td>USDA Section 521 Rural Rental Assistance.(^{202})</td>
<td>Naturalized citizens are eligible for public and assisted housing.(^{203}) and for USDA Section 514/516 Farm Lab or Housing.(^{204}) USDA Section 521 Rural Rental Assistance.(^{205})</td>
<td>In South Dakota, may be eligible to live in Low Income Housing Tax Credit Property.(^{206})</td>
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| **Income Tax Credits** | Child Tax Credit: Immigrants with social security numbers or Individual Taxpayer Identification Numbers (ITINs) who care for dependent children under the age of 17 are eligible to claim a child tax credit on their income taxes.\(^{241}\) A qualifying child must be a citizen, national, or resident of the U.S with an SSN or an Individual Taxpayer Identification Number (ITIN).\(^{242}\) Immigrants eligible to receive social security numbers include naturalized citizens, lawful permanent residents, refugees, asylees, and VAWA self-petitioners, T visa applicants with bona fide determinations, and wait-list approved U visa applicants once they are granted work authorization. Any immigrant without regard to immigration status can obtain an ITIN.\(^{243}\) | | | | | | | |
| | Child and Dependent Care Tax Credit: Immigrants with social security numbers or Individual Taxpayer Identification Numbers (ITINs) can claim a child or dependent care tax credit on their income taxes when they care for— | | | | | | | |
| | - A dependent child under the age of 13, | | | | | | | |
| | - A spouse who is unable to physically or mentally care for themselves, or | | | | | | | |
| | - An individual who is unable to care for themselves, mentally or physically who has lived with the taxpayer for at least six months.\(^{244}\) The child or dependent must have a social security number or ITIN.\(^{245}\) Immigrants eligible to receive social security numbers include naturalized citizens, lawful permanent residents, refugees, asylees, and VAWA self-petitioners, T visa applicants with bona fide determinations and wait-list approved U visa applicants once they are granted work authorization. Any immigrant without regard to immigration status can obtain an ITIN.\(^{246}\) | | | | | | |

<table>
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<tr>
<th><strong>Earned Income Tax Credit (EITC)</strong></th>
<th>VAWA self-petitioners, lawful permanent residents, and naturalized citizens who(^{247}): have been granted work</th>
<th>Refugees, asylees, asylum applicants, and T visa holders with work authorization or lawful permanent residency who: have lived in the U.S. for</th>
<th>Recipients of T visa bona fide determinations or continued presence who: are granted work authorization,</th>
<th>DACA applicants who: are granted work authorization, have lived in the U.S. for at least</th>
<th>SIJS recipients granted lawful permanent residency who: have lived in the U.S. at least 183 days during the tax</th>
<th>Once granted lawful permanent residency(^8) or work authorization U visa holders and U visa applicants with deferred action</th>
<th>Not eligible.</th>
<th>Not eligible.</th>
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<table>
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<tr>
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<th>VAWA Self-Petitioners, Battered Spouse Waivers,1 Lawful Permanent Residents, and Naturalized Citizens</th>
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<th>T Visa5/ Continued Presence6</th>
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<td>An immigrant who (or whose child) is battered or subjected to extreme cruelty269 inside or outside of the United States270 is eligible for legal assistance from Legal Services Corporation (LSC)-funded agencies on matters related to the abuse.271 Eligible for legal assistance on any matter the LSC-funded agency handles.281</td>
<td>An immigrant who (or whose child) is battered or subjected to extreme cruelty,327 or is a victim of sexual assault or trafficking in the U.S.328 is eligible for legal assistance from Legal Services Corporation (LSC)-funded agencies289 on matters related to the abuse.330 Eligible for legal assistance on any matter the LSC-funded agency handles upon receiving lawful permanent resident status,272 or spouses, parents, and unmarried children under age 21 of U.S. citizens273</td>
<td>An immigrant victim of severe forms of human trafficking with (or seeking) HHS Certification,288 and family members with (or applying for) T visa status,289 are eligible for legal assistance on any matter the LSC-funded agency handles.</td>
<td>Eligible for Office of Violence Against Women funded Legal Assistance290 for victims of domestic violence, sexual assault, stalking291 or dating violence.292</td>
<td>Eligible for Office of Violence Against Women funded Legal Assistance293 for victims of domestic violence, sexual assault, stalking291 or dating violence.292</td>
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<td>Eligible for weatherization assistance (WAP) for families living in multi-unit dwellings, without regard to immigration status.335 Eligible for LIHEAP heating/cooling assistance and single-family weatherization</td>
<td>Eligible for weatherization assistance (WAP) for families living in multi-unit dwellings, without regard to immigration status.337 Refugees, asylees, T visa holders, and T visa applicants with prima facie (bona fide) determination eligible for</td>
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<td>assistance upon receipt of VAWA prima facie determination, lawful permanent residence, or naturalized citizenship.</td>
<td>LIHEAP heating/cooling and single-family weatherization assistance.</td>
<td>presence or a bona fide determination on a T visa application) or with HHS eligibility determination (under 18), are considered refugees and thus are eligible for LIHEAP heating/cooling and single-family weatherization assistance.</td>
<td>assistance upon receiving lawful permanent residency.</td>
<td>family weatherization assistance upon receiving lawful permanent residency.</td>
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<td>D-SNAP, which provides temporary food assistance for households affected by a natural disaster, may be available for households that are not normally eligible for SNAP benefits.</td>
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**Federal Emergency Management Agency (FEMA) Assistance**

Upon receipt of VAWA prima facie determination, lawful permanent residence, or naturalized citizenship:

- Eligible for FEMA Assistance Programs, Individuals and Households Program (IHP), Disaster Unemployment Assistance (DUA):
  - open to Refugees, Asylees, T visa applicants with prima facie (bona fide) determination.
  - Emergency SNAP open to Refugees/Asylees (no five-year bar), T visa applicants with prima facie (bona fide) determination, subject to five-year bar, unless under 18 years of age; can be credited with 40 quarters of work.

- Not eligible.

- Upon receiving lawful permanent residency:
  - Eligible for FEMA Assistance Programs, Individuals and Households Program (IHP), and Disaster Unemployment Assistance (DUA).
  - Eligible for Emergency SNAP, subject to five-year bar, unless under 18 years of age; can be credited with 40 quarters of work.

- Upon receiving lawful permanent residency:
  - Eligible for FEMA Assistance Programs, Individuals and Households Program (IHP), and Disaster Unemployment Assistance (DUA).
  - Eligible for Emergency SNAP, subject to five-year bar, unless under 18 years of age; can be credited with 40 quarters of work.

- Not eligible.
<table>
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<th><strong>FEMA Restricted Programs</strong></th>
<th><strong>VAWA Self-Petitioners, Battered Spouse Waivers,1</strong></th>
<th><strong>Refugee, Asylee, T Visa,2 Afghans,3 Ukrainians</strong></th>
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<th><strong>U Visa Applicants</strong></th>
<th><strong>Undocumented</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nutrition Assistance Program (SNAP), subject to five-year bar, unless under 18, or lawfully residing on August 22, 1996 and either receiving disability-related benefits or born before Aug. 22, 1931.354</strong></td>
<td>18, or lawfully residing on August 22, 1996 and either receiving disability-related benefits or born before Aug. 22, 1931.357</td>
<td>These human trafficking victims are considered refugees and thus are eligible for FEMA Assistance Programs, Individual and Households Program (IHP), Disaster Unemployment Assistance (DUA), and Emergency SNAP.359</td>
<td>earned by the individual, parents, or spouse; or lawfully residing on August 22, 1996 and either receiving disability-related benefits or born before Aug. 22, 1931.361</td>
<td>earned by the individual, parents, or spouse; or lawfully residing on August 22, 1996 and either receiving disability-related benefits or born before Aug. 22, 1931.363</td>
<td>SNAP, subject to five-year bar, unless under 18 years of age; can be credited with 40 quarters of work earned by the individual, parents, or spouse; or lawfully residing on August 22, 1996 and either receiving disability-related benefits or born before Aug. 22, 1931.365</td>
<td></td>
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</tr>
<tr>
<td><strong>Unemployment Insurance367</strong></td>
<td>Eligible for UI upon receipt of work authorization, lawful permanent residence, or citizenship.368</td>
<td><strong>Refugee:</strong> Eligible for UI upon receipt of work authorization.369</td>
<td>Eligible for UI upon receipt of HHS certification or eligibility letter and work authorization.372</td>
<td>Eligible for UI upon receipt of work authorization.374</td>
<td>Eligible for UI upon receipt of work authorization.375</td>
<td>Not eligible.376</td>
<td>Not eligible.377</td>
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<td><strong>Asylee:</strong> Eligible for UI upon grant receipt of work authorization.370</td>
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<td><strong>T Visa:</strong> Eligible for UI upon receipt of work authorization.371</td>
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</tbody>
</table>

2 See 8 U.S.C. §§ 1641(b)(2)-(3), (c)(4) (Asylees, Refugees and trafficking victims and family members of trafficking victims with T visa status or a pending T visa application setting forth a “prima facie” (bona fide) case for eligibility); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92266, 92279, 92304, 92307 (Dec. 19, 2016) (effective Jan. 18, 2017) (to be codified at 8 C.F.R. pts. 212, 214, 245, 274) (Prima facie/bona fide determinations on T visa applications are made by the Department of Homeland Security.).


7 See 8 U.S.C. § 1101(a)(27)(j) (Special Immigrant Juvenile Status (SIJS) allows certain youth immigrant survivors of abuse, abandonment, and/or neglect by a parent to obtain legal immigration status.).


10 State benefits agencies are only allowed to ask for immigration status and social security number information for the family members who is the applicant for the benefit. See NAT’L IMMIGRATION LAW CTR., Privacy Protections in Selected Federal Benefits Programs (Feb. 21, 2018) https://www.nilc.org/wp-content/uploads/2018/03/privacy-protections-fed-programs-tbl-2018.pdf (providing guidelines on what information a State may request from a parent applying on behalf of a child applicant); see also Anna Pohl, Hema Sarangapani, Amanda Baran, and Cecilia Olavarria, Chapter 4.3: Barriers to Accessing Services: The Importance of Advocates Accompanying Battered Immigrants Applying for Public Benefits (Jul. 10, 2013), https://niwaplibrary.wcl.american.edu/pubs/ch4-3-importance-advocates; see also 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 (Tafn), and Food Stamp Benefits, U.S. DEP’T HEALTH & HUM. SERV. (Mar. 24, 2006), https://niwaplibrary.wcl.american.edu/pubs/pb-gov-hhs/citizenshippolicyguidance-03-24-06.


Table 1: Overview of Immigrant Eligibility for Federal Programs in
GUIDE TO IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS


15 DEP’T OF HEALTH & HUM. SERV., Administration for Children and Families, Office of Family Assistance, Q & A: Immigrants (August 20, 2019), https://www.acf.hhs.gov/ofa/faq/q-immigrants. (Q2: Does the five-year bar for certain newly arrived qualified aliens apply to all federally-funded TANF benefits (e.g., including benefits that do not meet the definition of assistance)? “A service that is only available to the financially needy would not meet the AG criteria and could be provided only to otherwise eligible citizens and qualified aliens.” TANF is such a program.)

16 8 U.S.C. §§ 1612(b)(2)(A)(i); 1613(b)(1). Federal eligibility for refugees and asylees extends for the first five years after attaining that status. However, if they have attained lawful permanent resident status with 40 qualifying work quarters, they will already have satisfied the five-year bar for eligibility as an LPR by the time their refugee/asylee benefit period for TANF ends. See 8 U.S.C. §§ 1612(b)(2)(B). Or, they may be eligible as a veteran and/or member of a veteran’s family, for which neither the five-year bar nor the five-year time limit applies. See 8 U.S.C. §§ 1612(b)(2)(C), 1613(b)(2). Or, in some states their eligibility as a refugee or asylee continues past this five-year limit. States can also continue to provide benefits once the mandated five year federal coverage period for refugees and asylees ends. See Nat’l Immigration Law Ctr., Table 1: Overview of Immigrant Eligibility for Federal Programs in Guide to Immigrant Eligibility for Federal Programs 17, 17-20 (4th ed. 2002, table updated Oct. 2011), https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/. Since refugees, asylees and trafficking victims with continued presence or who are T visa applicants are not required under U.S. immigration laws to have a sponsor, they are not subject to sponsor deeming. See OFFICE OF FAMILY ASSISTANCE, U.S. DEP’T OF HEALTH & HUM. SERV., TANF-ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources to A Non-Citizen) (April 17, 2003), https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0.

17 See 22 U.S.C. § 7105(b)(1); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92266, 92278 (Dec. 19, 2016) (effective Jan. 18, 2017) (to be codified at 8 C.F.R. pts. 212, 214, 245, 274); New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4784, 4789-91 (Jan. 31, 2002) (to be codified at 8 C.F.R. pt. 103), http://niwaplibrary.wcl.american.edu/pubs/register-new-classification/. TANF benefits for refugees are available without a five-year waiting period, but are limited to five years. However, if the refugee arrives lawful permanent resident status with 40 qualifying work quarters, they will already have satisfied the five-year bar for eligibility as a lawful permanent resident by the time their refugee/asylee benefit period for TANF ends. See 8 U.S.C. §§ 1612(b)(2)(B). Or, they may be eligible as a veteran and/or member of a veteran’s family, for which neither the five-year bar nor the five-year time limit applies. See 8 U.S.C. §§ 1612(b)(2)(C), 1613(b)(2). Or, in some states their eligibility as a refugee or asylee continues past this five-year limit. See NAT’L IMMIGRATION LAW CTR., Table 1: Overview of Immigrant Eligibility for Federal Programs in Guide to Immigrant Eligibility for Federal Programs 17, 17-20 (4th ed. 2002, table updated Oct. 2011), https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/. Since refugees, asylees and trafficking victims with continued presence or who are T visa applicants are not required under U.S. immigration laws to have a sponsor, they are not subject to sponsor deeming. See OFFICE OF FAMILY ASSISTANCE, U.S. DEP’T OF HEALTH & HUM. SERV., TANF-ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources to A Non-Citizen) (April 17, 2003), https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0.


20 OFFICE ON TRAFFICKING IN PERSONS, U.S. DEP’T OF HEALTH & HUM. SERV., OTIP-FS-16-01, CERTIFICATION FOR ADULT VICTIMS OF HUMAN TRAFFICKING FACT SHEET 1 (2016), https://traffickingresourcecenter.org/sites/default/files/Certification%20Fact%20Sheet%20Posting%2020%282%29.pdf. See 22 U.S.C. § 7105(b) (Applicants over age 18 require an HHS certification. Applicants under age 18 require an HHS eligibility determination (not a certification)). Since refugees, asylees and trafficking victims with continued presence or who are T visa applicants are not required under U.S. immigration laws to have a sponsor, they are not subject to sponsor deeming, https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0.


24 8 U.S.C. 1631(f) (Qualified immigrants who have been battered or subjected to extreme cruelty by a spouse, a parent or a member of the spouse’s or parent’s family are exempt from deeming for 12 months. The exemption from deeming may be extended if the battered immigrant obtains an order from a judge or a ruling from the U.S. Department of Homeland Security recognizing the battering or extreme cruelty the immigrant victim suffered.) (Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997)), http://niwaplibrary.wcl.american.edu/pubs/1997-doii-interim-guidance-benefits/; See Catherine Longville and Leslye Orloff, Public Benefits: What is “Deeming” and What Are its Exceptions, (January 13, 2015), http://niwaplibrary.wcl.american.edu/pubs/deeming-factsheet/Applicability of Public Charge and Deeming Rules to Immigrant Survivors and Their Children Eligible for Healthcare Subsidies, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (April 9, 2015), http://niwaplibrary.wcl.american.edu/public-charge-deeming/. Qualified immigrants may also be exempt from deeming when they naturalize, when they can show they are credited with 40 qualifying quarters of work, when they qualify for the up to 12 month exception for indigence, or have another form of immigration status does not require sponsorship. See 8 U.S.C. § 1631; Dep’t of Health & Hum. Servs., Off. Of Fam. Assistance, TANF-ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources To A Non-Citizen), (2003), https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0


26 8 U.S.C. 1631(f) (Qualified immigrants who have been battered or subjected to extreme cruelty by a spouse, a parent or a member of the spouse’s or parent’s family are exempt from deeming for 12 months. The exemption from deeming may be extended if the battered immigrant obtains an order from a judge or a ruling from the U.S. Department of Homeland Security recognizing the battering or extreme cruelty the immigrant victim suffered.) (Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Att’y Gen. Order No. 2129-97, 62 Fed. Reg. 61,344, at 61,371 (Nov. 17, 1997)), http://niwaplibrary.wcl.american.edu/pubs/1997-doii-interim-guidance-benefits/; See Catherine Longville and Leslye Orloff, Public Benefits: What is “Deeming” and What Are its Exceptions, (January 13, 2015), http://niwaplibrary.wcl.american.edu/pubs/deeming-factsheet/Applicability of Public Charge and Deeming Rules to Immigrant Survivors and Their Children Eligible for Healthcare Subsidies, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (April 9, 2015), http://niwaplibrary.wcl.american.edu/public-charge-deeming/. Qualified immigrants may also be exempt from deeming when they naturalize, when they can show they are credited with 40 qualifying quarters of work, when they qualify for the up to 12 month exception for indigence, or have another form of immigration status does not require sponsorship. See 8 U.S.C. § 1631; Dep’t of Health & Hum. Servs., Off. Of Fam. Assistance, TANF-ACF-PI-2003-03 (Deeming of Sponsor’s Income and Resources To A Non-Citizen), (2003), https://www.acf.hhs.gov/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0


30 Administration for Children and Families, Office of Family Assistance, Q & A: Immigrants, Dep’t of Health & Hum. Serv (August 20, 2019), https://www.acf.hhs.gov/ofa/faq/q-immigrants. (Q2: Does the five-year bar for certain newly arrived qualified aliens apply to all federally-funded TANF benefits (e.g., including benefits that do not meet the definition of assistance)? “A service that is only available to the financially needy would not meet the AG criteria and could be provided only to otherwise eligible citizens and qualified aliens.” TANF is such a program.)


Food & Nutrition Serv., U.S. Dep’t of Agric., Supplemental Nutrition Assistance Program (SNAP) (2017), https://www.fns.usda.gov/snap/eligibility (As with most public benefits, to obtain food stamps, individuals must also meet resource, income, and employment requirements. There is a pre-screening tool to determine if an individual might be eligible for nutrition assistance.; See also SNAP Policy on Non-Citizen Eligibility, U.S. Dept. of Agric., Supplemental Nutrition Assistance Program, https://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility (last accessed Oct. 24, 2018). (In general, non-citizens who have lived in the U.S. for 5 years or more, are blind or disabled, are under the age of 18, were admitted for lawful permanent resident with 40 qualifying quarters or are lawfully residing and are on active duty in the U.S. Army, Air Force, Marine Corps, or Coast Guard or honorably discharged are eligible.)

Table 1: Overview of Immigrant Eligibility for Federal Programs in


57 SNAP Policy on Non-Citizen Eligibility, U.S. DEPT’ OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, https://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility (last accessed Oct. 24, 2018). Five-year residency includes time in qualified status prior to turning 18. When SIJS children become qualified immigrants, they may be exempt from deeming when they naturalize, or if they can show they are credited with 40 qualifying quarters of work, or if they are eligible for a 12 month exception for indigence, or have another form of immigration status does not require sponsorship. 8 U.S.C. § 1631; Supplemental Nutrition Assistance Program Guidance on Non-Citizen Eligibility, U.S. DEPT’ OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, at 31-33, https://fns-prod.azureedge.net/sites/default/files/snap/Non-Citizen_Guidance_063011.pdf (last accessed Mar. 13, 2019.).


See U.S.C. § 1641(b)(3); 45 C.F.R. § 152.2-5 (2017) (“A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.”).


See 22 U.S.C. § 7105(b) (Applicants over age 18 require an HHS certification. Applicants under age 18 require an HHS eligibility determination (not a certification)).


See 22 U.S.C. § 7105(b) (Applicants over age 18 require an HHS certification. Applicants under age 18 require an HHS eligibility determination (not a certification)).


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NIWAP American University, Washington College of Law


92 8 U.S.C. §§ 1612(b)(2)(A); 1613. Federal eligibility for Medicaid for refugees and asylees extends for the first seven years after attaining that status; however, in most states their eligibility can continue past this seven-year limitation, since by seven years they may have become lawful permanent residents with 40 qualifying quarters of work credit and will have satisfied the five-year bar to access to Medicaid. See 8 U.S.C. § 1612(b)(2)(B). Or, they may be a veteran and/or a member of a veteran’s family, for whom the five-year bar and seven-year limit do not apply. See 8 U.S.C. §§ 1612(b)(2)(C), 1613(b)(2). States can also continue to provide benefits once the mandated seven-year federal coverage period for refugees and asylees ends. See also Nat’l Immigration Law Ctr., Table 1: Overview of Immigrant Eligibility for Federal Programs in GUIDE TO IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 17, 17-20 (4th ed. 2002, table updated Oct. 2011), https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/.

93 8 U.S.C. §§ 1612(b)(2)(A); 1613. Human trafficking victims with HHS certification or an HHS determination letter are eligible as refugees for 7 years. To continue to receive benefits once 7 years has passed since they received their HHS certification or HHS determination letter, they will need to file for and be granted a T visa. This allows them to continue to qualify for public benefits as qualified immigrants. So long as the trafficking victim files for a T visa soon after receiving HHS certification or determination, they should gain qualified immigrant status and the 5-year bar will be completed prior to reaching the 7-year limit on refugee benefits. States can also continue to provide benefits once the mandated seven-year federal coverage period for refugees and asylees ends. See also Nat’l Immigration Law Ctr., Table 1: Overview of Immigrant Eligibility for Federal Programs in GUIDE TO IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 17, 17-20 (4th ed. 2002, table updated Oct. 2011), https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/. See state law citations in this chart to identify if this state provides benefits for asylees and refugees beyond the seven-year limitation.

94 22 U.S.C. § 7105(b)(1). Human trafficking victims with HHS certification or an HHS determination letter are eligible as refugees for 7 years. To continue to receive benefits once 7 years has passed since they received their HHS certification or HHS determination letter, they will need to file for and be granted a T visa. This allows them to continue to qualify for public benefits as qualified immigrants. So long as the trafficking victim files for a T visa soon after receiving HHS certification or determination, they should gain qualified immigrant status and the 5-year bar will be completed prior to reaching the 7-year limit on refugee benefits. States can also continue to provide benefits once the mandated seven-year federal coverage period for refugees and asylees ends. See also Nat’l Immigration Law Ctr., Table 1: Overview of Immigrant Eligibility for Federal Programs in GUIDE TO IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 17, 17-20 (4th ed. 2002, table updated Oct. 2011), https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/. See 22 U.S.C. § 7105(b) (Applicants over age 18 require an HHS certification). Applicants under age 18 require an HHS eligibility determination (not a certification). See also 8 U.S.C. § 1641(c)(4). Human trafficking victims with HHS certification or an HHS determination letter are eligible as refugees for 7 years. To continue to receive benefits once 7 years has passed since they received their HHS certification or HHS determination letter, they will need to file for and be granted a T visa. This allows them to continue to qualify for public benefits as qualified immigrants. So long as the trafficking victim files for a T visa soon after receiving HHS certification or determination, they should gain qualified immigrant status and the 5-year bar will be completed prior to reaching the 7-year limit on refugee benefits.


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DEP’T SOCIAL SERVICES, SO. DAKOTA, Prenatal Care for Unborn Children Program (June 22, 2016) available at https://dss.sd.gov/docs/medicaid/providers/ProviderBulletins/2016/7.22.16_unbornchildrenprogram.pdf (Last visited Aug. 25, 2022) (Prenatal care only. Does not include post-partum benefits).


DEP’T SOCIAL SERVICES, SO. DAKOTA, Prenatal Care for Unborn Children Program (June 22, 2016) available at https://dss.sd.gov/docs/medicaid/providers/ProviderBulletins/2016/7.22.16_unbornchildrenprogram.pdf (Last visited Aug. 25, 2022) (Prenatal care only. Does not include post-partum benefits).


8 U.S.C. § 1641(b)(2)-(3). For some Federal programs such as SSI, a general bar applies where qualified immigrants are ineligible, unless they have attained LPR status with 40 qualifying quarters and satisfy the five-year bar, have a specified military connection, or fall within other limited exceptions. See 8 U.S.C. 1612(a)(2). For refugees and asylees, this bar does not apply until seven years after the date that they are admitted to refugee or asylee status; however, § 1612(b)(2) lists exceptions that independently lift the bar after seven years.


165 SOC. SECURITY ADMIN., UNDERSTANDING SUPPLEMENTAL SECURITY INCOME SSI ELIGIBILITY REQUIREMENTS – 2017 EDITION, https://www.ssa.gov/ssi/text-eligibility-ussi.htm (While the chart shows eligibility to apply for SSI benefits by immigration status, those with qualified immigration statuses must also meet all other eligibility requirements. To obtain SSI benefits individuals must be aged 65 or over, blind, or disabled; and have limited income, limited resources, be a resident of one of the 50 states, DC, or Northern Mariana Islands, and not be absent from the country for a full calendar month, in addition to other requirements.)


168 SOC. SECURITY ADMIN., UNDERSTANDING SUPPLEMENTAL SECURITY INCOME SSI ELIGIBILITY REQUIREMENTS – 2017 EDITION, https://www.ssa.gov/ssi/text-eligibility-ussi.htm (While the chart shows eligibility to apply for SSI benefits by immigration status, those with qualified immigration statuses must also meet all other eligibility requirements. To obtain SSI benefits individuals must be aged 65 or over, blind, or disabled; and have limited income, limited resources, be a resident of one of the 50 states, DC, or Northern Mariana Islands, and not be absent from the country for a full calendar month, in addition to other requirements.)


180 See 6 C.F.R. § 37.11(g)(1) (2012).


183 See 6 C.F.R. § 37.11(g)(1) (2012).


185 See 6 C.F.R. § 37.11(g)(2) (2012); Cindy Mann, Ctr. for Medicare & Medicaid Serv., U.S. Dep’t of Health & Hum. Serv., Medicaid and CHIP Coverage for “Lawfully Residing” Children and Pregnant Women 2 (2010), http://niwaplibrary.wcl.american.edu/pubs/pb-gov-hhs-lawfully-residing-medicaid-07-01-10-also-in-qualified-immigrants/ (For example, the U.S. Department of Health and Human Services has identified categories of lawfully present immigrants for purposes of Medicaid and CHIP eligibility. These individuals should be able to access full Real ID compliant driver’s licenses without waiting for work authorization. This may be an area for advocacy in individual cases).


188 VAWA self-petitioners receive employment authorization once their case has been approved. Trafficking victims receive legal work authorization based on HHS certification for victims with continued presence and for T visa applicants with bona fide determinations. U visa applicants will receive work authorization after their case has been wait-list approved based on deferred action. Asylum applicants become eligible for work authorization approximately 6 months after filing for asylum. DACA recipients receive work authorization based on deferred action and SIJS children receive work authorization once they are granted lawful permanent residency. Once an immigrant receives legal work authorization from DHS they can apply for a receive a Social Security Number.

189 Trafficking Victims Self-petitioners receive legal work authorization before their case has been approved. Trafficking victims receive legal work authorization based on HHS certification for victims with continued presence and for T visa applicants with bona fide determinations. U visa applicants will receive work authorization after their case has been wait-list approved based on deferred action. Asylum applicants become eligible for work authorization approximately 6 months after filing for asylum. DACA recipients receive work authorization based on deferred action and SIJS children receive work authorization once they are granted lawful permanent residency. Once an immigrant receives legal work authorization from DHS they can apply for a receive a Social Security Number. See 6 C.F.R. § 37.11(b)(1)(D).


Immigrants including victims who are lawfully residing in the United States or its territories and possessions under section 141 of the Compacts of Free Association between the U.S. and the Governments of the Marshall Islands, the Federated States of Micronesia and Palau are eligible for public and assisted housing. HUD PUBLIC AND INDIAN HOUSING, Eligibility Determination and Denial of Assistance, Citizenship Status 10 (November 2019) available at:
https://www.hud.gov/sites/dfiles/PIH/documents/HCV%20Guidebook%20Eligibility%20Determination%20and%20Denial%20of%20Assistance.pdf (last visited Aug. 27, 2022) (However in Guam, such immigrants are not entitled to a preference in receiving housing assistance over a U.S. citizen or national resident who is otherwise eligible for such assistance).

For detailed information about Low Income Housing Tax Credit (LIHTC) funding housing eligibility and how to find LIHTC funded units in communities across the country see, VAWA Home: Rights for Survivors in LIHTC https://www.vawahome.com/ (last visited February 10, 2022).


See 7 C.F.R. § 3560.158(d); USDA MFH ASSET MANAGEMENT HANDBOOK HB 2-3650, § 6.30(D) (stating that a remaining family member who is a co-tenant or member of the household, who has the legal capacity to sign the lease, and is a U.S. citizen or qualified immigrant, may remain in the housing after the original tenant has departed); NHLP, Chart on Federally Assisted Housing and Immigrant Eligibility (Feb. 2017), reprinted in LIST OF SUPPORTING DOCUMENTS FOR THE WEBINAR: “IMMIGRANT ACCESS TO FEDERALLY ASSISTED HOUSING” (Feb. 22, 2017) at Attachment A (2017), www.niwaplibrary.wcl.american.edu/pubs/info-packet-webinar-immigrant-access-and-housing/; see also 8 U.S.C. §§ 1641(c).


See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units use these federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants, including VAWA self-petitioners, who could meet the eligibility requirements of the federal subsidies involved. See, DEP’T OF HOUS. & URBAN DEV., PIH NOTICE 2017-02 (HA), VIOLENCE AGAINST WOMEN ACT (VAWA) SELF-PETITIONER VERIFICATION PROCEDURES (2017), http://niwaplibrary.wcl.american.edu/pubs/hud-vawa-self-petitioner-verification-procedures/.


See 42 U.S.C. § 1484(b)(3)(A), 1486(g)(4) (Sections 514 and 516 Farm Labor Housing).

See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units use these federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants who could meet the eligibility requirements of the federal subsidies involved. See 22 U.S.C. § 7105(b) (Applicants over age 18 require an HHS certification. Applicants under age 18 require an HHS eligibility determination (not a certification)).


See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units use these federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants who could meet the eligibility requirements of the federal subsidies involved. See 22 U.S.C. § 1495.


May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from other unrestricted programs. See 7 C.F.R. § 3560.11 (2012).

See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units use these federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants who could meet the eligibility requirements of the federal subsidies involved. DACA applicants will only qualify if the housing is LIHTC only or LIHTC is combined with one of the USDA programs listed above.


May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from other unrestricted programs. See 7 C.F.R. § 3560.11 (2012).


See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units that use these South Dakota based funds also receive federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants, including SIJS applicants upon receipt of lawful permanent residency, who could meet the eligibility requirements of the federal subsidies involved. SIJS applicants and recipients prior to receipt of lawful permanent residency will only qualify if the housing is LIHTC only or LIHTC is combined with one of the USDA programs listed above.


May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).


234 See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units that use these state based funds also receive federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants including SIJS applicants upon receipt of lawful permanent residency, who could meet the eligibility requirements of the federal subsidies involved. SIJS applicants and recipients prior to receipt of lawful permanent residency will only qualify if the housing is LIHTC only or LIHTC is combined with one of the USDA programs listed above.


May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).

236 May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).

237 See Housing Tax Credits, S.D. HOUS. DEV. AUTH., http://www.sdhda.org/housing-development/housing-tax-credits.html (last visited June 26, 2018). The South Dakota Housing Authority allocates the Low Income Housing Tax Credits (LIHTC). The LIHTC program does not impose immigrant restrictions. However, when housing units that use these state based funds also receive federally funded tax credits or other federally funded subsidies, the housing units with this combination of funding would only be available to immigrants including SIJS applicants upon receipt of lawful permanent residency, who could meet the eligibility requirements of the federal subsidies involved. SIJS applicants and recipients prior to receipt of lawful permanent residency will only qualify if the housing is LIHTC only or LIHTC is combined with one of the USDA programs listed above.

238 May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).

239 May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).

240 May also be eligible for proration in HUD or USDA housing programs, or for federal housing assistance from unrestricted programs. See 7 C.F.R. § 3560.11 (2012).


244 26 U.S.C.A § 21(b); U.S. DEP’T OF TREASURY, I.R.S., PUB. 503, CHILD AND DEPENDENT CARE EXPENSES, at 1, 3 (2017).


258 Battered or subjected to extreme cruelty includes, but is 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 may be considered acts of violence. The definition of battering or extreme cruelty is identical to that in the immigration regulations. See 45 C.F.R. §§ 1626.4(a)(1)(ii) (1996) (parent of victim); Leslye E. Orloff, Brittnay Roberts & Stefanie Gitler, Compare 45 C.F.R. § 1626.2(b) (1997) and 8 C.F.R. § 204.2(c)(1)(vi) (2012). The abuse may have occurred either inside or outside of the U.S. See Ronald S. Flagg, General Counsel & Vice President for Legal Affairs, Legal Services Corporation, Program Letter 14-3: Assessing Eligibility of Aliens Under 45 C.F.R. § 1626.4(b) (2014) (interpreting 45 C.F.R. § 1626.4(b) (“Related legal assistance means legal assistance directly related” “to the prevention of, or obtaining relief from, the battery [or] cruelty” and “includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).”). See also Benish Anver, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes, Nat’l Immigrant Women’s Advocacy Project (NIWAP), (Nov. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/; Benish Anver, Henrissa Bassey, & Leslye E. Orloff, And Legal Services Access for All: Implementing the Violence Against Women Act of 2005, Nat’l Legal Aid & Defender Ass’n Cornerstone Jan.-Apr. 2015, at 20, http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/; Benish Anver, Henrissa Bassey, & Leslye E. Orloff, Human Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Services Corporation Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes, Nat’l Immigrant Women’s Advocacy Project (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/and-legal-services-for-all/; Catherine Longville, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors, Nat’l Immigrant Women’s Advocacy Project (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/lsc-tool-accesspubliclyfunded/.

259 45 C.F.R. § 1626.5(a).

260 45 C.F.R. § 1626.5(b).


See 45 C.F.R. § 1626.5(c).

See 45 C.F.R. § 1626.4(a)(1)(i) (trafficking victim); 45 C.F.R. §§ 1626.4 (a)(1)(ii) (parent of trafficking victim); 45 C.F.R. § 1626.2(k)(2) (A “victim of trafficking” under the anti-abuse regulation is a victim of any conduct included in the definition of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services (HHS)); 45 C.F.R. § 1626.4(c)(2)(i) (stating that to qualify for legal assistance by an LSC funded agency, the trafficking must have occurred in the U.S. or violate U.S. law, 45 C.F.R. § 1626.4(c)(1), and the trafficking victim must be present in the U.S. at the time of the application for legal assistance).

See 45 C.F.R. § 1626.4(a)(2).

OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


See 45 C.F.R. § 1626.4(a)(2)(i)(A) (HHS certified victim); 45 C.F.R. § 1626.4(a)(2)(ii) (seeking certification); 45 C.F.R. § 1626.2(j) (“Victim of severe forms of trafficking” means any person described at 22 U.S.C. § 7105(b)(1)(C), with the inclusion of those still seeking HHS certification); 45 C.F.R. § 1626.4(c)(1) (stating that to qualify for legal assistance by an LSC funded agency, the victim must be present in the U.S. at the time of the application for legal assistance. 45 C.F.R. § 1626.4(c)(2)(ii), although the trafficking must either have occurred in the U.S. or violated U.S. law).

See 45 C.F.R. § 1626.4(a)(2)(i)(B) (visa holder); 45 C.F.R. § 1626.4(a)(2)(ii) (visa applicant); 45 C.F.R. § 1626.4(c) (stating that eligibility for legal assistance under these provisions does not require HHS certification, 45 C.F.R. § 1626.4(a)(2)(ii), although the trafficking must either have occurred in the U.S. or violated U.S. law).

OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


294 See 45 C.F.R. §§ 1626.4(a)(1)(i) (crime victim or family member eligible for U visa relief); 45 C.F.R. § 1626.4(a)(1)(ii) (parent of U visa eligible child); 45 C.F.R. § 1626.2(b) (definitions); 8 U.S.C. § 1101(a)(15)(U)(i)(iv) (stating that to qualify for a U visa, the victim must have suffered substantial physical or mental abuse as a result of having been a victim of one or more of the following, or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes); Leslye E. Orloff, Brittnay Roberts & Stefanie Gitler, Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases, NAT’L LEGAL AID & DEFENDER ASS’N CORNERSTONE (Jan.-Apr. 2015, at 20, http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/ (describing Legal Services Corporation funded legal services available to immigrant victims of violence and their families); Benish Anver, Henrissa Bassey, & Leslye E. Orloff, Legal Services Access for All: Implementing the Violence Against Women Act of 2005, NAT’L LEGAL AID & DEFENDER ASS’N C’RNERSTONE Jan.-Apr. 2015, at 20, http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/ (describing Legal Services Corporation funded legal services available to immigrant victims of violence and their families); Benish Anver, Henrissa Bassey, & Leslye E. Orloff, Legal Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Services Corporation Funded Representation for Immigrants Subjected to Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Nov. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/and-legal-services-for-all/; Catherine Longville, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/lsc-tool-accesspubliclyfundedls/.

295 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, OVW FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


299 45 C.F.R. §§ 1626.4(a)(1)(i); 45 C.F.R. § 1626.2(b) (‘‘Battered or subjected to extreme cruelty includes, but is not limited to, being the victim of any act or threatened act of violence, including any forcible 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 may be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.’’). See Leslye E. Orloff, Brittnay Roberts & Stefanie Gitler, Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Sept. 12, 2015), http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/ (suggesting the definition of battering or extreme cruelty is identical to that in the immigration regulations). Compare 45 C.F.R. § 1626.2(b) and 45 C.F.R. § 204.2(c)(1)(vi).


301 Compare 45 C.F.R. §§ 1626.4(a)(1)(i); 45 C.F.R. § 1626.2(k) (“Victim of sexual assault or trafficking” means a victim of sexual assault subjected to any conduct included in the definition of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services.).
C.F.R. 1626.4(b) (“Related legal assistance means legal assistance directly related” “to the prevention of, or obtaining relief from, the battery [or] cruelty” and “includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions”). “See also Benish Anver, Henrissa Bassey & Leslye E. Orloff, Legal Services Access for All: Implementing the Violence Against Women Act of 2005, NAT’L LEGAL AID & DEFENDER ASS’N CORNERSTONE Jan.-Apr. 2015, at 20, http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/ (describing Legal Services Corporation funded legal services available to immigrant victims of violence and their families); Benish Anver, Henrissa Bassey, & Leslye E. Orloff, And Legal Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Services Corporation Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Nov. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/and-legal-services-for-all/; Catherine Longville, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/lsc-tool-accesspubliclyfundedls/.

305 See 45 C.F.R. § 1626.5(a).


307 See 45 C.F.R. § 1626.5(a).

308 45 C.F.R. § 1626.4(b) (crime victim or family member eligible for U visa relief); 45 C.F.R. § 1626.4(a)(1)(i) (parent of U visa eligible child); 45 C.F.R. § 1626.2(h) (definitions); 8 U.S.C. § 1101(a)(15)(U)(i)-(U)(iii) (stating that to qualify for a U visa, the victim must have suffered substantial physical or mental abuse as a result of having been a victim of one or more of the following, or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage;peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felony assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes).

309 See, e.g., OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1602436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at a minimum or no cost to the victims. The LAV Grant Program provides the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).

316 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. Dep’t of Justice, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


319 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. Dep’t of Justice, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).

320 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. Dep’t of Justice, FY 2017 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


322 45 C.F.R. § 1626.4(c)(1) (crime victim or family member eligible for U visa relief); 45 C.F.R. § 1626.4(a)(1)(i) (parent of U visa eligible child); 45 C.F.R. § 1626.2(h) (definitions); 8 U.S.C. § 1101(a)(15)(U)(i)-(a)(15)(U)(iiii) (stating that to qualify for a U visa, the victim must have suffered substantial physical or mental abuse as a result of having been a victim of one or more of the following, or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; statutory rape; female genital mutilation; forced marriage; peonage; involuntary servitude; slave trade; theft; kidnapping; prostitution; sorcery; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes).

323 To qualify for legal representation by an LSC funded agency, the abuse must either have occurred in the U.S. or violated U.S. law. 45 C.F.R. § 1626.4(c)(1).

324 45 C.F.R. § 1626.4(b) (“Related legal assistance means legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty and includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse.”). See also Benish Anver, Henrissa Bassey & Leslye E. Orloff, Legal Services Access for All: Implementing the Violence Against Women Act of 2005, Nat’l Legal Aid & Defender Ass’n’s CORNERSTONE Jan.-Apr. 2015, at 20, http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/; (describing Legal Services Corporation funded legal services available to immigrant victims of violence and their families); Benish Anver, Henrissa Bassey, & Leslye E. Orloff, And Legal Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Services Corporation Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes, Nat’l Immigrant Women’s Advocacy Project (NIWAP), (Nov. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/and-legal-services-for-all/; Catherine Longville, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors, Nat’l Immigrant Women’s Advocacy Project (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/lsc-tool-accesspubliclyfunded/.

325 OFFICE ON VIOLENCE AGAINST WOMEN, U.S. Dep’t of Justice, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/ovw/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


327 45 C.F.R. §§ 1626.4(a)(1)(i) (1996) (victim); 45 C.F.R. §§ 1626.4(a)(1)(ii) (1996) (parent of victim); 45 C.F.R. § 1626.2(b) (1996) (“Battered or subjected to extreme cruelty includes, but is not limited to, being the victim of any act or threatened act of violence, including any forcible 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 may be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The definition of battering or extreme cruelty is identical to that in the immigration regulations.”). See Leslye E. Orloff, Brittnay Roberts & Stefanie Gitler, Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Sept. 12, 2015), http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/. Compare 45 C.F.R. § 1626.2(b) (1997) and 8 C.F.R. § 204.2(c)(1)(ii) (2012).

328 See 45 C.F.R. § 1626.4(a)(1)(i) (victim); 45 C.F.R. § 1626.4(a)(1)(ii) (parent of victim); 45 C.F.R. § 1626.2(k) (“Victim of sexual assault or trafficking” means a victim of sexual assault subjected to any conduct included in the definition of sexual assault in VAWA, 42 U.S.C. 13925(a)(29), or a victim of trafficking subjected to any conduct included in the definition of “trafficking” under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services.).

329 The abuse must either have occurred in the U.S. or violate U.S. law. See 45 C.F.R. § 1626.4(c).

330 See also 45 C.F.R. 1626.4(b) (“Related legal assistance means legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty and includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection to the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions.”). Benish Anver, Henrissa Bassey & Leslye E. Orloff, Legal Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Service Corporations Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Trafficking, and Other Crimes, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Nov. 3, 2014), http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015/; Benish Anver, Henrissa Bassey, & Leslye E. Orloff, And Legal Services Access for All: Implementing the Violence Against Women Act of 2005’s New Path to Legal Service Corporations Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Trafficking, and Other Crimes, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), (Oct. 1, 2014), http://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_2015/; Catherine Longville, Henrissa Bassey & Leslye E. Orloff, Guide: Access to Publicly Funded Legal Services for Immigrant Survivors, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (NIWAP), FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/owd/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


333 See, e.g., OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUSTICE, FY 2018 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM PRE-APPLICATION CONFERENCE CALL TUESDAY, DECEMBER 19, 2017, https://www.justice.gov/owd/page/file/1020436/download (“The purpose of the LAV Program is to increase the availability of civil and criminal legal assistance needed to effectively aid adult and youth victims of sexual assault, domestic violence, dating violence, and stalking who are seeking relief in legal matters relating to or arising out of that abuse or violence, at minimum or no cost to the victims. The LAV Grant Program supports the provision of holistic legal services. For example, survivors may also need legal assistance with other legal matters relating to or arising out of the abuse or violence, including family matters such as divorce, child custody or child support, immigration, administrative agency proceedings, housing, and assistance related to human trafficking.”).


See American Red Cross and the Nat’l Council of La Raza, and NAT’L IMMIGRATION LAW CTR., Fact Sheet: Immigrant Eligibility for Disaster Assistance (June 2007), https://www.nilc.org/issues/economic-support/immigrant-eligibility-disaster-assistance/.


351 FEMA, You May Be Able to Get Disaster Assistance (February 21, 2023), https://www.fema.gov/sites/default/files/documents/fema_undocumented-immigrants-disaster-assistance_flyer_2023.pdf (listing naturalized citizens, lawful permanent residents, and certain battered non-citizens or their spouses or children which includes VAWA self-petitioners).


366 The general rule is that workers must have valid work authorization during the base period, at the time that they apply for benefits, and throughout the period during which they are receiving benefits.

367 To be eligible for unemployment insurance, each class of immigrant must have had prior work authorization and had to have been working with the authorization at the time they applied for unemployment. Work authorization must remain valid while they receive unemployment and if work authorization expires, then so does the eligibility for unemployment.

368 8 U.S.C. § 1641(c)(2), or (3).

369 8 U.S.C. § 1641(b)(1), or (ii); or 8 U.S.C. § 1641(c)(2), or (3).


373 See Rebecca Smith, Immigrant Workers’ Eligibility for Unemployment Insurance, NAT’L EMPLOYMENT LAW PROJECT (Mar. 31, 2020), https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/ (“The general rule is that workers must have valid work authorization during the base period, at the time that they apply for benefits, and throughout the period during which they are receiving benefits.”).


376 See Rebecca Smith, Immigrant Workers’ Eligibility for Unemployment Insurance, NAT’L EMPLOYMENT LAW PROJECT (Mar. 31, 2020), https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/ (“The general rule is that workers must have valid work authorization during the base period, at the time that they apply for benefits, and throughout the period during which they are receiving benefits.”).