

§1.410 Determination of Alien Status for Program Beneficiaries

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Administrator--An entity that receives federal or state funds passed through the Department. The term includes, but is not limited, to a Subrecipient, State Recipient, Recipient, or a Developer of single-family housing for homeownership. The term also applies to a For Profit Entity having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.

(2) For Profit Entity--an Administrator that is neither a Public Organization nor a Nonprofit Charitable Organization.

(3) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(4) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(5) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(6) State--The State of Texas or the Department, as indicated by context.

~~(5) Subrecipient--An entity that receives federal or state funds passed through the Department. The definition does apply to a vendor having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.~~

(7) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, ~~not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.~~ Block grants have been determined to be subject to PRWORA. The only circumstance in which the Department will not apply this section is in cases in which the PRWORA statute provides, or the administering federal agency has given clear direction, that an activity is explicitly not a federal public benefit and does not require verification.

(2) At the time of the publication of this rule, this rule applies to Contracts administered in the Single Family and Homeless Division and the Community Affairs Division for applicable federally funded Department programs including Low Income Home Energy Assistance Program, Department of Energy Weatherization Assistance Program, Community Services Block Grant Program, Community Development Block Grant Program, Emergency Solutions Grant Program, and to the extent used for

single-family activities National Housing Trust Fund Program, Neighborhood Stabilization Program, the HOME Program and other programs as provided for in Administrator's Contracts or state guidance with an initial effective date on or after February 1, 2026, or for the Community Development Block Grant Program and HOME 2025 or later year funds added to an existing Contract. For those programs that operate reservation based funding methods this rule applies to Household Commitment Contracts with an initial effective date on or after February 1, 2026.

~~(32)~~ The requirements of this section are applicable to Subrecipients of federal funds passed through the Department as described in paragraph (1) of this subsection, for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further provided by the applicable federal agency described in this rule.

(d) Applicability for State Funds. The Department has determined that State ~~Housing Trust Funds~~ that are provided to a Subrecipient ~~that is a Public Organization or acting on behalf of a Public Organization~~ to be distributed directly to individuals, are a state public benefit. At the time of the publication of this rule, applicable state funded Department programs include TCAP-RF (to the extent used for single-family activities), the Homeless Housing and Services Program, the Amy Young Barrier Removal Program, and the Bootstrap Program and other programs as provided for in Administrator's Contracts or state guidance with an initial effective date on or after February 1, 2026. For those programs that operate reservation based funding methods this rule applies to Activity level commitment documents with an initial effective date on or after February 1, 2026.

~~(e) No Applicable Exemptions and Benefit Calculations~~ under PRWORA.

(1) If no exemptions under PRWORA are applicable to the Subrecipient, or to the activity type, as provided for by the federal agency or by the statute further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using the methods provided for in subsection (f) of this section, SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(2) Administrators should review Program Rules and Contracts for additional information, including how benefit calculations are adjusted for households in which not all members can be verified.

~~(f) Verification Process Exemptions~~ Under PRWORA for Programs with Subrecipients.

(1) Administrators may first seek to verify legal status through the use of several established documents as described more fully in guidance provided by the Department and in the Administrator's Contract. Only if unable to verify legal status with those documents will the SAVE system be utilized as described in this subsection.

(24) Public Organizations. Administrators that are Public Organizations are required to perform the verifications through the SAVE system.

~~U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.~~

~~(2) For activities in the Low Income Home Energy Assistance Program, Low Income Household Water and Wastewater Program, and the Department of Energy Weatherization Program performed by a~~

Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient

(3) An Administrator is required to must ensure compliance with the verification requirement as provided for in subparagraphs (A), (B) or (C) of this paragraph. Records must be maintained as required by subparagraph (D) of this paragraph. Notification of election of method must be provided in accordance with subparagraph (E) of this paragraph. through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. For existing Subrecipients, an election made under this subsection does not need to be restated annually, but will continue from the election made in the prior year unless the Subrecipient notifies the Department otherwise in writing before the deadline. For new Subrecipients, if the election must be made with the Application or if there is no Application before Contract execution. If the existing Subrecipient does not notify the Department of the election in writing by the deadline but refuses to abide by its election the Subrecipient will not be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal or termination of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, ~~t~~The Subrecipient may voluntarily elect to requesting from the household and transmitting to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department or its vendor can perform such verification and provide a determination to the Subrecipient; OR is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

~~(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.~~

~~(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.~~

(B) As eligible, t~~The Subrecipient Administrator may voluntarily electing to perform the verifications through the SAVE system, as authorized through the Department's access to such system; OR-~~

(C) ~~The Subrecipient may voluntarily electing to procure an eligible qualified organization to perform such verifications on its~~their behalf, subject to Department approval.

(D) In the administration of subparagraph (A) of this paragraph, the Administrator must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its vendor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party. In the administration of subparagraphs (B) or (C) of this paragraph, the Subrecipient or its procured provider ~~(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.~~

~~(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits,~~

~~income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.~~

(E) Notification of Election of method under subsection (f)(4)(A) through (C) of this section by Nonprofit Charitable Organizations and For Profit Entities must be provided to the Department as specified in this subparagraph.

(i) For existing Applicants, Administrators with a Contract that is subject to Automatic Renewal, and Awardees or Administrators with a Reservation Contract. No later than 60 days after the effective date of this rule, all entities shall submit their election under subsection (f)(4)(A) through (C) of this section in writing to the applicable program director or his/her designee.

(ii) A new Applicant must make its election under subsection (f)(4)(A) through (C) of this section in its application, or if there is no Application prior to Contract execution.

(iii) For Administrators with no Application or Automatic Renewal once an election is made under this subsection or was made under a prior version of this rule, it does not need to be resubmitted or reelected, but will continue from the election made in the prior year unless the Administrator notifies the Department otherwise in writing at least three months prior to the renewal of the Contract (as applicable).

(iv) If an Administrator does not notify the Department of the election in writing by the deadline or refuses to abide by its election the Administrator will not be eligible to perform as an Administrator in the program, which is considered good cause for nonrenewal or termination of a Contract.

~~(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.~~

~~(g)(g)~~ The Department may further describe an ~~Subrecipient's~~ Administrator's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the ~~Subrecipient~~ Administrator or in further guidance. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

~~(h)(h)~~ Regardless of method of verification, the results of the verification performed or received by the Administrator must be utilized by the Administrator in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other Program Rules under this Title.

~~(i)~~ A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and ~~highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.~~