

OBTAINING ANCILLARY BENEFITS

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OBTAINING ANCILLARY BENEFITS

I. INTRODUCTION

Obtaining lawful status for a client marks a transition to a new phase of the client's life. This new phase enables a client the means to lawfully work and live in the United States. Access to "ancillary benefits"¹ such as a Social Security number, driver's license, and affordable healthcare, are essential for immigrants to contribute economically and socially to their communities. These benefits may provide invaluable support for immigrants as they transition into American life. This chapter provides basic and practical information on applying and qualifying for ancillary benefits and explores how select issues intersect with an applicant's immigration status. The chapter also delivers an overview of pending litigation and policy updates that may affect access to such benefits in the future.

II. SOCIAL SECURITY NUMBERS AND CARDS

A valid Social Security number is required for a client to utilize many benefits and government services including securing a job, collecting Social Security benefits, and applying to banks and credit card companies for financial purposes. For many immigrants and non-immigrants alike, obtaining a Social Security number and card represents a life-changing experience.

A. General Application Process

To apply for a Social Security number and card, an applicant must complete an *Application For A Social Security Card* (Form SS-5)² and provide evidence of his or her U.S. citizenship or immigration status, age, and identity to the Social Security Administration (SSA).³

An applicant may utilize a U.S. birth certificate, U.S. passport, Certificate of Naturalization, or

Certificate of Citizenship as primary level evidence to prove U.S. citizenship.⁴

For non-U.S. citizens, acceptable documents of immigration status include (1) Form I-551; (2) Permanent Resident Card (or a machine-readable immigrant visa, endorsed upon first entry to the U.S. and an unexpired foreign passport); (3) Form I-94, Arrival Departure Record for appropriate category and an unexpired foreign passport; or (4) Form I-766, Employment Authorization Card.⁵ International students face additional documentary requirements. *See infra* Part.II.B. If the applicant's evidence of immigration status, or the immigration status itself, expires within the 14 calendar days from the date of application, the SSA will not process the application.⁶

An applicant must present a birth certificate as proof of age. If one is not available, alternative evidence, such as a religious record made before the age of five showing the date of birth, or a passport may be submitted in lieu.⁷

Acceptable documents of identity include valid unexpired documents containing the applicant's name, identifying information, and a recent photograph such as a state driver's license, a state ID card, or a U.S. passport. Alternatively, an SSA employee will ask to see other documents including (1) employee ID card; (2) school ID card; (3) Health insurance card; (4) U.S. military ID card; (5) adoption decree; (6) life insurance policy; or (7) a marriage document when name changes result from marriage.⁸

An applicant for a Social Security number and card must present at least two different original documents (or copies certified by the issuing agency), and one document may be used for two purposes.⁹

*The authors wish to express their thanks to Leonardo De La Garza, third year law student at Texas Tech School of Law and law clerk for Whittenburg Stein & Strange P.C., for his invaluable assistance.

¹ For the purposes of this chapter, "ancillary benefits" refer to benefits outside the immigration law context—such as Social Security numbers and cards, driver's licenses, public assistance, affordable healthcare and in-state tuition—as opposed to the more traditional definition which includes employment and travel authorization.

² 20 C.F.R. § 422.103(b)(1) (2014). The application is available at <http://ssa.gov/forms/ss-5.pdf>.

³ 20 C.F.R. § 422.107.

⁴ U.S. SOC. SEC. ADMIN. PROGRAM OPERATIONS MANUAL SYSTEMS (POMS) RM 10210.505 [hereinafter POMS], *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210505>.

Alternative evidence is listed under RM 10210.510, 10210.515, 10210.520, 10210.525 and 10210.530.

See POMS, supra, at RM 10210.510, 10210.515, 10210.520, 10210.525 and 10210.530, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210510>.

⁵ *See POMS, supra* note 5, at RM 10211.000, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211000> (Table of Contents).

⁶ *Id.* at RM 10213.300, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110213300>.

⁷ *See id.* at RM 10210.250, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210250>.

⁸ *Id.* at RM 10210.405, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210405>.

⁹ *Id.* at RM 10210.020, *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210020>.

B. Application Process for International Students

In addition to documenting immigration status, age, and identity, F-1 international students must also present Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, while J-1 exchange visitors must show Form DS-2019, Certificate of Eligibility for Exchange Visitor Status, except when the student or exchange visitor presents a valid Form I-766.

International students must also provide proof of work eligibility. An F-1 student eligible to work on campus must provide a letter from the designated school official (DSO) that identifies the student, confirms current school status, and identifies the employer and the type of work. If the work is at an off-campus location, either the DSO or the employer must indicate that the employer qualifies as one that is affiliated with the school or is a contractually funded post-graduate level research project. In addition, the SSA requires a recent pay slip or a letter from employer describing the student's job, employment start date, number of work hours, and supervisor's name and telephone number.¹⁰

If an F-1 student is authorized for Curricular Practical Training (CPT), page 3 of the student's Form I-20 must be completed and signed by the DSO. The information must specify employer name and location, employment start and end dates, and whether the training is full-time or part-time.¹¹

J-1 students, interns, or international visitors must provide a letter from the sponsor prepared on the sponsor's official letterhead with official signature authorizing employment.¹²

The SSA will not process an international student's application if the on-campus or CPT employment begins more than 30 days from the date of application, or if the applicant's Employment Authorization Document start date is a future date.

The foreign student or visitor must also ensure that he or she has reported to the school or sponsor, and that the school has updated the information in the Student and Exchange Visitor Information System (SEVIS).¹³

C. Application Process for Refugees and Asylees

Refugees and asylees who submit evidence of their immigration status are treated as permanent

residents with permanent employment authorization. Accordingly, they are issued unrestricted Social Security cards.¹⁴

Acceptable evidence of refugee status includes Form I-94 with refugee admission stamp or Form I-766 with category A3. Similarly, asylees may submit Form I-94 with asylum granted stamp, Form I-766 with category A5, or an order of the immigration judge granting asylum.¹⁵ On rare occasions, asylees and refugees applying for an original Social Security number may submit only one—instead of two—documents to prove age, identity, and immigration status for Social Security card.¹⁶

D. Application Process for Persons without Work Authorization

Persons residing in the United States illegally or currently in lawful nonimmigrant status, but without DHS work authorization, may only request a Social Security number and card for a valid nonwork reason.¹⁷ Valid nonwork reasons derive from Federal statutes or regulations requiring the person to provide a Social Security number to obtain a particular benefit or service to which the person is otherwise entitled; or State or local laws requiring the person who is legally in the United States to provide a Social Security number to obtain public assistance benefits to which the alien has otherwise established entitlement.¹⁸ Such examples include Medicare eligibility due to end stage renal disease, some Medicaid programs, Temporary Assistance for Needy Families, and food stamps. In addition to the basic application documents proving age and identity, applications based on a valid nonwork reason must be accompanied by a letter from the state or Federal agency requiring the number.¹⁹

E. SSA Policy of Social Security Number Issuance for United States Citizens Born to Undocumented Parents

Social Security numbers are issued automatically to United States citizen children born in hospitals in the United States if the parent chooses Enumeration at

¹⁰ *Id.* at RM 10211.270, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211270>.

¹¹ *Id.* at RM 10211.255, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211255>.

¹² *Id.* at RM 10211.345, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211345>.

¹³ *Id.* at RM 10211.395, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211395>.

¹⁴ *Id.* at RM 10211.185 & 10211.205, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/011021185> and <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211205>.

¹⁵ *Id.*

¹⁶ *Id.* at RM 10210.020, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110210020>.

¹⁷ For example, to apply for some of the benefits discussed in this chapter, the state agency requires a Social Security number.

¹⁸ 20 C.F.R. § 422.104(a)(3) (2014).

¹⁹ POMS, *supra* note 5, at RM 10211.600, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110211600>.

Birth (EAB) while the mother and the newborn are in the hospital.²⁰

A non-citizen parent without valid status may not apply for a Social Security number for his or her United States citizen newborn outside an EAB request. When applying on behalf of another person, the person filing the application must provide the same type of identification documents as required for the number holder or a person entitled to a number, including proof of immigration status. Therefore, undocumented parents should choose EAB for their children. If the parents are undocumented and EAB is not utilized, another relative may be able to submit the required documents and apply on the child's behalf, or the child can apply once he or she is old enough to sign his or her name. There are no formal age limits defining who is old enough for this purpose.²¹

F. Social Security Number and Employment

Prior to issuance of a Social Security number, the SSA must verify the worker's documents directly with the Department of Homeland Security (DHS) to ensure the integrity of the Social Security number. The SSA verifies the validity of documents with the DHS using the Systemic Alien Verification for Entitlements (SAVE). In most cases, DHS updates the SAVE program immediately after the applicant arrives in the United States or when DHS grants new status. With Forms N-550/N-570 and N-560/N-561, however, the data is entered manually into DHS databases feeding into SAVE. For these documents, SSA maintains a 10-day hold policy.²²

Most Social Security cards are issued within 2 weeks of applying. The time needed to verify the documents in SAVE is not included in the 2-week period. Therefore, the SSA advises applicants that verification of documents with the issuing authority could take several weeks to several months.²³

In the meantime, a non-citizen authorized to work in the United States may work while the application for a Social Security number is processing. No federal law prohibits the hiring of a person solely for lack of a

Social Security number. Similarly, no federal law prohibits paying wages based solely on the lack of a Social Security number.²⁴

An applicant for a Social Security card and number may request a receipt to confirm that an individual successfully completed an application for a Social Security card and that the applicant will receive a card. The receipt will not, however, contain the person's Social Security number. Alternatively, if an employer must know the Social Security number immediately, the SSA employee is instructed to offer to notify the applicant of the SSN by phone as soon as it is available. If the application is for replacement of the card, the SSA employee must attempt to resolve the problem by calling the employer while the applicant is present.²⁵

G. Enumeration at Entry (EAE)²⁶

Enumeration at entry serves as a way to streamline the assignment of a Social Security number and issuance of a Social Security card to avoid the potential delays for persons who immigrate to the United States through consular processing. The SSA has agreements with the DHS and the Department of State (DOS) to assist the SSA in enumerating immigrants admitted as lawful permanent residents (LPRs).²⁷

The DOS collects the enumeration data for prospective immigrants who wish to apply for an original or replacement card and transmits it to the DHS. The DHS electronically transmits this data to the SSA when the immigrant is admitted. This process eliminates the need for an immigrant to apply in person at an SSA field office. The SSA will mail the card to the mailing address the immigrant provided to the DHS during processing at the port of entry. The SSA instructs prospective immigrants to contact the SSA if the card does not arrive within three weeks after admission to the United States. If a card is not received within this time frame, however, the immigrant should not file a new application. The SSA

²⁰ 20 C.F.R. § 422.103(b)(2).

²¹ AM. IMMIGRATION LAWYERS ASS'N, SSA CLARIFIES POLICY ON ISSUANCE OF SSNs TO USC CHILDREN BORN AT U.S. HOSPITALS TO UNDOCUMENTED PARENTS 1 (2010), AILA INFONET DOC. NO. 10011561, available at <http://www.aila.org/content/default.aspx?docid=6748>.

²² POMS, *supra* note 5, at RM 10213.305, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110213305>; AM. IMMIGRATION LAWYERS ASS'N, (2014), AILA/SSA LIAISON MEETING QUESTIONS AND ANSWERS 4, AILA INFONET DOC. NO. 14042960, available at <http://www.aila.org/content/default.aspx?docid=6748>.

²³ POMS, *supra* note 5, at RM 10205.100, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110205100>.

²⁴ Internal Revenue Serv., *Delays in Issuing SSNs to Aliens by the Social Security Administration*, IRS.GOV, <http://www.irs.gov/Individuals/International-Taxpayers/Delays-in-Issuing-SSNs-to-Aliens-by-the-Social-Security-Administration> (last updated May 28, 2014).

²⁵ POMS, *supra* note 5, at RM 10205.210, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110205210>.

²⁶ 20 C.F.R. § 422.103; POMS, *supra* note 5, at RM 10205.600, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110205600>. SSA has recently been in discussions with DHS to initiate EAE for nonimmigrants. See AM. IMMIGRATION LAWYERS ASS'N, *supra* note 24, at 8.

²⁷ POMS, *supra* note 5, at RM 10205.600, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0110205600>.

will complete a search to determine if a number was assigned and a card issued. If a number has been assigned, but a card was not issued, the SSA will issue a replacement card. If a number cannot be located, the SSA will retrieve the EAE record to process application, or if the record cannot be found, the immigrant will then need to reapply for a Social Security number.²⁸

To take advantage of the enumeration at entry, an applicant for immigrant visa must properly complete Form DS-260, marking correctly questions regarding prior Social Security number issuance and whether the applicant desires a new card.

H. Individual Taxpayer Identification Numbers (ITINs)

President Obama's recent announcement to expand deferred action would take into account whether an applicant has paid taxes.²⁹ While USCIS is not currently accepting applications for these initiatives, interested clients may seek information on how to pay taxes as required by the President's memorandum.

1. Determining Whether Your Client is Required to Pay Federal Income Taxes

Federal tax law requires virtually every person, with or without a Social Security number, who earns income above a certain level in the United States to pay taxes, regardless of whether the income is earned with authorization to work in the United States.³⁰ Experts estimate that between 50 and 70 percent of foreign nationals residing in the United States account for over \$1 billion a year in federal income taxes.³¹

To determine whether an individual must file a federal income tax return, the Internal Revenue Service (IRS) generally considers income level, income type, filing status, and age among other factors.³² To assist potential taxpayers unsure of their taxpaying obligations, the IRS publishes filing requirements annually. The interested client may find these "Filing Requirements" within the instructions of most IRS forms used to file taxes.³³

For example, for income earned in 2013, married individuals filing jointly were required to file if they were both under 65 years of age at the end of 2013 and their gross income was \$20,000 or more.³⁴

Every client, regardless of immigration status, should diligently review the applicable—and frequently changing—filing requirements to determine whether they are required to file. A client who fails to properly file a tax return when required may face serious tax penalties, audits, and potential criminal prosecution.³⁵ Even if a client is not required to file a federal income tax return based on their income level or for eligibility under the recent initiatives, there may be other reasons to file. The immigration attorney should urge their client to consult with a professional tax preparer for more information.

2. ITIN Eligibility

A taxpayer identification number must be furnished on all returns, statements, and other tax-related documents, and must be provided upon request. In 1996, the U.S. Treasury created the ITIN, a nine-digit tax-processing number assigned by the IRS to individuals obligated to file a federal tax return, but ineligible for an SSN (e.g. 9XX-XX-XXXX).³⁶

²⁸ *Id.*; AM. IMMIGRATION LAWYERS ASS'N, *supra* note 24, at 7.

²⁹ U.S. DEP'T OF HOMELAND SEC., MEMORANDUM, EXERCISING PROSECUTORIAL DISCRETION WITH RESPECT TO INDIVIDUALS WHO CAME TO THE UNITED STATES AS CHILDREN AND WITH RESPECT TO CERTAIN INDIVIDUALS WHO ARE THE PARENTS OF U.S. CITIZENS OR PERMANENT RESIDENTS (2014), available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.

³⁰ See 26 U.S.C.A. §§ 7203, 1441; § 871 (West 2014) (stating that taxation of nonresident aliens who meet a certain earning threshold is required).

³¹ The IRS does not distinguish between foreign nationals who have lawful status and those who do not. To the IRS, an alien is either a "resident" or a "nonresident." A foreign national is a resident if he or she lives in the United States for the required number of days out of a year, which makes many illegal immigrants "resident aliens" for tax purposes. Resident aliens' income is taxed the same way as a U.S. citizen's income.

³² Examples of filing status include single, married, and head of household.

³³ See Internal Revenue Serv., *Frequently Asked Questions and Answers*, IRS.GOV, <http://www.irs.gov/Help-&-Resources/Tools-&-FAQs/FAQs-for-Individuals/Frequently-Asked-Tax-Questions-&-Answers> (last updated Oct. 27, 2014). Such forms include Forms 1040, 1040A, 1040EZ.

³⁴ See Internal Revenue Serv., *2013 Filing Requirements*, IRS.GOV, <http://www.irs.gov/publications/p554/ch01.html>. (last visited Dec. 10, 2014) (forming part of the 2013 instructions to Form 1040 (Chart A)).

³⁵ 26 U.S.C.A. § 6501(c)(1)–(3) (West 2014).

³⁶ The IRS cites the following examples of individuals needing an ITIN:

- (1) A nonresident alien not eligible for a SSN required to file a U.S. tax return or filing a U.S. tax return only to claim a refund;
- (2) A nonresident alien not eligible for a SSN electing to file a joint tax return with a spouse who is a U.S. citizen or resident alien;

Thus, clients retaining either a Social Security number, a specific form of ITIN, or the broader ITIN may satisfy tax-filing requirements. Accordingly, ITINs empower immigrants to comply with federal tax law, create greater tax revenue for the U.S. government, and enable U.S. employers to meet withholding requirements.

The immigration attorney must remind the client that an ITIN—unlike a Social Security number—is used for reporting federal taxes only. In fact, a non-U.S. citizen cannot possess both an ITIN and a SSN.

3. Applying for an ITIN

First, to obtain an ITIN, the client must send an ITIN application (Form W-7)³⁷ alongside a federal income tax return. In effect, the client can only apply for an ITIN when they are ready to file their tax return, which is generally on or after January 1st but before April 15th of each year. The IRS will not accept an ITIN application without a tax return form.

Second, the client must provide proof of identity and foreign status. To prove identity and foreign status, the client must provide at least two forms of documentation. Both of these documents must either constitute originals or copies certified by the issuing agency.³⁸ For example, as proof of identity, the IRS will accept a U.S. driver's license, foreign driver's license, and various similar documents. As proof of

-
- (3) A U.S. resident alien who files a U.S. tax return but who is not eligible for a SSN;
 - (4) An alien individual, claimed as a spouse for an exemption on a U.S. tax return, who is not eligible for a SSN;
 - (5) An alien individual, who is not eligible for a SSN, claimed as a dependent on another person's U.S. tax return; and
 - (6) A nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception to the tax return filing requirement who is not eligible for a SSN.

See Internal Revenue Serv., Topic 857 - Individual Taxpayer Identification Number (ITIN) – Form W-7, IRS.GOV, <http://www.irs.gov/taxtopics/tc857.html> (last updated Aug. 28, 2014).

³⁷ Further information about ITINs and expiration dates available at <http://www.irs.gov/Individuals/General-ITIN-Information>.

³⁸ For a complete list of documents that the IRS will accept as a certified or original copy to prove the applicant's identity or foreign status, visit the IRS website at <http://www.irs.gov/Individuals/Revised-Application-Standards-for-ITINs>. Documents must be current (not expired) and show the photo, name, current address, and date of birth of the applicant along with the expiration date of the document. If the documentation does not have an expiration date, it must have been issued within the last 12 months.

foreign status, the IRS will accept a national identification card, civil birth certificate, and various other documents. If the client submits an original or certified copy of their passport from the country of origin, they need not submit a second document to prove her identity and foreign status. In other words, the IRS accepts an original or certified copy of the passport as proof of both identity and foreign status.

III. DRIVER'S LICENSES IN TEXAS

A. Driver's License Litigation

In the past decade, the Texas Department of Public Safety (DPS) rules covering driver's license eligibility and applications for non-citizen applicants have changed substantially. Many of these changes resulted largely from recent lawsuits challenging those rules and policies.

In 2008, by exercising Administrative Procedure Act (APA) rulemaking,³⁹ DPS *sua sponte* developed a number of rules and policies related to non-citizen eligibility, which the Texas Legislature had previously rejected in 2007.⁴⁰

³⁹ *See* TEX. GOV'T CODE ANN. §§ 2001.004–.033 (West 2008 & Supp. 2013).

⁴⁰ During the 2007 Legislative Session, the Texas Legislature considered, but declined to enact, a number of proposed bills that would have authorized DPS to (1) change the appearance of driver's licenses for nonimmigrants with federal authorization to be in the United States; (2) exclude certain non-immigrants from receiving a driver's license based on the remaining period of authorized presence as indicated on their immigration documents; and (3) alter the expiration date of licenses for those persons. *See* Tex. H.B. 932, 80th Leg., R.S. (2007) (proposing to change the appearance of licenses by placing a citizenship identifier on the driver's license and requiring proof of citizenship for all applications including renewals and replacements); Tex. H.B. 1604, 80th Leg., R.S. (2007) (proposing to deny the use of any foreign identity document as a primary, secondary or supporting document to get a driver's license); Tex. H.B. 931, 80th Leg., R.S. (2007) (proposing to require proof of immigration status and an expiration date that corresponded to the applicant's immigration status).

Likewise, during the 2009 Regular Legislative Session, the Texas Legislature considered but declined to codify the rules and policies by rejecting a number of similar bills that would have granted to DPS the authority to (1) exclude certain nonimmigrants from receiving licenses, (2) limit the duration of their licenses, and (3) change the appearance of their licenses. These bills included: CSSB 1785 and CSSB 1784, which required proof of citizenship and tied the expiration date of the driver's license to coincide with immigration status. *See, e.g.,* House Comm. on Public Safety, Bill Analysis, Tex. C.S.S.B. 1785, 81st Leg., R.S. (2009), *available at* <http://www.legis.state.tx.us/tlodocs/81R/analysis/html/SB01785H.htm>.

For example, DPS adopted rules that denied driver's licenses to Texas residents who were lawfully admitted for less than one year or who had less than six months remaining on their authorized period of stay.⁴¹ In fact, these rules prevented most H-2B workers in Texas from lawfully obtaining driver's licenses.⁴²

That same year, DPS adopted a separate policy for Texas-resident applicants who were lawfully admitted into the United States for more than one year. Rather than relying on APA rulemaking, the Assistant Chief of the Driver's License Division issued a "Field Memorandum" directing all field agents to issue nonstandard licenses that were (1) vertically oriented; (2) labeled "TEMPORARY VISITOR" in red; and (3) showed a "status expiration" date.⁴³ The policy applied to any applicant who was not a U.S. Citizen or Legal Permanent Resident, so that even persons admitted indefinitely, such as refugees and asylees,⁴⁴ were labeled "Temporary Visitors" by their licenses.

In January of 2009, three individual H-2B workers and their employer, who relied on such workers being able to drive lawfully, sued DPS, its Director, and the Public Safety Commission and its chairman. They alleged the rules were invalid under DPS's Transportation Code authority and failed to properly follow APA rulemaking.

Defendants filed a plea to the jurisdiction, asserting sovereign immunity.⁴⁵ On April 9, 2009, the trial court denied the plea to the jurisdiction, ruling that DPS acted outside the scope of its statutory authority in

implementing the temporary visitor policy, and issued a temporary injunction.⁴⁶

Defendants filed an interlocutory appeal under Texas Civil Practice and Remedies Code § 51.014.⁴⁷ In December of 2009, the third court of appeals overturned the temporary injunction, holding that Plaintiffs lacked standing for failure to prove imminent, irreparable injury. The court found that Plaintiffs had "failed to identify any legal effect on private persons as a result of the [] policy," and that they had to show a "legally protected interest that [was] actually or imminently affected by the alleged harm."⁴⁸

On remand in *Salazar II*, new asylees and VAWA plaintiffs successfully showed that they had suffered personal harm—such as denial of credit, bank accounts, and employment opportunities—from the false temporary visitor licenses.⁴⁹

The new plaintiffs also challenged a second DPS policy that required applicants to produce federal immigration documents the United States did not require them to have (additional documents policy).⁵⁰ In 2009, DPS began issuing a series of "Temporary Visitor Issuance Guides" to field agents directing them to implement the additional documents policy.⁵¹ DPS constantly changed these Guides, issuing at least five different versions between February 2009 and January 2011.

In response to the lawsuit, on June 26, 2011, the Texas Legislature amended the Transportation Code to prohibit nearly all of the temporary visitor policy and part of the additional documents policy.⁵² Specifically,

⁴¹ 33 Tex. Reg. 4088 (May 16, 2008); 33 Tex. Reg. 8032 (Sept. 19, 2008); *see, e.g.*, 37 TEX. ADMIN. CODE § 15.24 (2008) (Tex. Dep't of Safety, Identification of Applicants) (amended 2011); *Id.* § 15.171 (2008) (Tex. Dep't of Pub. Safety, Special Provisions for Non-Citizens), *repealed* 36 Tex. Reg. 8384 (2011) (proposed Oct. 14, 2011).

⁴² *See* 8 U.S.C.A. § 1101(a)(15)(H)(ii)(a)–(b); 8 C.F.R. § 214.2(h)(6) (West 2014).

⁴³ A sample can be found on the Times Record News website (Wichita Falls, Texas) at <http://www.timesrecordnews.com/photos/2009/feb/19/2318>.

⁴⁴ *See, e.g.*, 8 U.S.C.A. § 1158 (West 2014) (asylum) (stating the Attorney General "shall not remove or return the alien to the alien's country of nationality"); *Id.* § 1101(a)(51) (Violence Against Women Act (VAWA) applicants) (allowing for continued residence in renewable intervals); *Id.* § 1254a (temporary protected status) (stating the Attorney General "shall not remove the alien from the United States during the period in which such status is in effect"); *Id.* § 1231(b)(3) (withholding of removal); *Id.* § 1101(a)(15)(k) (fiancés of U.S. citizens); *Id.* § 1101(a)(15)(U); 8 C.F.R. § 214.4(g) (2014); 8 C.F.R. § 245.24 (U-Visas).

⁴⁵ *See* Tex. Dep't of Pub. Safety v. Salazar, 304 S.W.3d 896, 900 (Tex. App.—Austin 2009, no pet.) (*Salazar I*).

⁴⁶ *See id.* at 902.

⁴⁷ TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4), (a)(8) (West 2008).

⁴⁸ *Salazar I*, 304 S.W.3d at 905.

⁴⁹ *See* Salazar v. Tex. Dep't of Pub. Safety, No. D-1-GN-09-000273 (345th Dist. Ct., Travis County, Tex. July, 27, 2011), *judgment vacated by*, Tex. Dep't of Pub. Safety v. Salazar, No. 03-11-00478-CV (Tex. App.—Austin Oct. 31, 2013, pet. filed) (mem. op.).

⁵⁰ *See id.*

⁵¹ *See id.* For example, the 2009 Guide said the "required documents" for an asylee were:

- (1) Social security Card or SSN Affidavit, Immigration documentation;
- (2) indication[sic] Asyee[sic] status; and
- (3) One of the following:
 - a. Employment Authorization Document 1-6B8B or 1-766
 - b. Refugee Travel Document 1-571
 - c. I-94.

Tex. Dep't of Pub. Safety, Temporary Visitor Issuance Guide Rev. 2-09 (on file with author and available upon request).

⁵² *See* Act of June 28, 2011, S.B. 1, 82nd Leg., 1st C.S., ch. 4, §§ 72.05, 72.07, 2011 Tex. Gen. Laws 5254, 5344,

§ 72.07 of S.B. 1 amended § 521.1425, “Information Required to be Furnished to Department,” by adding subsection (d), barring DPS from denying licenses “based on the duration of the person’s authorized stay in the United States.”⁵³ Section 72.05 amended § 521.121, “General Information on Driver’s License,” by adding subsection (e), requiring licenses in the “same format,” “hav[ing] the same appearance and orientation,” and “contain[ing] the same type of information” as other licenses.⁵⁴ Section 72.06 amended subsection (a) of § 521.142, “Application for Original License,” to provide that “[a]n applicant who is not a citizen of the United States must present to the department documentation issued by the appropriate United States agency that authorizes the applicant to be in the United States.”⁵⁵

In other words, DPS (1) could no longer deny licenses based on a Texas resident’s duration of authorized stay, (2) could not alter the appearance and orientation of licenses, and (3) could not require documents that the federal government did not require.

Though the trial court entered judgment on the plaintiffs’ behalf on July 27, 2011, the Austin court of appeals later vacated the judgment in 2013.⁵⁶ The sections below set out eligibility and application requirements as they exist today in light of changes caused by the amendments.

B. Eligibility

The rules governing eligibility for driver’s licenses vary by state. In Texas, U.S. citizens, U.S. nationals, LPRs, refugees and asylees are eligible for regular, standard-issued driver’s licenses.⁵⁷

“Temporary residents,” or those applicants who are not U.S. citizens, U.S. nationals, LPRs, refugees and asylees, may be eligible for “Limited Term” driver’s licenses. Temporary visitors who meet the requirements will be issued a driver’s license or ID

card with “Limited Term” printed on it, despite the Transportation Code provision requiring licenses have the same appearance and format.⁵⁸ The driver’s license or ID card will expire when the period of lawful presence expires. If the period of lawful presence is “duration of status,” then the driver’s license or ID card will expire in one year.

Eligibility rules for ID cards are substantially the same.⁵⁹ Unauthorized immigrants are not currently eligible for driver’s licenses or ID cards in Texas.

C. Application and Renewal

1. U.S. citizens, U.S. nationals, LPRs, refugees and asylees.

Applicants for driver’s licenses must apply as prescribed by DPS.⁶⁰ “[A]n applicant’s proof of identity must be ‘satisfactory to the department,’” and “an ‘application must include any other information the department requires to determine the applicant’s identity, residency, competency, and eligibility.’”⁶¹

Individuals applying for their first driver’s license must do the following:

- (1) Gather documents that verify their identity, Social Security number, U.S. citizenship or “lawful presence status,”⁶² and Texas residency.

available at <http://www.legis.state.tx.us/tlodocs/821/billtext/html/SB000101F.htm>.

⁵³ See TEX. TRANSP. CODE ANN. § 521.1425 (West 2013).

⁵⁴ See *id.* § 521.121.

⁵⁵ See *id.* § 521.142.

⁵⁶ See *Salazar v. Tex. Dep’t of Pub. Safety*, No. D-1-GN-09-000273 (345th Dist. Ct., Travis County, Tex. July, 27, 2011), *judgment vacated by*, *Tex. Dep’t of Pub. Safety v. Salazar*, No. 03-11-00478-CV (Tex. App.—Austin Oct. 31, 2013, pet. filed) (mem. op.) (vacating on procedural grounds).

⁵⁷ Unless otherwise stated, this chapter only discusses requirements and eligibility for Class C licenses. Information on requirements and fees for other types of licenses, including commercial licenses, can be found in the Texas Driver’s Handbook, located at: <http://www.txdps.state.tx.us/DriverLicense/documents/DL-7.pdf>.

⁵⁸ TRANSP. § 21.121.

⁵⁹ Tex. Dep’t of Pub. Safety, *Apply for an Identification (ID) Card, DRIVER LICENSE & ID CARD*, <http://www.txdps.state.tx.us/DriverLicense/applyforid.htm> (last visited Dec. 18, 2014).

⁶⁰ See *Salazar*, 2013 WL 5878905, at *11 (citing TRANSP. §§ 521.141, 521.142).

⁶¹ *Id.*

⁶² “Lawful presence status” is the term used by DPS for applicants who are not U.S. citizens. Individuals who are U.S. citizens may present one of the following documents:

- (1) U.S. passport book or card;
- (2) Birth certificate issued by a U.S. state, U.S. territory or District of Columbia;
- (3) For U.S. citizens born abroad—Certificate of Report of Birth (DS-1350 or FS-545) or Consular Report of Birth (FS-240) issued by the U.S. Department of State;
- (4) U.S. Certificate of Citizenship or Certificate of Naturalization (N-560, N-561, N-645, N-550, N-55G, N-570 or N-578); or
- (5) U.S. Department of Justice Immigration and Naturalization Service U.S. Citizen ID Card (Form I-197 or I-179).

U.S. nationals, LPRs, refugees or asylees may present one of the following documents to establish “lawful presence status” as defined by the Texas Department of Public Safety. Documents may be expired unless otherwise noted:

- (2) Complete the application, available at <https://drive.google.com/viewerng/viewer?url=http://www.txdps.state.tx.us/internetforms/Forms/DL-14A.pdf> or at any driver's license office.
- (3) Present either proof of Texas vehicle registration (only if a new Texas resident) and evidence of financial responsibility for each vehicle owned by the applicant *or* a statement affirming that the applicant does not own a motor vehicle.

The applicant must apply in person at any driver's license office, bring the required documents and fees, and pass the knowledge and driving tests unless exempt. Knowledge tests are available in English and Spanish.⁶³

Only U.S. citizens may renew online, and only under certain conditions.⁶⁴

2. "Temporary Visitors"

DPS defines a "temporary visitor" or a "temporary resident" as anyone who is not a U.S. citizen, U.S. national, LPR, refugee or asylee.

-
- (1) U.S. passport that reads, "THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN" on the last page;
 - (2) Permanent Resident Card (Form I-551);
 - (3) Foreign passport with attached temporary I-551 (immigrant visa endorsed with ADIT stamp);
 - (4) Passport or I-94 stamped "Approved I-551";
 - (5) Passport or I-94 stamped "Processed for I-551";
 - (6) Permit to Reenter the United States (Form I-327);
 - (7) I-94 or passport with annotation "Section 207" or "refugee";
 - (8) Refugee Travel Document (Form I-571);
 - (9) I-688B coded 274a.12(a)(3);
 - (10) I-766 with category A3 or A03;
 - (11) I-94 or passport with annotation "Section 208" or "asylee";
 - (12) I-688B coded 274a.12(a)(5);
 - (13) I-766 with category A5 or A05; or
 - (14) Refugee Travel Letter with photo, stamped by Customs and Border Protection

Tex. Dep't of Pub. Safety Driver License Div., *What it Takes to Apply for a DL or ID Card*, INTERNET FORMS, <http://www.txdps.state.tx.us/internetforms/Forms/DL-57.pdf> (last visited Dec. 22, 2014).

⁶³ Tex. Dep't of Pub. Safety, *Testing in Other Languages*, DRIVER LICENSE & ID CARD, <https://www.txdps.state.tx.us/DriverLicense/translators.htm> (last visited Dec. 18, 2014).

⁶⁴ Requirements for online renewal are located at <https://www.txdps.state.tx.us/DriverLicense/dlfork.aspx?action=renew>.

Temporary Visitors may apply for a "Limited Term" driver's license, which is nonstandard in appearance.

A temporary visitor who wants to apply for a limited term driver's license or ID card must provide a document (or combination of documents) issued by the U.S. Department of Justice (DOJ), U.S. Department of State (DOS), U.S. Department of Homeland Security (DHS), or USCIS that shows lawful temporary admission to the U.S. The 2012 Temporary Issuance Visitor's Guide contains the most recent guidance on which documents are acceptable.⁶⁵

DPS conducts verification of the applicant's period of lawful presence through the DHS's SAVE system.⁶⁶ Even if an applicant presents a document listed in the document guide, DPS is still required to seek verification through SAVE and DHS, which may include a "manual" check whereby DPS mails the documents to USCIS for verification.

Once verification is complete, the applicant should receive a letter from DPS notifying them that verification is complete, and requesting that the applicant to return to the DPS office to complete the application process.

DPS must run a verification check for every application and renewal. If the applicant's license has expired, then the applicant cannot drive lawfully. It is therefore critical for "temporary visitor" applicants to renew far in advance.

Limited term licenses issued to temporary visitors expire when the person's period of lawful presence expires.

As described above, before September 2011, driver's licenses and ID cards issued to temporary visitors read "Temporary Visitor" instead of "Limited Term." A driver's license or ID card that reads, "Temporary Visitor" is still valid through the temporary visitor status date. A "Limited Term" driver's license or ID card will be issued when the card is renewed.⁶⁷

When renewing a limited term driver's license or ID card, applicants must appear in person at any driver's license office and provide documents verifying their "lawful presence status."

⁶⁵ Tex. Dep't of Pub. Safety, *Verifying Lawful Presence*, DRIVER LICENSE DOCUMENTS, <p://www.txdps.state.tx.us/DriverLicense/documents/verifyingLawfulPresence.pdf> (last visited Dec. 18, 2014).

⁶⁶ *See id.*

⁶⁷ Tex. Dep't of Pub. Safety, *Driver Licenses and ID Cards for Temporary Visitors*, DRIVER LICENSE & ID CARD, <http://www.txdps.state.tx.us/DriverLicense/limitedTerm.htm> (last visited Dec. 18, 2014).

3. Pending Legislation for Driver's Licenses for Unauthorized Immigrants

Unauthorized immigrants are not currently eligible for driver's licenses or identification cards in Texas. There are bills pending in the 84th Legislative Session that, if passed, would make unauthorized immigrants eligible for a "Texas Resident Driver's Permit."⁶⁸

Similar bills were filed in the 83rd Texas Legislative Session in 2013, but they were not voted out of committee.⁶⁹

Advocates should remain aware that eligibility for a driver's permit might change depending on the outcome of driver's permit bills filed in the 84th Legislature.

IV. PUBLIC ASSISTANCE BENEFITS FOR US CITIZEN CHILDREN AND QUALIFIED IMMIGRANTS

A. Selected Benefits

Various public assistance benefits are authorized to eligible U.S. citizen and qualified immigrants under state and federal laws. This chapter focuses on Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and Children's Health Insurance Program (CHIP) as they apply in Texas.

B. Integrated Application Process and Application Assistance

In Texas, eligible persons may file an integrated application for the above benefits. The application can be completed and submitted on-line at <https://www.yourtexasbenefits.com/ssp/SSPHome/ssphome.jsp>. The application can also be downloaded from <http://www.hhsc.state.tx.us/Help/1010-eng.pdf> and mailed or faxed to the Health and Human Services Commission (HHSC). If an applicant needs help applying for benefits, he or she can call 2-1-1 or 1-877-541-7905 for assistance. Community partner organizations may also provide assistance in the application process. The HHSC provides information on community partners as a public service online in a database searchable by zip code, city or county, and the type of help one can receive at

⁶⁸ See, e.g., Tex. H.B. 68, 84th Leg., R.S. (2014) (filed in November 2014 by House Member Alonzo); Tex. S.B. 132, 84th Leg., R.S. (2014) (filed in November 2014 by Senators Hinojosa, Garcia, and Rodríguez).

⁶⁹ See, e.g., Tex H.B. 3206, 83rd Leg., R.S. (2013), available at ftp://ftp.legis.state.tx.us/bills/83R/billtext/html/house_bills/HB03200_HB03299/HB03206I.htm; Tex H.B. 64, 83rd Leg., 1st C.S. (2013), available at <http://openstates.org/tx/bills/831/HB64/>.

<https://www.texascommunitypartnerprogram.com/UI/UI/SearchCP/SearchCP.aspx>.

In addition, certain food banks participate in a pilot program to conduct SNAP eligibility interviews and collect as much information and verification as possible. The following food banks participate in the pilot program: Houston Food Bank, North Texas Food Bank, San Antonio Food Bank, Tarrant Area Food Bank, and South Plains Food Bank.⁷⁰ The HHSC must accept the application and consider it as submitted if it contains the applicant's name, address, and signature.⁷¹ Prior to a decision on the application, applicants must be interviewed either in person or by telephone.⁷²

C. Temporary Assistance for Needy Families (TANF) in Texas

1. Purpose and Background

TANF was created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) establishing wide flexibility for states to develop and implement programs.⁷³ In Texas, TANF is administered by the Texas HHSC.

TANF's purpose is to provide cash assistance to needy dependent children and the parents or relatives with whom they are living.⁷⁴ Monthly cash assistance is available to children living in two-parent households, child-only, or single-parent households. TANF-eligible families who meet certain criteria can opt to receive a one-time \$1,000.00 payment. For example, a grandparent caring for one or more grandchildren who receive TANF is eligible for such one-time payment. Similarly, a household meeting certain financial hardship criteria may choose a one-time TANF payment of \$1,000.00 instead of a monthly cash payment.⁷⁵ The federal time limit for receipt of

⁷⁰ Tex. Health & Human Servs. Comm'n, *TEXAS WORKS HANDBOOK* § A-116.4, DADS.STATE.TX.US <http://www.dads.state.tx.us/handbooks/TexasWorks/A/100/100.htm#secA-116.4> (last visited November 18, 2014) [hereinafter *Works Handbook*].

⁷¹ 7 C.F.R. § 273.2(b)(v).

⁷² *Works Handbook*, *supra* note 72, § A-122.2, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/100/100.htm#secA-122.2>.

⁷³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁷⁴ See 1 TEX. ADMIN. CODE § 372.4 (2009) (Tex. Health & Human Servs. Comm'n, Purpose of TANF and SNAP).

⁷⁵ 1 ADMIN. § 372.1507 (Tex. Health & Human Servs. Comm'n, TANF Supplemental Grandparent Payment); see also Kyle Janek & Stephanie Muth, Exec. Comm'r & Deputy Comm'r, Health & Human Servs. Comm'n, Presentation to the Senate Committee on Health and Human Services: Temporary Assistance for Needy Families 4 (Aug. 15, 2014),

TANF benefits is 60 months. Extensions beyond the 60-month period are available in some hardship situations including personal disability, caring for a family member with disability, family violence, or lack of employment.⁷⁶ TANF benefits are delivered to recipients by Electronic Benefit Transfer Program, i.e. the Lone Star Card.⁷⁷

2. Eligibility Requirements

To be eligible for TANF cash assistance, an applicant must meet the following criteria: (1) be a Texas resident; (2) be a U.S. citizen or eligible immigrant; (3) have a child under 18 living at home; (4) cooperate with Personal Responsibility Agreement, including work requirements;⁷⁸ and (5) meet income and asset requirements.

a. Texas Residence

An applicant satisfies the residence requirement when the applicant lives in Texas and intends to remain in Texas indefinitely. A TANF recipient who leaves Texas, but returns within 90 days and declares the out-of-state stay was not permanent, may establish residency for the time spent out of state and receive retroactive benefits. A migrant worker is not precluded from eligibility if he or she entered the state with a job commitment or intention to seek employment and is not receiving benefits in another state.⁷⁹

b. Citizen or Eligible Immigrant

TANF applicant must be a U.S. citizen or a qualified immigrant. For TANF eligibility purposes, the definition of qualified immigrant includes:

- (1) LPRs;
- (2) Asylees and refugees;

- (3) Parolees paroled into the U.S. under INA § 212(d)(5) for at least one year;
- (4) Deportation (or removal) withheld grantees (under INA § 243(h) or INA § 241(b)(3));
- (5) Conditional entrants granted conditional entry under INA § 203(a)(7) as in effect prior to April 1, 1980;
- (6) Battered aliens;
- (7) Cuban or Haitian entrants admitted under § 501(e) of the Refugee Education Assistance Act of 1980;
- (8) Victims of trafficking; and
- (9) Iraqi and Afghan Special Immigrants.⁸⁰

In general, qualified immigrants are eligible for TANF in Texas for the first five years after legal entry, while LPRs must have been credited with 40 qualifying quarters of employment and 5 years must have passed since the alien’s legal date of entry.⁸¹ For purposes of establishing eligibility through “40 qualifying quarters,” LPRs receive credit for quarters of earnings completed also by the LPR’s current or deceased spouse and parent before the LPR turned 18.⁸² Otherwise, an LPR meets eligibility requirements if he or she (1) becomes a naturalized citizen; (2) is an honorably discharged veteran or active duty military member; (3) is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military member; or (4) entered the U.S. before August 22, 1996, and remained continuously present until obtaining qualified immigrant status.⁸³

c. Reporting of “Illegal Aliens”

For purposes of TANF, “illegal alien” is defined as one who has received a final deportation order. Applicants who are “illegal aliens” will be reported to the nearest USCIS office in writing.⁸⁴ Alien status is

<https://www.hhsc.state.tx.us/news/presentations/2014/Senate-Presentation-TANF.pdf>.

⁷⁶ 1 ADMIN. § 372.251 (Tex. Health & Human Servs. Comm’n, Residency Requirements for TANF).

⁷⁶ 8 U.S.C.A. § 1641(b), (c) (West 2014); 1 ADMIN. § 372.455 (Tex. Health & Human Servs. Comm’n, Continuing Eligibility Beyond the 60-Month Lifetime Cash Limit).

⁷⁷ For more information on the Lone Star Card, refer to <http://www.hhsc.state.tx.us/providers/LoneStar/EBT/EBThwto.html>.

⁷⁸ Personal Responsibility Agreement requires the caretaker and second parent to participate in Choices program; cooperate with child support requirements; not voluntarily quit a job; have children immunized; have children attend school; attend parenting skills training; and not abuse drugs or alcohol. *Works Handbook*, *supra* note 72, § A–2110, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/2100/2100.htm#secA-2110>.

⁷⁹ 1 ADMIN. § 372.251 (Tex. Health & Human Servs. Comm’n, Residency Requirements for TANF).

⁸⁰ 8 U.S.C.A. §1641(b), (c) (West 2014); *see also*, 1 ADMIN. § 372.201 (Tex. Health & Human Servs. Comm’n, TANF Citizenship Requirements).

⁸¹ *WORKS HANDBOOK*, *supra* note 72, § A–342, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-342>.

⁸² *Id.* § A–331, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-331>.

⁸³ *Id.* § A–342, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-342>.

⁸⁴ 1 ADMIN. § 372.205 (Tex. Health & Human Servs. Comm’n, Reporting Undocumented Alien Applicants); *WORKS HANDBOOK*, *supra* note 72, § A–312, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-312>.

verified by obtaining documentation of alien status and accessing the DHS' SAVE system.⁸⁵

3. Public Charge and Income Deeming

a. Public Charge Issues

Receipt of TANF cash benefits places the immigrant at risk of being considered a public charge. The following individuals are exempted from consideration of public charge:

- (1) Refugees, asylees, asylum applicants, refugees and asylees applying for adjustment of permanent resident status;
- (2) Cuban/Haitian entrants and parolees;
- (3) Special Immigrant Visa holders from Iraq and Afghanistan;
- (4) Amerasian Immigrants (for their initial admission);
- (5) Individuals granted relief under the Cuban Adjustment Act (CAA), the Nicaraguan and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA);
- (6) Individuals applying for a T or U Visa, those who have been granted a T or U Visa and are trying to become a permanent resident, as well as individuals who have been certified by the Office of Refugee Resettlement as a victim of trafficking (prior to being issued T Visa by USCIS);
- (7) Applicants for Temporary Protected Status (TPS), and
- (8) Certain applicants under the LIFE Act Provisions.⁸⁶

b. Income Deeming for Sponsored Aliens

A sponsored alien is an individual on whose behalf a sponsor has signed an affidavit of support (Form I-864 or I-864A) on or after December 19, 1997, agreeing to support the alien as a condition of alien's entry into the United States.⁸⁷ If necessary, the HHSC uses SAVE to verify if the alien applicant has a sponsor. Through additional verification, the SAVE system can provide the sponsor's name and address.⁸⁸

When determining eligibility for benefits, a portion of the income and resources of the alien's sponsor and sponsor's spouse who have signed the affidavit of support are deemed as belonging to the sponsored alien. Deeming of the sponsor's income and resources to the sponsored alien ends when the sponsored alien becomes a naturalized citizen, the sponsored alien can be credited with 40 qualifying quarters of work, or when the sponsor dies. There are some exceptions to the sponsor deeming including (1) children under age 18; (2) battered spouses, parents or children if the battery is substantially related to the need for benefits and the applicant does not live with the batterer; (3) sponsor in the same household; and (4) indigent aliens.⁸⁹

Each time a determination of indigence is made, the HHSC office is required to send a memo to the Texas Works Policy Section providing both the sponsor's and the indigent alien's name, address, Social Security number, and date of birth. Before sending the memo, the HHSC office will inform the alien that state office is required to report the sponsor to the Office of the Attorney General (OAG) for failure to provide support as required on the affidavit of support. The alien is then allowed to choose whether the sponsor's income and resources should be deemed in the alien's application if the alien does not want the state office to report the sponsor. This policy does not apply to sponsors who themselves receive TANF or SSI, or to dependent children of the sponsor or sponsor's wife.⁹⁰

D. Supplemental Nutrition Assistance Program (SNAP)

1. Purpose and Background

Formerly known as the Food Stamp Program, SNAP is an entitlement program available to nearly everyone with limited income and resources as long as they are citizens or meet certain immigration status requirements. To determine eligibility benefits, the Texas HHSC follows federal regulations.⁹¹ There are no time limits for how long eligible non-citizens may receive SNAP because of their immigration status. The HHSC applies time limits to household members between ages 18 and 49 who fail to meet the work

⁸⁵ 7 U.S.C.A. § 2020(e) (West 2014); *WORKS HANDBOOK*, *supra* note 72, § A-352, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-352>.

⁸⁶ *WORKS HANDBOOK*, *supra* note 72, § A-315.1, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-315.1>.

⁸⁷ 8 C.F.R. § 213a.1 (2014).

⁸⁸ *WORKS HANDBOOK*, *supra* note 72, § A-316, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-316>.

⁸⁹ *Id.* §§ A-316.1, A-1245, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-316.1>,

<http://www.dads.state.tx.us/handbooks/TexasWorks/A/1200/1200.htm#secA-1245>.

⁹⁰ *Id.*

⁹¹ 1 TEX. ADMIN. CODE § 372.153 (2009) (Tex. Health & Human Servs. Comm'n, Determining SNAP Household Eligibility).

requirements unless exempt.⁹² Work requirements for SNAP include registering for work, not quitting a job voluntarily without good cause, participation in a training program, reporting to an employer, and accepting a bona fide offer of suitable employment.⁹³ As with TANF cash assistance, benefits are transferred to recipients via the Electronic Benefit Transfer Program, i.e., the Lone Star Card. *See supra* Part.IV.C.1.

Informational brochures for the general public may be ordered or downloaded from the U.S. Department of Agriculture (USDA) Food and Nutrition Service at <http://snap.ntis.gov/download.aspx>.

2. Eligibility Requirements

Eligibility for SNAP is limited to U.S. citizens and certain lawfully present aliens who meet the definition of a “qualified immigrant.” *See supra* Part IV.C.2.b Citizen or Eligible Immigrant.

a. Eligible Non-citizens

The following qualified immigrants are eligible for SNAP benefits from the date of entry or effective date of status: refugees, asylees, deportation withheld aliens, Cuban/Haitian entrants, Haitian orphans, Amerasians, victims of severe trafficking, and Afghani or Iraqi Special Immigrants. Parolees, conditional entrants, battered non-citizens,⁹⁴ and LPRs must meet one additional condition including: 5 years of residence in the U.S. in qualified status, certain disability conditions, under the age of 18, or military connection.⁹⁵ In addition, LPRs may meet the alternative condition of 40 qualifying quarters’ credit.⁹⁶

The 5-year waiting period for certain qualified immigrants begins on the date the alien enters the United States with or receives qualified status or, in the

case of battered non-citizens, when the prima facie determination is issued or Form I-360 is approved, whichever occurs earlier.⁹⁷ It may be either consecutive or nonconsecutive, and absences of less than 6 months with no intention of abandoning U.S. residency do not interrupt or terminate this period.⁹⁸

Applicants who are “illegal aliens,” i.e. with final deportation orders, will be reported to the nearest USCIS office in writing.⁹⁹ Alien status is verified by obtaining documentation of alien status and accessing the DHS’s SAVE system.¹⁰⁰ This reporting requirement applies only to individuals who have actually applied for SNAP benefits; it does not apply to adults applying on behalf of their eligible children or to other household members.¹⁰¹

b. Children

All qualified alien children under 18 are eligible for SNAP irrespective of their date of entry into the United States. In addition, they are exempted from sponsor deeming requirements. *See infra*. In addition, once the child turns 18, the child continues to be eligible for benefits if the child has been living in the U.S. for 5 years and meets other program criteria.¹⁰²

c. Texas Residence Requirement

In addition to immigration status and income and resource limits, to be eligible for SNAP benefits, the applicant must live in Texas but is not required to reside in a permanent dwelling or to express intent to reside in Texas permanently.¹⁰³

⁹² 7 C.F.R. § 273.24 (2014); ADMIN. § 372.451 (Tex. Health & Human Servs. Comm’n, Time Limits).

⁹³ ADMIN. § 372.1351 (Tex. Health & Human Servs. Comm’n, SNAP Work Requirements).

⁹⁴ Battered noncitizens must establish the following to meet the definition of qualified immigrant: (1) must have a Form I-130 or I-360 approved or pending, or have filed an application for cancellation of removal or suspension of deportation as a victim of domestic violence, (2) must have been battered or subjected to extreme cruelty in the United States, (3) there is a substantial connection between the abuse and the need for benefits, and (4) the battered non-citizen, child or parent is no longer residing in the same household as abuser. 8 U.S.C.A. § 1641(c) (West 2014).

⁹⁵ 7 C.F.R. § 273.4 (2014); *see also*, *WORKS HANDBOOK*, *supra* note 72, § A-341, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-341>.

⁹⁶ 7 C.F.R. § 273.4(a)(6)(ii) (2014). *See supra* Part IV.C.2.b for a discussion of 40 qualifying quarters.

⁹⁷ *See* U.S. DEP’T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: GUIDANCE ON NON-CITIZEN ELIGIBILITY 19 (2011), *available at* http://www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf.

⁹⁸ 7 C.F.R. § 273.4(a)(6)(iii).

⁹⁹ 1 TEX. ADMIN. CODE § 372.205(2009) (Tex. Health & Human Servs. Comm’n, Reporting Undocumented Alien Applicants); *WORKS HANDBOOK*, *supra* note 72, § A-312, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-312>.

¹⁰⁰ 7 C.F.R. § 273.4(b) (2014); *WORKS HANDBOOK*, *supra* note 72, § A-352, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-352>.

¹⁰¹ *See* U.S. DEP’T OF AGRIC., *supra* note 57, at 48.

¹⁰² *See id.* at 5.

¹⁰³ 1 ADMIN. § 372.252 (Tex. Health & Human Servs. Comm’n, Determining SNAP Household Eligibility).

3. Public Charge and Sponsor Deeming

Receipt of SNAP benefits does not place the non-citizen at risk of becoming a public charge.¹⁰⁴

Similar to TANF rules, the HHSC counts a portion of the non-citizen's sponsor's income and resources as income and resources available to the non-citizen applying for SNAP until the sponsored alien becomes a naturalized citizen, the sponsored alien can be credited with 40 qualifying quarters of work, or the sponsor dies.¹⁰⁵ Sponsor deeming does not apply to children under 18 years of age; battered spouses, parents and children; sponsors in the same SNAP household; and indigent non-citizens.¹⁰⁶ If the sponsored non-citizen's immigration status makes him or her ineligible for SNAP benefits, then the sponsor's income and resources are not deemed to other members of the household. For SNAP applicants, the HHSC applies the same rules governing determination of indigence and reporting procedures as for TANF applicants. *See supra* Part IV.C. These policies, however, do not apply to sponsored aliens whose sponsors receive SNAP as a member of the same household.¹⁰⁷

E. Texas State Children's Health Insurance Program (CHIP)

1. Background

Children without health insurance in Texas may be able to obtain low-cost or free health coverage for office visits, prescription drugs, dental care, eye exams, glasses, and more. CHIP is also available for perinatal benefits for pregnant women who do not have insurance but who meet eligibility requirements.

Children who qualify and enroll in CHIP receive up to 12 months of continuous coverage and are required to renew eligibility every 12 months. Families with net income over 150% of the Federal Poverty Income Limit must pay an enrollment fee, and families whose income exceeds 185% of the Federal Poverty Income Limit must undergo an income check during their sixth month of eligibility.¹⁰⁸ Co-pays for

doctor visits range from \$3 to \$35 depending on household income level.¹⁰⁹

2. Eligibility for CHIP

a. Age

A child may be eligible for CHIP from birth until the end of the month in which the child reaches age nineteen.¹¹⁰

b. Texas Resident

CHIP is available to children who are Texas residents. While there are no durational requirements for residency, the child's fixed residence must be in Texas or, if the child does not have a fixed residence, the child's family must intend to remain in the state.¹¹¹ Listing a Texas residence address on the application suffices for this purpose.¹¹² Temporary absences of fewer than 12 months do not cause the child to lose Texas residency status.¹¹³

c. U.S. Citizenship or Immigration Status

An eligible child must be a U.S. citizen or a non-citizen who is a qualified alien meeting a definition of qualified alien under 8 U.S.C. § 1641(b), i.e., LPRs, asylees, refugees, parolees, deportation withheld aliens, conditional entrants, and Cuban and Haitian entrants.¹¹⁴ Only the child's citizenship status is considered; the status of the parents or other persons applying on the child's behalf is irrelevant. The date of entry does not apply.¹¹⁵ In addition, sponsor deeming does not apply to CHIP benefits, and the sponsor is not liable for the immigrant's CHIP benefits.¹¹⁶ CHIP is also exempted from consideration for public charge as a means-tested benefit.¹¹⁷

¹⁰⁴ *WORKS HANDBOOK, supra* note 72, § A-315.1, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/300/300.htm#secA-315.1>; *see also* U.S. Citizenship & Immigration Servs., *Public Charge Fact Sheet*, USCIS.GOV, <http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet> (last updated Nov. 15, 2013).

¹⁰⁵ 7 C.F.R. § 273.4(c)(2) (2014).

¹⁰⁶ *Id.* § 273.4(c)(3).

¹⁰⁷ *Id.* § 273.4(c)(3)(iv); *WORKS HANDBOOK, supra* note 72, § A-1245, <http://www.dads.state.tx.us/handbooks/TexasWorks/A/1200/1200.htm#secA-1245>.

¹⁰⁸ *WORKS HANDBOOK, supra* note 72, § D-110, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/100/100.htm#secD-110>.

¹⁰⁹ *Costs, CHIP CHILDREN'S MEDICAID*, <http://chipmedicaid.org/en/Costs> (last visited Nov. 20, 2014).

¹¹⁰ 1 TEX. ADMIN. CODE § 370.42 (2009) (Tex. Health & Human Servs. Comm'n, Age Limits).

¹¹¹ *Id.* § 370.43 (Tex. Health & Human Servs. Comm'n, Citizenship and Residency).

¹¹² *WORKS HANDBOOK, supra* note 72, § D-710, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/700/700.htm#secD-710>.

¹¹³ 1 ADMIN. § 370.43 (Tex. Health & Human Servs. Comm'n, Citizenship and Residency).

¹¹⁴ *Id.*; *see also supra* Part IV.C.2.b for a list of qualified aliens.

¹¹⁵ *WORKS HANDBOOK, supra* note 72, § D-410, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/400/400.htm#secD-410>.

¹¹⁶ *See* Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, § 214 (2009).

¹¹⁷ U.S. Citizenship & Immigration Servs., *Public Charge Fact Sheet*, USCIS.GOV, <http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet> (last updated Nov. 15, 2013).

d. Household Income

The general income requirement is less than 200% of the Federal Poverty Guidelines for the household size.¹¹⁸ HHSC provides a detailed income chart at http://chipmedicaid.org/sites/default/files/documents/Income_Guidelines_ENG.pdf.

e. Not Eligible for Medicaid

All children requesting CHIP coverage will be screened for Medicaid eligibility first, and a child eligible for Medicaid may not obtain coverage under CHIP.¹¹⁹

3. Who Can Apply

Any adult living more than half the time with an uninsured child may apply on the child's behalf including parents, stepparents, grandparents, legal guardians, adult siblings, or other relatives. Any child age 19 or younger living on his or her own can also apply on his or her own behalf.¹²⁰

Social Security numbers must be provided for all applying children except if a child is 6 months or younger or an independent child in the process of obtaining one.¹²¹

4. Eligibility for CHIP Perinatal

Pregnant women of any age meeting the CHIP Texas residency and income requirements may qualify for CHIP perinatal if they are not eligible for ongoing Medicaid because of income or immigration status or for CHIP because of immigration status.¹²² A woman is not eligible for CHIP perinatal, however, if she applies after the child has been born. Rather, the HHSC would then determine the child's eligibility for Medicaid and CHIP.¹²³ A pregnant woman is not required to provide or apply for a Social Security number.¹²⁴

¹¹⁸ 1 ADMIN. § 370.44 (Tex. Health & Human Servs. Comm'n, Income and Assets).

¹¹⁹ *Id.* § 370.45 (Tex. Health & Human Servs. Comm'n, Medicaid Eligibility).

¹²⁰ *Can I Get It?*, CHIP CHILDREN'S MEDICAID, <http://chipmedicaid.org/en/Can-I-Get-It> (last visited Nov. 20, 2014).

¹²¹ *WORKS HANDBOOK*, *supra* note 72, § D-510, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/500/500.htm#secD-510>.

¹²² *Id.* § D-122, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/100/100.htm#secD-122>.

¹²³ *Id.* § D-122.1, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/100/100.htm#secD-122.1>.

¹²⁴ *Id.* § D-510, <http://www.dads.state.tx.us/handbooks/TexasWorks/D/500/500.htm#secD-510>.

F. Affordable Care Act (ACA)

1. Background

President Barack Obama signed the Patient Protection and Affordable Care Act (ACA) into law on March 23, 2010.¹²⁵ On June 28, 2012, the Supreme Court rendered a final decision to uphold the law.¹²⁶

The ACA contains five primary components: (1) the individual mandate; (2) state-governed individual health exchanges, or Marketplaces; (3) premium credits and cost-sharing subsidies; and (4) expanded Medicaid coverage for qualifying income brackets.¹²⁷

The individual mandate, or individual shared responsibility provision, requires all citizens and lawfully present immigrants regardless of age to obtain minimum essential coverage or pay a penalty.¹²⁸ While some exceptions may apply, minimum essential coverage requires an individual to obtain coverage under a government-sponsored program—including Medicare, Medicaid, and CHIP—an employer sponsored plan, individual market plans, grandfathered plans, or other applicable programs.¹²⁹

2. "Lawfully Present" Immigrants

For purposes of ACA, "lawfully present" encompasses the following categories:

- (1) A qualified alien as defined in 8 U.S.C. 1641;
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to INA § 212(d)(5) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes: (i) aliens currently in temporary resident status pursuant to INA §§ 210 or 245A; (ii) aliens currently under Temporary Protected Status (TPS) pursuant to INA §

¹²⁵ *See* Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 134 Stat. 224 (2010).

¹²⁶ *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2600 (2012) (Chief Justice Roberts held that the ACA's requirement that "certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax.").

¹²⁷ *See* Vinita Andrapalliyal, "Healthcare for All"? The Gap Between Rhetoric and Reality in the Affordable Care Act, 61 UCLA L. REV. DISCOURSE 58, 61 (2013); Nathan Cortez, Embracing the New Geography of Health Care: A Novel Way to Cover Those Left Out of Health Reform, 84 S. CAL. L. REV. 859, 870-73 (2011).

¹²⁸ *See* 26 U.S.C.A. § 5000A(a) (West 2014).

¹²⁹ *See* *Id.* § 5000A(f)(1)(A).

244, and applicants for TPS who have been granted employment authorization; (iii) aliens who have been granted employment authorization under 8 C.F.R. §§ 274a.12(c)(9), (10), (16), (18), (20), (22), or (24); (iv) Family Unity beneficiaries pursuant to § 301 of Public Law 101–649; (v) aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President; (vi) aliens currently in deferred action status except for Deferred Action for Childhood Arrivals; (vii) aliens whose visa petitions have been approved and who have a pending application for adjustment of status;

- (5) A pending applicant for asylum under INA § 208(a) or for withholding of removal under INA § 241(b)(3) 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;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture; and
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in INA § 101(a)(27)(J).¹³⁰

3. Minimum Essential Coverage and Exemptions

a. What is Individual Mandate?

Effective January 1, 2014, and applying in each month of a calendar year, the individual shared responsibility provision requires those subject to it to either have minimum essential coverage, have an exemption from the responsibility to have minimum essential coverage, or to make a shared responsibility payment when filing the annual federal income tax return with the payment due in 2015 for tax year 2014.¹³¹ Foreign nationals who do not spend enough time in the U.S. to be considered “resident aliens” for federal income tax purposes are not subject to the individual shared responsibility provision even if they may have to file a U.S. income tax return.¹³²

b. What Is Minimum Essential Coverage?

Minimum essential coverage includes health insurance provided by an employer, purchased through the Health Insurance Marketplace in the area of residence or directly from a health insurance company, or provided under a government-sponsored program such as Medicare, Medicaid or health care programs for veterans.¹³³ U.S. citizens who are residents of a foreign country for a whole year, as well as residents of U.S. territories, are deemed to have minimum essential coverage.¹³⁴ U.S. citizens living abroad for at least 330 days in any 12-month period are not required to obtain coverage for that 12-month period.¹³⁵ As long as an individual has minimum essential coverage for one day in a month, he or she has satisfied the requirement for the entire month.¹³⁶

c. Exemptions from Minimum Essential Coverage

The ACA allows for certain exemptions from the individual shared responsibility penalty provisions. The exemptions may be claimed in the following situations:

- (1) Short gaps in coverage which are less than 3 consecutive months;
- (2) Unaffordable coverage which would exceed 8% of the household income for the lowest cost bronze plan;
- (3) Household income below the income tax filing limit (in 2014, the tax filing thresholds for individuals and for couples are \$10,150.00 and \$20,300.00 respectively);
- (4) Immigration status not covered by ACA;
- (5) Membership in a federally recognized tribe;
- (6) Incarceration;
- (7) Membership in a health-sharing ministry;
- (8) Membership in a recognized religious sect with religious objections to insurance; and
- (9) Certain hardships.¹³⁷

The religious conscience exemption and most hardship exemptions are available only through the Health Insurance Marketplace by applying for an exemption

¹³⁰ 45 C.F.R. § 152.2 (2014).

¹³¹ See 26 U.S.C.A. § 5000A(b) (West 2014); Internal Revenue Serv., *The Individual Shared Responsibility Provision*, IRS.GOV, <http://www.irs.gov/uac/Individual-Shared-Responsibility-Provision> (last updated Dec. 10, 2014) [hereinafter *Individual Shared Responsibility Provision*].

¹³² 26 C.F.R. § 1.5000A–3(c)(2) (2014); Internal Revenue Serv., *Questions and Answers on the Individual Shared Responsibility Provision*, IRS.GOV, <http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision> (last updated Dec. 10, 2014)

[hereinafter *Q&A Individual Shared Responsibility Provision*].

¹³³ 26 U.S.C.A. § 5000A(f)(1); see also *Individual Shared Responsibility Provision*, *supra* note 133.

¹³⁴ 26 U.S.C.A. § 5000A(f)(4); see also *Individual Shared Responsibility Provision*, *supra* note 133.

¹³⁵ *Who’s Eligible to Use the Marketplace*, HEALTHCARE.GOV, <https://www.healthcare.gov/quick-guide/eligibility/> (last visited Nov. 27, 2014).

¹³⁶ 26 U.S.C.A. § 5000A(e)(4); see also *Individual Shared Responsibility Provision*, *supra* note 133.

¹³⁷ 26 U.S.C.A. §§ 5000A(d), (e); *Individual Shared Responsibility Provision*, *supra* note 133.

certificate. Most of the remaining exemptions may be claimed only as part of filing a federal income tax return.¹³⁸

d. Penalties for Non-compliance

For 2014, penalty for non-compliance is 1% of household income that is above the tax filing threshold for a given filing status or the family flat amount equal to \$95.00 per adult and \$47.50 per child, but capped at \$285.00. Over the first three years the percentages and flat penalties are set to increase by 0.5% annually and to \$325.00 and \$695.00 per adult in 2015 and 2016 respectively.¹³⁹ The penalty will also not exceed an amount equal to the national average premium for the lowest cost bronze health plan available through the Marketplace.¹⁴⁰

The IRS provides the following examples on the mechanics of calculating the penalties:

Example 1: Single individual with \$40,000 income

Jim, an unmarried individual with no dependents, does not have minimum essential coverage for any month during 2014 and does not qualify for an exemption. For 2014, Jim's household income is \$40,000 and his filing threshold is \$10,150.

- **To determine his payment using the income formula**, subtract \$10,150 (filing threshold) from \$40,000 (2014 household income). The result is \$29,850. One percent of \$29,850 equals \$298.50.
- Jim's flat dollar amount is \$95.

Jim's annual national average premium for bronze level coverage for 2014 is \$2,448. Because \$298.50 is greater than \$95 and is less than \$2,448, Jim's shared responsibility payment for 2014 is \$298.50, or \$24.87 for each month he is uninsured (1/12 of \$298.50 equals \$24.87).

Jim will make his shared responsibility payment for the months he was uninsured when he files his 2014 income tax return, which is due in April 2015.

Example 2: Married couple with 2 children, \$70,000 income

Eduardo and Julia are married and have two children under 18. They do not have minimum essential coverage for any family member for any month during 2014 and no one in the family qualifies

for an exemption. For 2014, their household income is \$70,000 and their filing threshold is \$20,300.

- **To determine their payment using the income formula**, subtract \$20,300 (filing threshold) from \$70,000 (2014 household income). The result is \$49,700. One percent of \$49,700 equals \$497.
- Eduardo and Julia's **flat dollar amount** is \$285, or \$95 per adult and \$47.50 per child. The total of \$285 is the flat dollar amount in 2014.

The family's annual national average premium for bronze level coverage for 2014 is \$9,792 (\$2,448 x 4). Because \$497 is greater than \$285 and is less than \$9,792, Eduardo and Julia's shared responsibility payment is \$497 for 2014, or \$41.41 per month for each month the family is uninsured (1/12 of \$497 equals \$41.41).

Eduardo and Julia will make their shared responsibility payment for the months they and their children were uninsured when they file their 2014 income tax return, which is due in April 2015.¹⁴¹

4. Health Insurance Marketplace

Once it is determined that an individual is subject to the individual shared responsibility provision, he or she may use the state exchange or the Marketplace to shop for health coverage. As Texas has not created its own state health insurance exchange¹⁴², Texas residents may shop and apply for health insurance through the federally facilitated Marketplace available at www.healthcare.gov.¹⁴³

By filing out a single application on the Marketplace, consumers will find out for which programs they and their households are qualified. If anyone appears to be eligible for Medicaid and/or CHIP, the Marketplace will let the state agency know. If anyone is eligible for private insurance, the

¹³⁸ 45 C.F.R. § 155.605 (2014); see also *Q&A Individual Shared Responsibility Provision*, *supra* note 134.

¹³⁹ 26 U.S.C.A. § 5000A(c); see also *Individual Shared Responsibility Provision*, *supra* note 133.

¹⁴⁰ 26 U.S.C.A. § 5000A(c)(1)(B).

¹⁴¹ Internal Revenue Serv., Individual Shared Responsibility Provision—Calculating the Payment, IRS.GOV, <http://www.irs.gov/uac/ACA-Individual-Shared-Responsibility-Provision-Calculating-the-Payment> (last updated Dec. 9, 2014).

¹⁴² Letter from Rick Perry, Governor of Tex., to Kathleen Sebelius, Sec'y of U.S. Dep't of Health & Human Servs (July 9, 2012), <http://governor.state.tx.us/files/press-office/O-SebeliusKathleen201207090024.pdf>.

¹⁴³ Tex. Dep't of Ins., *Federal Health Care Reform Resource Page*, TEX.HEALTHOPTIONS.COM, <http://www.texashealthoptions.com/cp2/healthcare.html> (last updated Nov. 15, 2014).

Marketplace will inform the consumer of the next steps.¹⁴⁴

a. Required Identifying Information

The ACA requires that applicants for enrollment for a qualified health plan offered through the Marketplace provide:

- (1) The name, address, and birthdate of all pertinent enrollees;
- (2) For an enrollee claiming citizenship, the enrollee's Social Security number; and
- (3) For an enrollee claiming lawful residence, a Social Security number (if applicable) and appropriate immigration status documentation.¹⁴⁵

Under no circumstances should applicants enter false or misleading status information as the information submitted will be subject to cross verification with the other agencies, including the DHS.¹⁴⁶ Citizenship and immigration status of applicants is checked electronically with several systems including the SSA and the DHS SAVE. If an individual's status cannot be verified electronically, the individual can provide other documentation.¹⁴⁷

b. Qualified Individuals

Qualified individuals may enroll in any qualified health plan available to such an individual and for which he or she is eligible.¹⁴⁸ A qualified individual is an individual who seeks to enroll in a qualified health plan in the Marketplace offered through the Exchange and who resides in the state governing that particular Exchange. Congress, however, limited access to lawful residents.¹⁴⁹

In general, an individual is considered a resident of the state in which he or she lives and intends to reside without a fixed address, or has entered into a job

commitment or is seeking employment.¹⁵⁰ Members of tax households in multiple Exchange service areas, with some exceptions, may enroll through any of the Exchanges for which one of the filers meets the residency standard.¹⁵¹

Any individual who is not, or not expected to be for the sought enrollment period, a U.S. citizen, national, or alien lawfully present is not a qualified individual and may not be covered under a qualified health plan.¹⁵²

5. Premium Tax Credits and Other Savings

Lawfully present immigrants may be eligible for lower costs on monthly premiums and lower out-of-pocket costs based on income. Generally, if the household's annual income is at or below 400% of the federal poverty level, and if the annual household income is below 100% federal poverty level and the immigrant is not otherwise eligible for Medicaid, the immigrant may be eligible for premium tax credits and other savings.¹⁵³

a. Premium Tax Credits

To be eligible for the credit, an individual must:

- (1) Buy health insurance through the Marketplace;
- (2) Be ineligible for insurance coverage through an employer or government plan;
- (3) Be within income limits;
- (4) If married, not file his or her federal tax return as Married Filing Separately; and
- (5) Not be another person's tax dependent.¹⁵⁴

The premium tax credit can be paid out in two ways: in advance—partially or fully—to the insurance company or to the individual at the time of filing the federal income tax return. If the advance payment option is chosen, the Marketplace estimates the amount of the credit based on the information provided about projected income and household size for the year.

¹⁴⁴ *Find Out If You Qualify for Medicaid and CHIP*, HEALTHCARE.GOV, <https://www.healthcare.gov/medicaid-chip/eligibility/> (last visited Nov. 24, 2014).

¹⁴⁵ 42 U.S.C.A. § 18081(b)(2) (West 2014) (containing procedures for determining exchange eligibility, premium tax credit eligibility, reduced cost-sharing eligibility, and individual responsibility).

¹⁴⁶ *Id.* §§ 18081(c)(1)–(c)(2) (including name, date of birth, social security number, attestations of citizenship, and attestations of lawful presence).

¹⁴⁷ 45 C.F.R. § 155.315 (2014); Georgetown Univ. Health Pol'y Inst., *Affordable Care Act Guide*, GEORGETOWN.EDU, <http://navigatorguide.georgetown.edu/#section1> (last visited Dec. 7, 2014) [hereinafter *ACA Guide*].

¹⁴⁸ 42 U.S.C.A. § 18032 (a)(1).

¹⁴⁹ *Id.* § 18032(f)(1)(A).

¹⁵⁰ 45 C.F.R. § 155.305(a)(3) (2014).

¹⁵¹ *Id.* § 155.305(a)(3)(iv).

¹⁵² 42 U.S.C.A. § 18032(f)(3).

¹⁵³ 26 C.F.R. § 1.3B-2(b); *see also Coverage for Lawfully Present Immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/> (last visited Nov. 24, 2014) [hereinafter *Coverage for LPIs*].

¹⁵⁴ 45 C.F.R. § 155.305(f) (2014); Internal Revenue Serv., *The Premium Tax Credit*, IRS.GOV, <http://www.irs.gov/uac/The-Premium-Tax-Credit> (last visited Nov. 25, 2014). Certain exceptions apply to victims of domestic violence and spousal abandonment even if they filed their federal tax return as Married Filing Separately. *See* Temporary Income Tax Regulations § 1.36B-2T(b)(2).

Because Marketplace estimates the credit on the basis of this information, any changes in income and household composition during the year in which the credits are received should be reported within 30 days.¹⁵⁵

b. Cost-Sharing Subsidies

Cost-Sharing Subsidies are available to households with income between 100% and 250% of the federal poverty level, but only through modified versions of silver plans that are offered on the Marketplace. These plans feature lower deductibles, co-pays, and other cost-sharing benefits acting to reduce the overall cost of coverage.¹⁵⁶

6. Most Common Concerns for Immigrants and Their Families

Immigrants may have concerns about applying for healthcare benefits through the Marketplace. Some of them include disclosing their information to a governmental entity, sponsor deeming and public charge, as well as the linguistic barriers in access to information.

a. Is It Safe to Apply?

The ACA contains protections for personally identifiable information, and some of the privacy provisions were written to “encourage participation of mixed-status immigrant families.”¹⁵⁷ The Marketplace must keep the individual’s information private; such information may only be used for purposes of eligibility and enrollment.¹⁵⁸ These rules also apply to contractors, such as insurers, navigators, certified application counselors, and agents or brokers.¹⁵⁹

During the application process, individual household members who are selected as non-applicants will not be required to disclose their citizenship and immigration status. Non-applicants should not be

required to provide a Social Security number unless they or their tax dependents are applying for premium tax credits, they have a Social Security number, and they are a taxpayer.¹⁶⁰ For example, an undocumented parent may safely apply for health insurance for a citizen child.

Further, information about applicants and household members obtained for health insurance purposes will not be used by USCIS for immigration enforcement.¹⁶¹

b. Sponsor Deeming and Public Charge

Neither sponsor deeming nor public charge apply to premium tax credits obtained under the ACA.¹⁶² Receiving subsidies and premium tax credits will not affect an individual’s chances of becoming a LPR or a United States citizen.

c. Availability of Assistance

The call center can provide language interpretation assistance in 150 languages at 1-800-318-2596. Individuals in need of enrollment assistance may also look for organizations that can provide help locally at <https://www.healthcare.gov/contact-us/>.

d. Failed Online ID Verification

People with limited or no credit history are likely to have to produce documents to establish their identity. When ID verification cannot be completed online, a unique reference ID is provided, and the individual is directed to call Experian Help Desk directly or with the Marketplace on a three-way call. If the ID cannot be verified by telephone, the individual will have to mail or upload his or her documents to be verified by the Marketplace. Consumers can prove identity by mailing or uploading the following documents: driver’s license, school ID card, voter registration card, U.S. military card, U.S. military draft record, military dependent ID card, tribal card, merchant mariner card, government-issued ID card, foreign passport or ID card issued by foreign embassy or consulate that contains a photograph. Alternatively, two of the following may be presented: U.S. public birth record, Social Security card, marriage certificate, divorce decree, employer ID card, high school or college diploma, or property deed or title.¹⁶³

¹⁵⁵ 45 C.F.R. § 155.330 (2014); *see also* Internal Revenue Serv., *Affordable Care Act Tax Provisions for Individuals and Families*, IRS.GOV, <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Individuals-and-Families> (last updated Dec. 11, 2014).

¹⁵⁶ 42 U.S.C.A. § 18071; *see also* *ACA Guide*, *supra* note 149.

¹⁵⁷ *Citizenship and Immigration Status*, HEALTHCARE.GOV, <https://www.healthcare.gov/help/citizenship-and-immigration-status-questions/> (last visited Nov. 24, 2014).

¹⁵⁸ 45 C.F.R. § 155.260; *ACA Guide*, *supra* note 149.

¹⁵⁹ Ctr. on Budget & Policy Priorities, *Navigating the Application Process for Families that Include Immigrants*, BEYONDTHEBASICS.ORG (Feb. 5, 2014) [hereinafter *Navigating Application Process*], <http://www.healthreformbeyondthebasics.org/wp-content/uploads/2014/02/Webinar-2.5.14-Application-Process-for-Families-that-Include-Immigrants.pdf>.

¹⁶⁰ 42 C.F.R. §§ 435.406, 457.320; *Navigating Application Process*, *supra* note 161.

¹⁶¹ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, CLARIFICATION OF EXISTING PRACTICES RELATED TO CERTAIN HEALTH CARE INFORMATION (2013), *available at* <http://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>; *Navigating Application Process*, *supra* note 161.

¹⁶² *Coverage for LPIs*, *supra* note 155.

¹⁶³ *Navigating Application Process*, *supra* note 161.

V. IN-STATE TUITION AND GRANTS

A. Eligibility for Non-citizens

In 2001, the Texas Legislature enacted House Bill 1403, which provides that students who attended high school for three years in Texas, graduated from a public or private high school in Texas, or passed a high school equivalency exam—and who qualify academically for admission—could pay in-state tuition rates at public colleges and universities in Texas.¹⁶⁴

Qualified non-citizen students who are not legal permanent residents may pay in-state tuition rates if they provide an “affidavit stating that the person will apply to become a permanent resident of the United States as soon as the person becomes eligible to apply.”¹⁶⁵

In 2005, the Texas Legislature enacted Senate Bill 1528 (SB 1528), amending HB 1403 by expanding the definition of students qualifying for in-state tuition purposes.¹⁶⁶ SB 1528 made in-state tuition rates available to individuals who had lived in Texas for a significant part of their lives, including U.S. citizens whose parents moved out of state.¹⁶⁷ Prior to these amendments, many U.S. citizens were inadvertently prevented from qualifying for in-state tuition. For example, students born and raised in Texas but whose parents moved out of state before they had enrolled in college were previously classified as nonresidents

¹⁶⁴ See TEX. EDUC. CODE ANN. § 54.052(a)(3). When he signed the legislation into law, Governor Rick Perry stated:

I signed House Bill 1403 so that young Texans who graduated from our public schools, regardless of their immigration status, will be able to pay in state tuition and take part in the Texas Dream. We want bright, new Texans to stay here, and contribute great things to our future.

Rick Perry, Gov. Rick Perry's Remarks to The Southwest Voter Registration Education Project (June 22, 2001), available at <http://governor.state.tx.us/news/speech/10622/>. The Texas legislation became a model for the adoption of similar policies across the country, including California, Utah, New York, New Mexico, Kansas, Washington, Illinois, and Nebraska. See Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27, 42 (2007) (“Since 2001, when Texas Governor Rick Perry signed legislation into law granting postsecondary residency for undocumented students, a dozen states have acted . . .”).

¹⁶⁵ See EDUC. § 54.053(3)(B).

¹⁶⁶ See House Comm. on Higher Education, Bill Analysis, Tex. S.B. 1528, 79th Leg., R.S. (2005), available at <http://www.hro.house.state.tx.us/pdf/ba79r/sb1528.pdf#navpanes=0>.

¹⁶⁷ See EDUC. § 54.052(b).

unless they had enrolled in college prior to their parents’ departure.¹⁶⁸

As of 2012, approximately 20,049 students who completed affidavits, or 1.1% of total public institution enrollment, qualified for in-state tuition and met the residency requirement for competing for state financial aid. The same year, students who completed affidavits paid over \$42 million in tuition and fees at institutions of higher learning.¹⁶⁹

Deferred Action does not impact provisions outlined in § 4.052(a) (3) of the Texas Education Code for Childhood Arrivals (DACA) or any other guidance issued by the federal government. Texas students must comply with Texas statutes and rules related to in-state tuition, including completing an affidavit if necessary.

B. In-state Tuition Litigation

On December 14, 2009, the Immigration Reform Coalition of Texas (IRCOT), a Texas nonprofit organization, filed suit against the State of Texas and the Texas Comptroller, arguing that the statutes granting eligibility in-state tuition and grants to non-citizens conflict with 8 U.S.C. §§ 1621, 1623.¹⁷⁰ IRCOT later dropped its claims as to in-state tuition.

Defendants filed a motion to dismiss, arguing that Plaintiffs lacked standing because they could not show injury-in-fact. Defendants appealed, and ultimately the Supreme Court of Texas denied review of the decision on October 24, 2014.¹⁷¹ The case was remanded and is now currently pending in state district court.

The outcome of this case could affect the eligibility of non-citizens for in-state grants, also known as “Texas grants.”

VI. CONCLUSION

Inevitably, immigration attorneys will face questions about clients’ eligibility for these and other programs. By providing clients with basic information about eligibility and application processes, immigration attorneys add value to their services and empower their clients. While advising immigrants not to apply for any public benefits may present a safe answer, a better answer takes into account the best

¹⁶⁸ TEX. HIGHER EDUC. COORDINATING BD., OVERVIEW: ELIGIBILITY FOR IN-STATE TUITION AND STATE FINANCIAL AID PROGRAMS (2013), available at <http://www.thehb.state.tx.us/download.cfm?downloadfile=2-D2C5F84-09C9-550E-49E69832108AA381&typename=dmFile&fieldname=filaname>.

¹⁶⁹ *Id.*

¹⁷⁰ See *Lone Star College Sys. v. Immigration Reform Coalition of Tex.*, 418 S.W.3d 263, 267 (Tex. App.—Houston [14th Dist.] 2013, pet. denied).

¹⁷¹ See *id.*

interests of clients who may be qualified for and need such assistance. Such knowledge can ensure that a client's future in the U.S. remains as bright as their new beginning.