

Barred from Applying: The Private Sector’s Requirement of Social Security Numbers Has Unintended Consequences for Student Access to Much Needed Educational Scholarships

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I. Access to Funding for University and College Education: Federal and State Assistance (please fix all of the outline format in the document)

The cost of postsecondary education has increased 538% since 1985 at the same time that income inequality has continued to rise in the United States leaving many qualified students without access to a college education.¹ For many students, access to privately-funded scholarships, grants, and fellowships is crucial to students’ ability to obtain college, university and graduate school degrees. Access to grants, scholarships and fellowships that are supported by non-governmental funding sources is particularly important for students who have immigrated to the United States and students whose parents are immigrants. Only limited categories of lawfully present immigrants qualify for federal student financial aid.²

In making determinations regarding which non-citizens are eligible for purposes of post-secondary financial aid the Federal Education statute³ states that:

In order to receive any grant, loan, or work assistance under this subchapter, a student must, “be a citizen or national of the United States, a permanent resident of the United States, able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.”⁴

Immigrants eligible to receive federally funded post-secondary educational grants and scholarships include following list of immigrants:⁵

- (1) Lawful permanent residents;⁶

¹ Michelle Jamrisko and Illan Kolet, College Costs Surge 500% in U.S. Since 1985: Chart of the Day (Aug. 26, 2013), available at <http://www.bloomberg.com/news/2013-08-26/college-costs-surge-500-in-u-s-since-1985-chart-of-the-day.html>.

² Free Application for Federal Student Aid, available at: <https://studentaid.ed.gov/sites/default/files/2014-15-fafsa.pdf>.

³ 20 U.S.C. § 1091; The Higher Education Act of 1965 (Pub. L. No. 89-329), Title IV (1965); See also generally, Amendments to the Higher education Act of 1965 (Pub. L. 105-244) (1998).

⁴ *Id.*

⁵ 8 U.S.C. § 1641(b) and (c). The only two categories of qualified aliens for whom DOE has failed to issue implementing policies governing access to postsecondary educational grants and loans are battered immigrant spouse and children and Cuban and Haitian Entrants. For examples of Appropriate INS Status for benefits, *see* sections 204(a)(1)(A)(i), (ii), (iv); 204 (a)(1)(B)(i), (ii), (iii); 244 (a)(3); and 204A(b)(2) of the INA, as cited in 62 FR 61344 at 61367.

⁶ This includes conditional permanent residents: who are spouses of U.S. citizens who at the time of obtaining resident status were married less than two years. Therefore, USCIS issues a “green card,” which expires two years

- (2) Conditional permanent residents;⁷
- (3) Asylees⁸
- (4) Refugees⁹
- (5) Aliens paroled into the United States for a period of at least 1 year¹⁰
- (6) Aliens granted withholding of deportation;¹¹
- (7) Aliens of conditional entry¹²
- (8) Veterans of certain United States military actions¹³
- (9) Amerasians;¹⁴
- (10) Trafficking victims;¹⁵
- (11) Cuban and Haitian entrants;¹⁶ and
- (12) Battered immigrant spouses and children of U.S. citizen and lawful permanent residents.¹⁷ This category includes immigrant victims of spouse or child abuse who have filed and have received prima facie determinations or approvals from the U.S. Department of Homeland Security (DHS) or an immigration judges in any of the following types of cases:¹⁸
 - VAWA self-petitioning cases,

after their residency interview, and the immigrant spouse must submit a second application to remove the conditions on her residence status 90 days before her card expires.

⁷ INA § 216; 8 U.S.C. 1186(a).

⁸ INA §208; 8 U.S.C. 1158.

⁹ INA §207; 8 U.S.C. 1157.

¹⁰ INA §212(d)(5) (for a period of at least one year); 8 U.S.C. 1182 (d)(5)

¹¹ INA §243 (h) as in effect prior to April 1st 1997 or those being withheld under INA §241(b)(3); 8 U.S.C. 1231 (b)(3).

¹² INA §203(a)(7) as in effect prior to April 1st, 1980.

¹³ Under PRWORA: “Under various provisions of the Act, a qualified alien who is lawfully residing in a state and is (1) a veteran (per 38 U.S.C.101(2), 107, 1101, or 1301) with an Honorable Discharge (not on account of alienage) and who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d); (2) on active duty (other than active duty for training) in the United States Armed Forces; or (3) a spouse, unmarried dependent child, or unremarried surviving spouse of such an individual, is eligible for particular programs.” 62 FR 61344, Exhibit B to Attachment 6 “DOD Guidance on implementation of Veteran and Active Duty Exception” (November 1997).

¹⁴ Pub. L. No 104-193 §403, 110 Stat. 2265. An alien is eligible for benefits under Public Law 97-359 as the Amerasian child or son or daughter of a United States citizen if there was reason to believe that the alien was born in Korea, Vietnam, Laos, Kampuchea (Cambodia), or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a United States citizen. Such an alien is eligible for classification under sections 201(b), 203(a)(1), or 203 (a)(3) of INA as the Amerasian child or son or daughter of a United States citizen, pursuant to section 204(f) of INA. 8 C.F.R. §204.4 (2007); see also section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

¹⁵ The Trafficking Victims Protection Act of 2000 created access to public benefits for immigrants who receive HHS certification as trafficking victims either because they have been granted continued presence or because they are eligible to receive T-visas as trafficking victims. §107(b)(1) of the TVPA of 2000. Trafficking victims are granted the same access to federal public benefits as asylees and refugees. Department of Education Dear Colleague Letter, *Eligibility for Title IV Program Assistance for Victims of Human Trafficking*, GEN-06-09 (May 2006), <http://www.nasfaa.org/publications/2006/gen0609.html>; Dep’t of Education Press Release, New Process Benefits Victims of Human Trafficking Seeking College Aid (May 9, 2006), available at: <http://www.ed.gov/news/pressreleases/2006/05/05102006.html>,

¹⁶ As defined in §501(e) of the Refugee Education Assistance Act of 1980.

¹⁷ See Appendix C. For examples of Appropriate INS Status for benefits see §’s 204(a)(1)(A), (ii),(iii), (iv)(v); 204 (a)(1)(B), (ii), (iii)(iv); 244 (a)(3)(as in effect on March 31, 1997); and 204A(b)(2) of the INA, as cited in 62 FR 61344 at 61367; 8 U.S.C. 1154 (a)(1)(A)(ii)(iii)(iv)(v); 8 U.S.C. 1154 (a) (1) (B) (ii) (iii) (iv).

¹⁸ 8 C.F.R.104.1 ; 8 U.S.C. 1641(c); for examples of documentation see 62 F.R. 61344 at 61367-61369

- VAWA suspension of deportation cases,
- VAWA cancellation of removal cases, or
- Family-based visa petition cases for spouses or children who are being battered or subjected to extreme cruelty.

The only options for educational subsidies for all other immigrant students, both those who are lawfully present in the United States¹⁹ and those who are undocumented, are in-state tuition and privately funded grants, scholarships and fellowships. As of May 2014, eighteen (18) states²⁰ offered in-state tuition to immigrant students. The requirements under which immigrant students qualify for in-state tuition vary from state to state. However, the states that permit in-state tuition for immigrants generally requires that students have:

- Resided and attended high school in the particular state for one to four years,
- Graduated from high school or obtained a GED in that state,
- Been accepted into a public college or university, and
- Provided a sworn affidavit expressing their intent to file for lawful status.²¹

When available under state law in-state tuition plays an important role in facilitating access to higher education for immigrant students. As does the position taken by the DHS that DHS imposes no requirements for higher educational institutions to inquire into, report or obtain information about the immigration status of applicant or enrolling students.²²

II. The Importance of Access to Privately-Funded Grants, Scholarships and Fellowships for Immigrant Students

In light of the restrictions imposed on access to federal financial aid and in-state tuition in many states, immigrant students who are qualified to pursue higher education must find other ways to fund their education. Grants, scholarships and fellowships from non-governmental privately-funded programs are the primary resource to which talented immigrant students can turn to receive the financial assistance they need to pursue higher education. It has long been recognized that access to higher education plays a crucial role in increasing opportunity and earning capacity. According to Department of Education policy, postsecondary education is necessary for all people in our society, as Secretary of Education Spellings has explained in 2006:

¹⁹ Examples of lawfully present immigrants who rely on in-state tuition and private non-governmental grants, scholarships and fellowships include: work, student, diplomatic and religious visa holders, U visa crime victims and their children, immigrants granted Temporary Protected Status; asylum applicants, and children with pending or approved applications for Special Immigrant Juvenile Status.

²⁰ CA, CO, CT, FL, IL, KS, MD, MI, NE, NJ, NM, NY, OK, OR, RI, TX, UT, WA. See National Conference of State Legislatures, *Undocumented Student Tuition: State Action* (May 2014), available at: <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx>.

²¹ Demographics Map, National Immigrant Women's Advocacy Project (2014) <http://niwap.org/benefitsmap/>.

²² Department of Homeland Security, Immigration and Customs Enforcement, Student Exchange Visitor Program, *Aliens who may be Unlawfully Present in the United States and their Access to Public Post-Secondary Educational Institutions* (July 6, 2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/7%20SEVP%20Info%20Undocumented%20Student%2007%2002%2010.pdf>.

“Nearly two-thirds of all high-growth, high-wage jobs created in the next decade will require a college degree; degrees only one-third of Americans have. Unlike when I was growing up, you now need a high school diploma and a couple of years of college to succeed as a mechanic or plumber or electrician.”²³

“Where a college degree was once a sign of privilege, it's now all but a prerequisite for opportunity.”²⁴

President Obama has expressed similar sentiments in lieu of both the necessity and rising cost of education.

“There aren't many things that are more important to that idea of economic mobility – the idea that you can make it if you try – than a good education.”²⁵

“We understand that in the face of greater and greater global competition, in a knowledge-based economy, a great education is more important than ever. A higher education is the single best investment you can make in your future.”²⁶

While the access to higher education improves the annual earning capacity, opportunity and quality of life for all students and their current and future families, the impact on immigrant women and girls is particularly profound.²⁷ Immigrant women compared to U.S. born women have 20% less access to careers in professional, management, business and financial occupations.²⁸ Private non-governmental funders of educational grants, scholarships and fellowships play a key role making access to advanced education available so that all students, including immigrant, students can pursue the education they need to pursue their dreams.

III. Social Security Number Requirements In Applications for Educational Funding: Harms Outweigh Purposes

Under federal and state laws immigrant students have the same ability to access grants, scholarships and fellowships from privately funded sources as all students in the United States. Requiring social security numbers of students and/or their parents is a practice that has the unintentional consequence of cutting off highly qualified students who are immigrants or from immigrant families from much needed educational grants, scholarships and fellowships. Highly qualified immigrant students from immigrant families are deterred when scholarship applications required social security number by fears that their application to a private grant making

²³ Secretary of Education Margaret Spellings, remarks at the National Postsecondary Education Cooperative Symposium on Student Success, Washington, D.C. November 2, 2006.
<http://www.ed.gov/news/pressreleases/2006/11/11022006.html>

²⁴ Secretary of Education Margaret Spellings, remarks at the semiannual meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), December 18, 2007.
<http://www.ed.gov/news/pressreleases/2007/12/12182007.html>

²⁵ President Barack Obama, remarks on college affordability in Buffalo, NY, August 22, 2013.
<http://www.whitehouse.gov/the-press-office/2013/08/22/remarks-president-college-affordability-buffalo-ny>.

²⁶ *Id.*

²⁷ HEIDI HARTMANN, PH.D., President, Institute for Women's Policy Research, IMMIGRANT WOMEN IN THE ECONOMY (April 16, 2010), available at <file:///C:/Users/em2549a/Downloads/ImmigrantWomenEconomy.pdf> (finding nearly 70% of immigrant Latinas had incomes of below \$25,000 in 2008).

²⁸ *Id.* at 10.

organization may trigger the student or the student's parent's being reported to immigration authorities for deportation. As immigrants earn higher wages and are able to secure stable employment, they are able to make significant contributions to society such as paying more state, local, and federal taxes.²⁹ Higher wages also allow immigrants more opportunities to spend and invest.³⁰ Individuals who attend college are also more likely to volunteer, donate blood and vote.³¹ Additionally, college education leads to healthier lifestyles and a greater likelihood of the graduates and their families enjoying health insurance and pension benefits, reducing healthcare costs.³² In 1999, RAND study found that the investment in education also offsets savings in public health and welfare expenditures because of healthier lives and increased tax contributions.³³ For every \$1 invested in education (primary school to college) equality in access to education would save \$4.90 in public and societal benefits.³⁴

However, many immigrant students are barred or scared away from applying to college because of the requirement for many scholarships to provide the Social Security Number of them and their parents. Such application requirements are harmful not only to students from immigrant families but raise serious privacy and identify theft concerns for all students applying for educational funding.³⁵ A significant purpose of the Federal Privacy Act has been to limit the circumstances in which federal and state government agencies can require or request that a person provide their social security number.³⁶ Under the Privacy Act government agencies are required to notify applicants whether providing social security numbers is mandatory, how the numbers will be used, or whether an alternative authentication may be provided.³⁷ When private organizations request or require social security numbers, the private institutions are not bound by the same federal Privacy Act protections.³⁸

When funders of higher educational grants, scholarships and fellowships ask for or require that applicants provide social security numbers, this practice may have the effect of deterring or preventing students who are immigrants or from immigrant families from seeking much-needed funding for their education. This practice is also dangerous for all students applying for educational assistance from the non-governmental higher educational funder.³⁹

²⁹ Roberto G. Gonzales, *Young Lives on Hold: The College Dreams of Undocumented Students*, 13-14 (CollegeBoard, April 2009), available at: <http://professionals.collegeboard.com/profdownload/young-lives-on-hold-college-board.pdf>.

³⁰ *Id.*

³¹ Sandy Baum, Jennifer Ma & Kathleen Payea, *Education Pays: the Benefits of Higher Education for Individuals and Society*, 5-6 (CollegeBoard, 2013).

³² *Id.*

³³ Georges Vernez, Richard A. Krop & C. Peter Rydell, *Closing the Education Gap: Benefits and Costs*, 20-22 (RAND Education, 1999).

³⁴ *Id.* At 73-74.

³⁵ *Security in Numbers: SSNs and ID Theft* (Federal Trade Commission, Dec. 2008).

³⁶ 5 U.S.C. § 552a (1974).

³⁷ *Id.* At (e)(3)(A)-(D).

³⁸ 5 U.S.C. § 552a (1974) (explaining that requirements for and use of society security numbers is only mandated to federal agencies and that private institutions are not bound by the same authority).

³⁹ *Id.*

There are three purposes that educational funders may use to justify requesting social security numbers⁴⁰

- Verification of identity;
- Income verification; or
- Income tax reporting.

Each of these goals can be accomplished in a manner that better prevents identify theft and does not discourage immigrant students from applying for college funding. Private organizations that provide grants, scholarships or fellowships for students can seek the information they need to prove students' identity and economic need by allowing students to prove these factors by providing any credible evidence the student may be able to provide. This approach is modeled after the "any credible evidence" standard developed in the Violence Against Women Act and used by the DHS and other government agencies in processing applications for immigration or public benefits.⁴¹ Private funders for tax purposes do not need to ask for social security numbers of students applying for funding. If a student is offered a grant, scholarship or fellowship for which tax reporting is required by the Internal Revenue Service (IRS) students should be allowed to provide either a social security number or other number acceptable to the IRS for the filing of income taxes.

A. Requiring Applicants to Submit Social Security Numbers is Dangerous for Students

Organizations should not require applicants to provide social security numbers because doing so increases the risk of identity theft and is dangerous for student applicants.⁴² College-age students are among the most vulnerable groups to be subject to identify theft.⁴³ Further, students who are in the millennial or later generations experience more significant levels of financial harm when they fall victim to identity theft, because it takes them longer to learn that their identity has been compromised.⁴⁴

Several government agencies describe how students face a high susceptibility to identify theft and urge organizations to adopt alternative methods of student identification and income verification.⁴⁵ According to the Social Security Administration:

⁴⁰ Beth Givens, *Uses of Social Security Numbers in the Private Sector: Why SSNs Are Not Appropriate for Authentication*, Privacy Rights Clearinghouse (2008).

⁴¹ Leslye E. Orloff, Kathryn C. Isom & Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and Its "Any Credible Evidence" Rules – A Call for Consistency*, 11 GEO. J. GENDER & L. 619, 626-632 (2010) (discussing the "any credible evidence" rule from the Violence Against Women Act of 1994 subsequent implementation by the government).

⁴² See generally Social Security Administration: Office of the Inspector General, *Kindergarten through 12th Grade School's Collection and Use of Social Security Numbers*, Audit Reports (July 2010) www.ssa.gov/oig/ADOBEPDF/A-08-10-11057.pdf.

⁴³ Allison Klein, *18- to 24-Year Olds Most At Risk for ID Theft, Survey Finds*, Washington Post, Mar. 17, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/16/AR2010031604209.html>.

⁴⁴ *Id.*

⁴⁵ See, e.g., California Student Aid Commission, *Student Identify Theft*, <http://www.csac.ca.gov/doc.asp?id=1133> ("The Commission has replaced the SSN with a unique student identification number for information tracking and sharing purposes. All mailed student correspondence and other written communications concerning students now contain the unique student identifier."); U.S. Department of Education: Office of Inspector General, *Identity Theft*,

An organization's collection and use of SSNs can increase the risk of identity theft and fraud. Each time an individual divulges his or her SSN, the potential for a thief to illegitimately gain access to bank accounts, credit cards, driving records, tax and employment histories and other private information increases.⁴⁶

The Social Security Administration urges private organizations to avoid using social security numbers as identifiers for any type of transaction, urging that organizations should exercise limited use of SSNs.⁴⁷ Using alternate authenticators and identifiers can significantly reduce the risk of unauthorized SSN disclosures and thefts.⁴⁸

As a result many colleges and universities have abandoned the practice of using social security numbers as student identification numbers.⁴⁹ The American Association of Collegiate Registrars and Admissions Officers (AACRAO) in a 2010 survey found that 40.2% of colleges and universities did not or were no longer using students' full social security numbers in academic databases.⁵⁰ Moreover, 75% of colleges and universities surveyed indicated that they do not include student social security numbers on transcripts.⁵¹ Many colleges and universities have been transitioning toward not using social security numbers. This approach protects students while simultaneously promoting immigrant students' access to the higher education offered by these institutions. .

B. The Creation and Intended Use of Social Security Numbers

In 1936, social security numbers (SSNs) were created to track workers' earnings for social security benefits purposes.⁵² Since their creation, social security numbers have evolved to be used by both governmental and non-governmental organizations for a variety of purposes including verification of income in applications for benefits, services or financial aid.⁵³ The Privacy Act prohibits federal and state government agencies from "denying an individual any right, benefit, or privilege by law because of the individual's refusal to disclose his or her SSN

<http://www2.ed.gov/about/offices/list/oig/misused/idtheft.html> (stating that students are more vulnerable to identity theft because almost fifty percent of students have grades posted by Social Security number).

⁴⁶ Social Security Administration, *Avoid Identity Theft: Protect Social Security Numbers*, available at <http://www.ssa.gov/phila/ProtectingSSNs.htm>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Social Security Administration, *Avoid Identity Theft: Protect Social Security Numbers*, available at <http://www.ssa.gov/phila/ProtectingSSNs.htm>.

⁵⁰ American Association of Collegiate Registrars and Admissions Officers, *Transcript Practices, Student ID Numbers, and Name Changes* (2010).

⁵¹ *Id.*

⁵² Federal Trade Commission, *Security in Numbers: SSNs and ID Theft 3* (2008).

⁵³ U.S. Department of Health & Human Services, *Policy Guidance Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, state Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits* (1993).

unless such disclosure is required by federal law.”⁵⁴ Federal law requires that state agencies must inform applicants whether disclosure of their social security numbers is mandatory or voluntary and what uses will be made of the SSN.⁵⁵

Section 466(a)(13) of the Social Security Act governs the limited circumstances when social security numbers must be recorded in order for particular transactions to be finalized.⁵⁶ Federal law limits when SSNs are required to enumerate instances. This approach prevents fraud and misrepresentation. SSNs must be recorded only under the following circumstances:

(A) Applications for a professional license, occupational license, recreational license, or marriage license;

(B) Individuals subject to a divorce decree, support order, or paternity determination or acknowledgement; and

(C) Recording the social security number of a person who has died on the applications and records.⁵⁷

There are some additional circumstances in which federal or state governments require that persons who have social security numbers provide them. These include:⁵⁸

- Federal and state tax returns;⁵⁹
- Federal government loans;⁶⁰
- Employers for wage and tax reporting purposes;
- U.S. Treasury for U.S. Savings Bonds;
- Certain federal public benefits.⁶¹

⁵⁴ U.S. Department of Health & Human Services, *Policy Guidance Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits* (1993).

⁵⁵ *Id.*

⁵⁶ Social Security Act § 466(a)(13).

⁵⁷ *Id.*

⁵⁸ United States Social Security Administration, <http://www.ssa.gov/>

⁵⁹ Immigrants who do not have social security numbers can provide an Individual Taxpayer Identification Number (ITIN), a tax ID number instead of a social security number.

⁶⁰ Since federal loans are considered federal public benefits under federal public benefits laws, 8 U.S.C. § 1611(c)(1) (1998), persons applying for federal loans will usually already have received social security numbers or may be eligible to receive non-work social security numbers if the immigrant qualifies for a federal government loan. See also CECILIA OLAVARRIA ET AL. *Public Benefits Access for Battered Immigrant Women and Children in BREAKING BARRIERS: A COMPLETE GUIDE TO THE LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* (2013), available at: http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf

⁶¹ Social security numbers are required in applications for Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps, and TANF. See Dep’t of Health & Human Services & Dep’t of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000) (hereinafter “HHS Policy Guidance on Citizenship”), available at: <http://www.hhs.gov/ocr/nationalorigin/triagency.html>. Social security numbers are not required for applicants for federal public and assisted housing (see CECILIA OLAVARRIA, AMANDA BARAN, LESLYE ORLOFF, & GRACE HUANG, *Public Benefits Access for Battered Immigrant Women and Children* 25 in BREAKING BARRIERS: A COMPLETE GUIDE TO THE LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2013), available at: http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf); Emergency Medicaid (see HHS policy guidance on citizenship), and Health Care exchanges (“People who apply for health coverage need to provide an SSN if they

Non-governmental private organizations and business are not required under federal or state laws to collect social security number information.⁶² The Privacy Act social security number protections that include the right to refuse to provide a social security number unless disclosure is required under federal law and the right to be informed of how the SNN will be used do not apply to non-governmental organizations. As a result private organizations are not obligated to notify applicants that they have the right to refuse to provide their social security numbers. The official website of the Social Security Administration advises that while individuals may under federal law refuse to provide their SSN to private organizations, businesses or other enterprises, the refusal may result in rejection of the service or purchase requested.⁶³

Organizations providing grants, scholarships and fellowships should consider the risk of identity theft and deterring immigrant applicants when requesting that applicants provide SSNs. Since the SNN requirement is included in the application as a matter of discretion by the organization and is not required by any federal law, organizations funding students' higher education should consider providing all applicants with the option of using a number other than a social security number in the application. Should the grant making organization decide to continue to require a SSNs, applicants should be informed how their social security numbers will be used and how their SSN will be used. Abandoning the requirement of social security numbers on scholarship, fellowship and grant applications avoids unnecessary risk of identity theft for all students and provides immigrant students greater opportunities to advance their education. Implementing the best practices described below will help agencies providing funding to students for higher education obtain the information needed for both grant making purposes without social security number requirements.

C. Meeting Identification, Income Verification and Tax Reporting Goals Without Requiring Social Security Numbers.

This section outlines best practices non-governmental organizations can use to accomplish goals related to authenticating the identity of applicants, verifying income and meeting tax reporting requirements without requiring social security numbers. Employing the "any credible evidence" approach used by DHS and other federal government agencies will allow student applicants to prove identity and income using the evidence they can safely muster. The scholarship-granting agency can access the credibility of the information and ask for additional information if needed. Although the purpose of requiring SSNs may differ by

have one. An application filer must also provide the SSN of any tax filer who isn't applying for health coverage if the tax filer's tax information will be used to verify the household's eligibility for help with paying for health coverage. Other people not applying for health coverage are encouraged to provide their SSNs to speed up the application process, but aren't required to provide one." See *How We Use Your Data*, <https://www.healthcare.gov/how-we-use-your-data/> (last visited Nov. 11, 2014)

⁶² Tax reporting requirements for employment, scholarship or fellowship purposes can be met by providing any numerical identifier accepted by the IRS. This includes either a social security number or Tax ID number ITIN. See Internal Revenue Service *Taxpayer Identification Numbers (TIN)* [http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-\(TIN\)](http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-(TIN)) (discussing the use of TIN and SSN as acceptable identification for tax purposes).

⁶³ Social Security Administration, *Must I Provide a Social Security Number to Any Business or Government Agency That Asks?* available at <https://faq.ssa.gov/link/portal/34011/34019/Article/1822/Must-I-provide-a-Social-Security-number-to-any-business-or-government-agency-that-asks>

organization the lists below will provide examples of the types of evidence students could provide instead of the SSN that will give the grant-making agency the information they need. These alternative forms of evidence will benefit students by preventing agencies from potentially contributing to identity theft and simultaneously ensuring that all students that qualify for academic and needs based grants, scholarships and fellowships are able to apply for and be awarded educational funding without regard to the student's immigration status.

- **Authenticating Identity**

Organizations that use SSNs as an identification number to be assigned application filed by each student for the agencies' own records can use other identifiers such as student identification cards or numbers. Following *Plyler v. Doe*, no child can be refused matriculation to primary school on account of his immigration status. Thus, if a student attended elementary, middle, or high school in the United States, the student should have a student identification number provided through their high school that could be used as identification for the grant application and could serve as evidence of the student's identity for scholarship applications. Another form of authentication that may be used instead of SSNs is a driver's license. To date, 11 states,⁶⁴ Puerto Rico and the District of Columbia allow undocumented immigrants to obtain driver's licenses and 12 more states have pending legislation.

Scholarship-granting organizations that use SSNs solely to verify applicants' identities have a wide range of evidence that can be submitted and considered that solely or collectively prove identity more effectively than social security numbers. Immigrant students should be able to prove identity using any of the following forms of documentation:

- State issued driver's license
- Tribal identification
- U.S. State issued non-driver identity card
- Military identification
- Military dependent card
- Passport issued by any country
- Elementary and secondary school records or identification numbers
- Medical records
- Marriage records
- Health insurance cards or records
- Court records
- Adoption decree
- Religious records
- U.S. school identification card with photo
- Immigration related documents issued by DHS
 - I-94
 - Certificate of Naturalization
 - Certificate of Citizenship
 - ORR photo identification card

⁶⁴ IL, MD, CT, VT, CO, NM, UT, NV, CA, OR, WA. See National Immigration Law Center, *Current and Pending State Laws & Policies on Driver's Licenses for Immigrants*, Mar. 2014, available at <http://nilc.org/driverlicensemap.html>.

- **Verifying Income for Need-Based Awards**

Some organizations request social security numbers for need-based⁶⁵ scholarships and grants, in order to verify the applicant's income. Many economic need-based federal and state health or benefits programs require proof of income eligibility without requiring that the applicant have or submit a social security number. Significant examples include applicants for Housing and Urban Development (HUD) funded public and assisted housing programs and Emergency Medicaid and applicants to the federal or state health care exchanges, who are only required to submit social security numbers if they have one. Any credible evidence⁶⁶ of a student's income eligibility for need-based grants, scholarships or fellowships may include but not be limited to the following⁶⁷:

- State court- Employer affidavits used to establish child support
- Financial statements prepared on state court forms generally used in family court child and spousal support proceedings
- Statements from the student's and/or their parent's employers
- Tax returns filed using a student's and/or the student's parent's federal Tax ID (ITIN) number
- Affidavits as to income and expenses from the student and/or the student's parents
- Evidence of payments of expenses including rent, health care costs, child support
- Cost of living adjustment letter and other benefit verification notices⁶⁸
- Self-employment ledger⁶⁹
- Letter from government agency for unemployment benefits⁷⁰
- Proof of tribal income⁷¹
- Bank statements⁷²
- Proof of cash payments from employer

⁶⁵ Need-based scholarships and fellowships are awarded to students who demonstrate a strong financial need for tuition assistance.

⁶⁶ For a more detailed discussion on the any credible evidence standard, see Leslye E. Orloff, Kathryn C. Isom, & Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and its "Any Credible Evidence" Rules- A Call for Consistency*, 11 GEO. J. GENDER & L. 619 (2010), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/other-immigration/any-credible-evidence-standard/Any%20Credible%20Evidence%20-%20Orloff.pdf>

⁶⁷ For more examples of how income is proven in family court cases for the purposes of ordering child support, see LESLYE E. ORLOFF, JOYCE NOCHE, ANNE BENSON, LAURA MARTINEZ, & JENNIFER ROSE, *Ensuring Economic Relief for Immigrant Victims Through Family Law Proceedings: Child Support and Spousal Support 16 in BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* (2013), available at: http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/economic-relief/6.4 c FAM_BB Economic-Relief-for-Victims-Child-Spousal-Support-MANUAL-BB.pdf

⁶⁸ For a list of documents that verify income accepted by the federal health care insurance exchange, see <https://www.healthcare.gov/help/how-do-i-resolve-an-inconsistency/> (last visited Nov. 11, 2014).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

- **Meeting Tax Reporting Requirements**

Many organizations also require SSNs for tax purposes, as all taxable scholarships and fellowships must be reported to the Internal Revenue Service.

For the organizations that require income verification, tax IDs may be used in lieu of SSNs. The Internal Revenue Service (IRS) has developed a system that allows immigrants who are working to file tax returns and pay taxes without regard to whether the immigrant worker is documented and whether the immigrant has legal work authorization.⁷³ U.S. immigration laws also encourage and in some instances require the filing of taxes by immigrants who have been working in the United States. Immigrants applying for lawful permanent residency must prove that they will not be a public charge.⁷⁴ Proof of employment history and submission of tax returns, although not mandated, provide evidence that the immigrant applying for lawful permanent residency is not likely to become a public charge. Additionally, when immigrants apply to become naturalized citizens, they are required to have filed tax returns for the years they have been working in the United States.⁷⁵ Having paid taxes under the immigrant's ITIN number provides this proof. Similarly, under state laws regarding in-state tuition, states may require that the students' parents have paid state taxes.⁷⁶

In order to file taxes, undocumented immigrants can apply for an Individual Taxpayer Identification Number (ITIN) to be used on tax forms instead of an SSN.⁷⁷ Immigrant parents who file taxes using an ITIN can include their immigrant children on their tax returns in the same manner as all other parents. When immigrant children are included in their immigrant parent's tax returns filed under the parent's ITIN number or numbers, the immigrant child included on their parent's tax returns will be assigned an ITIN of the child's own as a dependent. Immigrant students applying for grants, scholarships or fellowships who have filed their own tax returns using an ITIN number or who have been included in their parent's tax returns will have ITIN numbers of their own and/or of their parents that they can provide for income verification purposes. The ITIN number can also be used to verify identity in the same way SSNs have been used in the past.

⁷³ Illinois Legal Aid, *Paying Income Taxes as an Undocumented Immigrant* (Jun. 2012) available at http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=8418

⁷⁴ INA §§ 212(a)(4) and 237(a)(5).

⁷⁵ See U.S. Citizenship and Immigration Service, *Document Checklist for Form N-400, Application for Naturalization* (last reviewed/updated Jan 1, 2011), available at: <http://www.uscis.gov/forms/citizenship-and-naturalization-based-forms/document-checklist-form-n-400-application-naturalization>; see also U.S. Citizenship and Immigration Service, *Thinking About Applying for Naturalization?*, available at: <http://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/PDFs/G-1151.pdf> (last visited Nov. 11, 2014).

⁷⁶ The following are examples of states that require proof of payment of state taxes:

- Illinois: <http://www.usp.uillinois.edu/residency/residentreg.cfm>
- Iowa: <http://catalog.iastate.edu/registrar/#residencytext>
- Maryland: http://www.umaryland.edu/orr/residency/residency_faqs.html

For a comprehensive list of in-state tuition residency requirements, see FinAid, *In-State Tuition and State Residency Requirements*, available at: <http://www.finaid.org/otheraid/stateresidency.phtml> (last visited Nov. 11, 2014).

⁷⁷ *Id.*

D. Conclusion

Without access to federal financial aid obtaining funding through private grants, scholarships and fellowships is often the only way immigrant students can afford pursue higher education and pursue the career of their dreams.⁷⁸ Private organizations offering grants, scholarships and fellowships to students pursuing university and college education have no governmental obligation to request or require social security numbers of applicant students or their parents in the educational grant application process. Funders of students pursuing higher education should follow the lead of the higher education institutions that have been moving away from seeking or using student identification numbers. This approach will make an important contribution toward deterring identity theft. At the same time this approach will remove significant barriers that impede immigrant students and students with one or more immigrant parents from applying for and receiving financial assistance needed to help these students pursue their dreams of attaining degrees from universities and colleges across the United States.

⁷⁸ Roberto G. Gonzales, *Young Lives on Hold: The College Dreams of Undocumented Students* (Apr. 21, 2009), available at <http://www.e4fc.org/images/young-lives-on-hold-college-board.pdf>.