

REPORT OF THE ATTORNEY GENERAL ON PUBLIC BENEFITS

Issued in Compliance with O.C.G.A. § 50-36-1(a)(4)(B)

August 1, 2011

I. INTRODUCTION

The Georgia Security and Immigration Compliance Act (“GSICA”) provides that “[e]ach year before August 1, the Attorney General shall prepare a detailed report indicating any ‘public benefit’ that may be administered in this state as defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to SAVE verification pursuant to this Code section.” O.C.G.A. § 50-36-1(a)(4)(B).¹ This annual report is provided in accordance with that requirement.

The GSICA is intended to enact a “comprehensive regulation of persons in this state who are not lawfully present in the United States.” 2006 Ga. Laws 105-17. The GSICA amends Georgia law governing “contracts, crimes and offenses, law enforcement officers and agencies, penal institutions, professions and businesses, revenue and taxation, and state government.” *Id.* at 105. All requirements of the GSICA “concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.” *Id.* at 106.

Among other things, the GSICA requires that “every agency or political subdivision shall verify the lawful presence in the United States of any applicant for public benefits.” O.C.G.A. § 50-36-1(b). GSICA mandates that it “shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of” section 50-36-1. O.C.G.A. § 50-36-1(i). It should be noted that given the breadth of the definition of “public benefit” and that every public entity in the state, including political subdivisions, is affected by this requirement of the GSICA, each benefit administered or activity undertaken by such local public entities should be examined by each entity itself and its legal counsel should determine if such benefit or activity falls with the GSICA’s definition of “public benefit.”

In the 2011 legislative session, the General Assembly passed the “Illegal Immigration Reform and Enforcement Act of 2011” (H.B. 87) which amended various sections of the Official Code of Georgia. The bill was signed by Governor Deal on May 13, 2011 and took effect on July 1, 2011.²

¹ “SAVE verification” means “the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.” O.C.G.A. § 50-36-1(f). SAVE is an automated verification system for authorized agencies to access immigration status information. The SAVE website link is: <http://www.uscis.gov/portal/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1721c2ecoc7c8110VgnVCM1000004718190aRCD&vgnnextchannel=1721c2ecoc7c8110VgnVCM1000004718190aRCRD>.

² An action challenging the constitutionality of several sections of H.B. 87 was filed recently in federal court. See *Georgia Latino Alliance for Human Rights, et al. v. Nathan Deal*, United States District Court,

II. “PUBLIC BENEFITS”

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. §§ 1601-1646, (“PRWORA”), was enacted by Congress to regulate the receipt of “public benefits” by aliens. *See* 8 U.S.C. § 1601. Providers of non-exempt “public benefits,” as that term is defined under federal and state law, must verify that the person applying for a “public benefit” is a “qualified alien” and is eligible to receive the benefit. With respect to a state’s authority to make determinations concerning the eligibility of “qualified aliens” to receive “public benefits” under PRWORA, if the state chooses to follow the federal classification in determining the eligibility of aliens for public assistance, then it “shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.” 8 U.S.C. § 1601(7).

A. Georgia Law

1. Alien

Under Georgia law, “aliens” generally “are the subjects of foreign governments who have not been naturalized under the laws of the United States.” O.C.G.A. § 1-2-11(a).

2. “Public Benefits”

“Public benefit” under Georgia law means:

[A] federal benefit as defined in 8 U.S.C. Section 1611, a state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public benefit by the Attorney General of Georgia, or a public benefit which shall include the following:

- (i) Adult education;
- (ii) Authorization to conduct a commercial enterprise or business;
- (iii) Business certificate, license, or registration;
- (iv) Business loan;
- (v) Cash allowance;
- (vi) Disability assistance or insurance;
- (vii) Down payment assistance;
- (viii) Energy assistance;
- (ix) Food stamps;
- (x) Gaming license;
- (xi) Health benefits;
- (xii) Housing allowance, grant, guarantee, or loan;

Northern District of Georgia, Atlanta Division, Civil Action File No. 1:11-CV-1804-TWT. At the time of this report, the Court had enjoined Sections 7 and 8 of the bill.

- (xiii) Loan guarantee;
- (xiv) Medicaid;
- (xv) Occupational license;
- (xvi) Professional license;
- (xvii) Registration of a regulated business;
- (xviii) Rent assistance or subsidy;
- (xix) State grant or loan;
- (xx) State identification card;
- (xxi) Tax certificate required to conduct a commercial business;
- (xxii) Temporary assistance for needy families (TANF);
- (xxiii) Unemployment insurance; and
- (xxiv) Welfare to work.

O.C.G.A. § 50-36-1(a)(4)(A).

3. Considerations Concerning Specific Georgia “Public Benefits”

- Adult education [O.C.G.A. § 50-36-1(a)(4)(A)(i)]
The Technical College System of Georgia (formerly known as the Department of Technical and Adult Education) is required to set forth policies so as to comply with federal law, but verification by that agency is not otherwise required under the Act. *See* O.C.G.A. § 50-36-1(d)(7). Other public entities, however, certainly could offer such benefit and should examine those offerings to see if participants should verify their lawful presence.
- Authorization to conduct a commercial enterprise or business [O.C.G.A. § 50-36-1(a)(4)(A)(ii)]
Business certificate, license, or registration [O.C.G.A. § 50-36-1(a)(4)(A)(iii)]
Local governments regulate businesses and tax business. With stated exceptions, “the governing authority of each [city or] county is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on...businesses and practitioners.” O.C.G.A. § 48-13-6(a), (b). Further, with certain limits, “the governing authority of each [city or] county is authorized but not required to provide by local ordinance or resolution for the imposition and collection of regulatory fees on businesses and practitioners of professions and occupations doing business in [its] . . . part of the county.” O.C.G.A. § 48-13-8(a). *See also* O.C.G.A. § 48-13-9.

If the government imposes the payment for revenue purposes and issues a “license” merely to show payment, the license is not likely to be considered a commercial license. *See Sexton v. City of Jonesboro*, 267 Ga. 571, 572-73 (1997). Alcohol licenses are an example of a license that generally constitutes regulated permission for commercial activity and thus is within the definition of a “public benefit.”

Section 36-6-60 of the Georgia code requires that persons who are licensed by the state pursuant to Title 43 must present that state license when applying for a municipal and/or county business license. O.C.G.A. § 36-6-60. H.B. 87 adds a requirement that when such licensed persons seek an “occupational tax certificate, or other document required to operate a business” they also must present their state license in doing so. O.C.G.A. § 36-60-6(c).

H.B. 87 also added subsection “(d)” to Section 36-6-60 of the Georgia code and now provides in pertinent part that “[b]efore any county or municipal corporation issues or renews a business license, occupation tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of the Code section do not apply.” O.C.G.A. § 36-60-6(d). Such evidence “shall be in the form of an affidavit as provided by the Attorney General.” O.C.G.A. § 36-60-6(f). Further, counties or municipalities which issue or renew such licenses “shall provide to the Department of Audits and Accounts a report demonstrating that such county or municipality is acting in compliance with the provisions” of this code section. O.C.G.A. § 36-60-6(e). “Once an applicant...has submitted an affidavit with a federally assigned employment eligibility verification system user number, her or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number” without giving a reason as to why the number has changed. O.C.G.A. § 36-60-6(g). Finally, persons who knowing violate this provision may be guilty of certain criminal statutes. O.C.G.A. § 36-60-6(h).

- Business loan [O.C.G.A. § 50-36-1(a)(4)(A)(iv)]
Such loans require verification under both Georgia and federal law. 8 U.S.C. § 1621(c)(1)(A).
- Cash allowance [O.C.G.A. § 50-36-1(a)(4)(A)(v)]
Care should be taken towards verification when cash allowances are given although oftentimes they may be part of another benefit scheme which, itself, likely would require verification of lawful presence.
- Disability assistance or insurance [O.C.G.A. § 50-36-1(a)(4)(A)(vi)]
The majority of disability assistance or insurance is provided through the Social Security Administration and also is listed in 8 U.S.C. § 1621(c)(1)(B).
- Down payment assistance [O.C.G.A. § 50-36-1(a)(4)(A)(vii)]
This is not specifically mentioned in the federal law, although “housing assistance” is mentioned. *See* 8 U.S.C. § 1621(c). In Georgia, there are at least two mechanisms for down payment assistance. One is through the State Office of Housing. *See* O.C.G.A. § 8-3-170. That office has the ability to acquire and disburse federal funds so as to provide “financial assistance in the form of interest or down payment subsidies or write-downs.” O.C.G.A. § 8-3-170(5).

The second is via the State Housing Trust Fund for the Homeless. *See* O.C.G.A. § 8-3-300. That entity manages a trust fund from which may be used to provide down payment assistance. *See* O.C.G.A. §§ 8-3-302, 8-3-308. Federal money also may be sought. *See* O.C.G.A. § 8-3-309. Thus, persons in receipt of monies for down payment assistance from these and other entities likely will need to verify their lawful presence.

- Energy assistance [O.C.G.A. § 50-36-1(a)(4)(A)(viii)]
More than one state agency provides assistance with utility payments to low income persons. *See* O.C.G.A. §§ 46-4-166, 46-1-5. Other public entities also may provide such assistance, and all should be mindful that verification of lawful presence may be required by recipients depending on the source of the funding for such programs.
- Food stamps [O.C.G.A. § 50-36-1(a)(4)(A)(ix)]
The food stamp program is created by federal law. *See* 7 U.S.C. § 2011. State government and agencies, including local offices, are responsible for the administration of such public assistance, but federal law determines eligibility standards for receiving food stamps. *See* 7 U.S.C. §§ 2012(n), 2014(c). In Georgia, the state agency which administers the food stamp program is the Georgia Department of Human Services. *See* O.C.G.A. §§ 49-4-3, 49-4-15. In addition to its inclusion in the Georgia statute, the federal statutes also include “food assistance” as both a state or local benefit and a federal benefit. *See* 8 U.S.C. § 1621(c)(1)(B); 8 U.S.C. § 1611(c)(1)(B).
- Gaming license [O.C.G.A. § 50-36-1(a)(4)(A)(x)]
Georgia does not issue “gaming licenses” at present.
- Health benefits [O.C.G.A. § 50-36-1(a)(4)(A)(xi)]
Most public health benefits are given by the federal government via Medicaid. Medicaid is specifically included in the state statute as a “public benefit.” *See* O.C.G.A. § 50-36-1(a)(4)(xiv). Other health benefits given by entities should be examined closely to see if they are subject to verification requirements. As for employee health benefits, public employers in Georgia are required to verify the lawful presence of employees via the E-verify system, so it may be possible to rely on that verification and avoid double verification and the associated fees. *See* O.C.G.A. §§ 13-10-91, 50-36-1(h) (“Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.”)
- Housing allowance, grant, guarantee, or loan [O.C.G.A. § 50-36-1(a)(4)(A)(xii)]
See sections regarding rent assistance or subsidy and down payment assistance.

- Loan guarantee [O.C.G.A. § 50-36-1(a)(4)(A)(xiii)]
Many state entities have the authority to guarantee loans. Care should be taken to verify lawful presence when such guarantees are made for individuals and the guarantee is backed by public monies.
- Medicaid [O.C.G.A. § 50-36-1(a)(4)(A)(xiv)]
Medicaid is a federally and state funded program the funds from which are distributed in Georgia by several agencies, but mostly by the Department of Community Health.
- Occupational license and professional license [O.C.G.A. § 50-36-1(a)(4)(A)(xv) and (xvi)]
Similar to commercial licenses, where performing or holding a certain job is conditioned upon holding a license issued by a state or local government, it would then be considered a public benefit and would be subject to verification.
- Public post secondary education shall be considered a public benefit unless with respect to students whose lawful presence is not verified all of the following criteria are met:

The Board of Regents certifies that an unverified student is paying out-of-state tuition and that said tuition completely offsets the cost incurred by the Board to provide that education; and

The Board of Regents certifies that in those institutions that admit students on a competitive basis no legal resident applicants were denied admission as a result of the admission of the unverified student; and

The Board of Regents certifies that neither the unverified student nor his or her family receives any payments or assistance from either a federal, state or local agency or from federal, state or local appropriated funds in connection with the student's education.

- Registration of a regulated business [O.C.G.A. § 50-36-1(a)(4)(A)(xvii)]
See sections on authorization to conduct a commercial enterprise or business and business certificate, license, or registration.
- Rent assistance or subsidy [O.C.G.A. § 50-36-1(a)(4)(A)(xviii)]
Housing authorities, both local and regional, are allowed by state law. *See* O.C.G.A. §§ 8-3-4, 8-3-105. They have the authority by law to lease subsidized properties to low income persons utilizing public monies. *See* O.C.G.A. §§ 8-3-2, 8-3-12. As such it would seem that persons who apply for low income housing should verify that they are lawfully present. Further, "public or assisted housing" also is listed among the state or local public benefits, as well as federal benefits. *See* 8 U.S.C. § 1621(c)(1)(B); 8 U.S.C. § 1611(c)(1)(B). Other public entities that might provide some other form of rent assistance or subsidized housing also should be mindful of this provision.

- State grant or loan [O.C.G.A. § 50-36-1(a)(4)(A)(xix)]
See sections on cash allowance and loan guarantee.
- State identification card [O.C.G.A. § 50-36-1(a)(4)(A)(xx)]
The State of Georgia, through the Department of Driver Services, issues state identification cards to Georgia residents. *See* O.C.G.A. § 40-5-100. For purposes of issuance of this card, a resident is someone who has a permanent home in Georgia and who also is “a United States citizen or an alien with legal authorization . . .” O.C.G.A. § 40-5-1(15). State voter identification cards are available to registered voters who are U.S. citizens through county voter registrar offices and the Department of Driver Services.
[<http://www.sos.georgia.gov/GAPhotoID/default.htm>]
- Tax certificate required to conduct a commercial business
[O.C.G.A. § 50-36-1(a)(4)(A)(xxi)]
See sections on authorization to conduct a commercial enterprise or business and business certificate, license, or registration.
- Temporary assistance for needy families (TANF)
[O.C.G.A. § 50-36-1(a)(4)(A)(xxii)]
The TANF program exists to provide assistance to needy families in Georgia. “Qualified aliens will be eligible for assistance under the Georgia TANF Program upon meeting the same qualifications and conditions as other applicants.” O.C.G.A. § 49-4-188(b). “Qualified alien” is as defined in PRWORA, 8 U.S.C. § 1601 *et seq.* *See* O.C.G.A. § 49-4-188(a).
- Unemployment insurance [O.C.G.A. § 50-36-1(a)(4)(A)(xxiii)]
Unemployment insurance is offered through the Georgia Department of Labor, although not exclusively. *See* O.C.G.A. §§ 34-7-80, 45-9-110.
- Welfare to work [O.C.G.A. § 50-36-1(a)(4)(A)(xxiv)]
“Welfare” is included in the federal statutes as well as in O.C.G.A. § 50-36-1. 8 U.S.C. § 1621(c)(1)(B); 8 U.S.C. § 1611(c)(1)(B). *See* section on TANF.

In deciding whether an undertaken activity is a public benefit or not, public entities might consider: (1) what is the source of the funding of the benefit? (2) does a person denied the benefit have a due process or appeal right to the benefit? or (3) does an applicant need an award of the benefit in order to pursue business or employment opportunities in the entity’s jurisdiction? Public entities also should not lose sight that physical presence within the state is required. *See* O.C.G.A. § 50-36-1(d)(1). Additionally, persons required to verify their lawful presence are those over the age of eighteen, and the affidavit requirements are set out in the GSICA as well. *See* O.C.G.A. §§ 50-36-1(a)(3), 50-36-1(e). Finally, public entities which administer any public benefit must provide to the Georgia Department of Community Affairs by January 1 of each year an annual report “that identifies each public benefit, as defined in [O.C.G.A. § 50-36-1(a)(4)(A)] . . . , administered by the agency or political subdivision and a listing of each public

benefit for which SAVE authorization for verification has not been received.”
O.C.G.A. § 50-36-1(i).

B. Federal Law

1. Alien and Qualified Alien

Section 1611(a) of Title 8 of the United States Code provides that, with some exceptions, an alien who is not a “qualified alien” (as defined in 8 U.S.C. § 1641) is not eligible for any “federal public benefit” (as defined in 8 U.S.C. § 1611(c)) unless the “federal public benefit” falls within a specified exception. *See* 8 U.S.C. § 1611(a).

The exceptions to this general rule are enumerated in subsection (b) of section 1611 and are as follows:

- Medical assistance under Title XIX of the Social Security Act (42 U.S.C. §§ 1396-1396w-5) or any successor program to such title for care and services that are necessary for the treatment of an emergency medical condition (as defined in 42 U.S.C. § 1396b(v)(3)) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the approved state plan. *See* 8 U.S.C. § 1611(b)(1)(A).
- Short-term, non-cash, in-kind emergency disaster relief. *See* 8 U.S.C. § 1611(b)(1)(B).
- Public health assistance (not including any assistance under 42 U.S.C. §§ 1396-1396w-5) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. *See* 8 U.S.C. § 1611(b)(1)(C).
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the United States Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which (a) deliver in-kind services at the community level, including through public or private nonprofit agencies; (b) do not condition the provision of assistance, the amount of the assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (c) are necessary for the protection of life or safety. *See* 8 U.S.C. § 1611(b)(1)(D)(i)-(iii).
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under 42 U.S.C. §§ 1471-1490t, or any assistance under 7 U.S.C. § 1926c, to the extent that the alien is receiving such a benefit on the date of the enactment of PRWORA. *See* 8 U.S.C. § 1611(b)(1)(E).

- Any benefit payable under certain provisions of the Social Security Act to an alien who is lawfully present in the United States as determined by the United States Attorney General, any benefit if nonpayment of such benefit would contravene an international agreement, or any benefit payable under the Social Security Act to which entitlement is based on an application filed in or before the month in which PRWORA became law. *See* 8 U.S.C. § 1611(b)(2).
- Any benefit payable under the Social Security Act relating to the Medicare program to an alien who is lawfully present in the United States as determined by the United States Attorney General and, with respect to benefits payable under 42 U.S.C. §§ 1395c-1395i-5, who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits. *See* 8 U.S.C. § 1611(b)(3).
- Any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the United States as determined by the United States Attorney General or to an alien residing outside of the United States. *See* 8 U.S.C. § 1611(b)(4).
- Eligibility for benefits relating to the Supplemental Security Income program or to eligibility for benefits under any other program that is based on eligibility for benefits under that program so defined, for an alien who received such benefits on August 22, 1996. *See* 8 U.S.C. § 1611(b)(5).

“Qualified alien” for purposes of section 1611 means an alien who, at the time the alien applies for, receives, or attempts to receive a “federal public benefit,” is:

- an alien who is lawfully admitted for permanent residence under the federal Immigration and Nationality Act,
- an alien who is granted asylum under 8 U.S.C. § 1158,
- a refugee who is admitted to the United States under 8 U.S.C. § 1157,
- an alien who is paroled into the United States under 8 U.S.C. § 1182(d)(5) for a period of at least one year,
- an alien whose deportation is being withheld under 8 U.S.C. § 1251(b)(3), presently 8 U.S.C. § 1227,
- an alien who is granted conditional entry pursuant to 8 U.S.C. § 1153(a)(7) as in effect prior to April 1, 1980, or

- an alien who is a Cuban and Haitian entrant as defined in 8 U.S.C. § 1522. *See* 8 U.S.C. § 1641(b)(1)-(7).

There also are separate provisions for the treatment of certain battered aliens as qualified aliens. *See* 8 U.S.C. § 1641(c)(1)-(4).

Section 1621 expressly provides that aliens who are not

- “qualified aliens” as defined in section 1641,
- nonimmigrants under the federal Immigration and Nationality Act, or
- aliens who are paroled into the United States under 8 U.S.C. § 1182(d)(5) for less than one year are not eligible for any “state or local public benefit” as defined in section 1621(c).

2. Federal “Public Benefits”

Section 1611 (c) defines a “federal public benefit” as “any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States,” 8 U.S.C. § 1611(c)(1)(A)), and “any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.” 8 U.S.C. § 1611(c)(1)(B).

The following are not considered “federal public benefits” as set forth in section 1611(c): “any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect,” 8 U.S.C. § 1611(c)(2)(A); “with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State,” 8 U.S.C. § 1611(c)(2)(B); or “to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.” 8 U.S.C. § 1611(c)(2)(C).

3. Additional Authority on “Federal Public Benefits”

The United States Department of Health and Human Services (“HHS”) has provided its interpretation of the term “federal public benefit.” *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public

Benefit”, 63 Fed. Reg. 41658 (Aug. 4, 1998). HHS has determined that the following HHS programs provide non-exempt “federal public benefits”:

- Adoption Assistance
- Administration on Developmental Disabilities (ADD) – State Developmental Disabilities Councils (direct services only)
- ADD – Special Projects (direct services only)
- ADD – University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare
- Medicaid (except assistance for an emergency medical condition)
- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program

- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)

Id.

However, HHS also has noted that “[w]hile all of these programs provide ‘[f]ederal public benefits’ this does not mean that all benefits or services provided under these programs are ‘[f]ederal public benefits.’ . . . [S]ome benefits or services under these programs may not be provided to an ‘individual, household, or family eligibility unit’ and, therefore, do not constitute ‘[f]ederal public benefits as defined by PRWORA.’” *Id.* Those exceptions are extensively analyzed in sections II and III of 63 Fed. Reg. 41658, 41659-60.

In addition, in an order dated January 16, 2001, the United States Attorney General specified certain types of community programs, services, or assistance for which all aliens remain eligible (i.e., that an alien’s eligibility is not conditioned on immigration status) pursuant to the Attorney General’s authority found in sections 1611 and 1621. *See* Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613 (Jan. 16, 2001) (A.G. Order No. 2353-2001). In that order, the Attorney General specified the following:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services, or assistance. It is not the purpose of this Order, however, to define more specifically the scope of

the public benefits that Congress intended to deny certain aliens either altogether or absent my specification, and nothing herein should be so construed.

2. The government-funded programs, services, or assistance specified in this Order are those that: deliver in-kind (no-cash) services at the community level, including through public or private non-profit agencies or organizations; do not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources, as discussed in paragraph 3, below; and serve purposes of the type described in paragraph 4, below, for the protection of life or safety. Specified programs must satisfy all three prongs of this test.
3. The community-based programs, services, or assistance specified in paragraphs 2 and 4 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services, or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 4 below, are not within this specification if they condition on the individual recipient's income or resources:
 - (a) the provision of assistance;
 - (b) the amount of assistance provided; or
 - (c) the cost of the assistance provided on the individual recipient's income or resources.
4. Included within the specified programs, services, or assistance determined to be necessary for the protection of life and safety are:
 - (a) Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;
 - (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
 - (c) Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;
- (f) Activities designed to protect the life or safety of workers, children and youths, or community residents; and
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.

66 Fed. Reg. 3613, 3616.

The United States Department of Justice (“DOJ”) has provided further federal guidance concerning verification of eligibility for public benefits, citizenship, and qualified alien status, all of which provide information that exceeds what is required for this annual report. That additional information may be found at Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662 (Aug. 4, 1998) (DOJ’s Proposed Rule) and Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997) (DOJ’s Interim Guidance).

The Attorney General of the United States noted the following concerning compliance with the requirements of federal benefits, which also might be utilized in determining state and local benefits:

- (1) Determine if your program provides a ‘federal public benefit’ subject to the Act’s verification requirements; (2) Determine whether the applicant is otherwise eligible for benefits under general program requirements; (3) Verify the applicant’s status as a U.S. Citizen, U.S. non-citizen national or qualified alien; and (4) Verify the applicant’s eligibility for benefits under the Act. If at any step you determine that you are not required to verify (or further verify) immigration status, you should not go on to the following step(s).

DOJ Interim Guidance, 62 Fed. Reg. at 61345.

4. State or Local “Public Benefits”

Section 1621(a)’s requirements concerning which aliens may receive “state or local public benefits” does not apply to the following benefits:

- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in 42 U.S.C. § 1396b(v)(3)) of the alien involved and are not related to an organ transplant procedure. *See* 8 U.S.C. § 1621(b)(1).
- Short-term, non-cash, in-kind emergency disaster relief. *See* 8 U.S.C. § 1621(b)(2).
- Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. *See* 8 U.S.C. § 1621(b)(3).
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney’s General sole and unreviewable discretion after consultation with the appropriate federal agencies and departments, which (a) deliver in-kind services at the community level, including through public or private nonprofit agencies; (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (c) are necessary for the protection of life or safety. *See* 8 U.S.C. § 1621(b)(4)(A)-(C).

Section 1621(c) defines “state or local benefit” as “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government,” 8 U.S.C. § 1621(c)(1)(A), and “any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.” 8 U.S.C. § 1621(c)(1)(B).

The following are not considered “state or local public benefits” as set forth in section 1621: “any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect,” 8 U.S.C. § 1621(c)(2)(A); “with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the

Secretary of State, after consultation with the Attorney General,” 8 U.S.C. § 1621(c)(2)(B); or “the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.” 8 U.S.C. § 1621(c)(2)(C).

5. Additional Provision on “State or Local Public Benefits”

“State authority to provide for eligibility of illegal aliens for State and local public benefits. A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of (PRWORA) [enacted Aug. 22, 1996] which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d).

If a benefit satisfies the definitions of both a “federal public benefit” and “state and local public benefit,” it is a “federal public benefit.” *See* 8 U.S.C. § 1621(c)(3) (definition of state or local benefit “does not include any Federal public benefit”).

C. Examples of “Public Benefits” Under Recent Court Decisions

1. *Flores-Villar v. United States*, No. 09-5801, 2011 U.S. LEXIS 4378 (June 13, 2011). The United States Supreme Court affirmed without opinion a ruling by the United States Court of Appeals for the Ninth Circuit, *United States v. Flores-Villar*, 536 U.S. 990 (9th Cir. 2008), upholding the constitutionality of two provisions of the federal Immigration and Nationality Act (8 U.S.C. §§ 1401(a)(7) and 1409) imposing different residency timing requirements on United States citizen fathers (five years) and United States citizen mothers (one year) before they may confer citizenship to a child born out of wedlock abroad to a non-citizen.
2. *Chamber of Commerce v. Whiting*, No. 09-115, 179 L. Ed. 2d 1031 (May 26, 2011). The United States Supreme Court held that federal law does not preempt the “Legal Arizona Workers Act,” which sanctions employers who knowingly hire unauthorized aliens. The sanctions include suspending and revoking their licenses to do business in the state. The law requires all employers to participate in the federal E-Verify program to confirm whether their new employees are authorized to work in the United States, even though federal law makes the use of E-Verify voluntary for federal purposes. The Supreme Court reasoned that the Arizona law’s sanctions fell within the exception to the federal Immigration Reform and Control Act’s express preemption provision, as a “licensing [or] similar law”, and the federal law establishing the E-Verify system “contains no language circumscribing state action” and its aims are not obstructed by Arizona’s requirement.
3. A residential licensing ordinance which conditioned residence on a person’s federal immigration status was held unconstitutional and an impermissible

regulation of immigration in *Villas at Parkside Partners v. City of Farmers Branch*, 701 F. Supp. 2d 835 (N.D. Tex. 2010). The court further determined that a residential occupancy license was not a “public benefit” under section 1621(c) and that “public benefit” did not include purely private contracts for shelter or other necessities (such as the license in dispute in the case), but rather included public benefits or licenses which are authorized by or appropriated from state and local funds.

4. Post-secondary education was determined to be “public benefit” subject to section 1621 in *McPherson v. McCabe*, No. 5:04-CT-990-FL, 2007 U.S. Dist. LEXIS 69483 (E.D. N.C. Apr. 10, 2007), *aff’d*, 241 Fed. Appx. 963 (4th Cir. 2007). At issue in this case was a policy of a community college and a correctional institution which offered certain post-secondary and occupational extension courses to inmates free of charge, but not for those inmates subject to a deportation detainer. Those inmates would still be permitted to enroll in the classes but were required to pay the full out-of-state tuition. The court found that the plaintiff was not a “qualified alien” and that the challenged policy was not violative of any of the plaintiff’s constitutional rights.
5. Certain aspects of PRWORA were considered in *Equal Access Education v. Merten*, 305 F. Supp. 2d 585 (E.D. Va. 2004). The plaintiffs in this action challenged the constitutionality of a memorandum of Virginia’s Attorney General to all of the state’s public universities and colleges and to the executive director of the state’s council for higher education noting, among other things, that the attorney general was of the strong view that illegal and undocumented aliens should not be admitted into the state’s colleges and universities and that all school officials and all public employees in higher education should report to federal immigration officials facts and circumstances that might indicate that a student on campus was not lawfully present in the United States. The court determined that in the area of post-secondary education, PRWORA does not consider mere admission or attendance at a public post-secondary institution to be a public benefit; that PRWORA addresses only post-secondary monetary assistance paid to students or their households, not admissions to college or university; that PRWORA denies post-secondary monetary assistance to illegal aliens; and that any state wishing to make an illegal alien eligible for any state or local public benefit for which the alien would otherwise be ineligible under PRWORA must enact a state law affirmatively providing for such eligibility under section 1621(d). Accordingly, the court concluded that the defendants’ alleged admissions policies challenged in this action did not conflict with PRWORA’s classification, verification, and reporting schemes. In addition, the court held that the federal supremacy clause did not bar the defendants from adopting and enforcing admissions policies that denied admission to illegal aliens, provided that the defendants used federal immigration status standards to identify which applicants were illegal aliens. The court also ruled that there were no violations of plaintiffs’ rights to which they might be entitled under the federal foreign commerce and due process clauses of the federal constitution.

6. In *League of United Latin American Citizens v. Wilson*, Nos. CV 94-7569 MRP, CV 94-7570 MRP, CV 94-7571 MRP, CV 94-7652 MRP, CV 95-187 MRP, 1998 U.S. Dist. LEXIS 3418 (C.D. Ca. Mar. 13, 1998), the plaintiffs challenged various provisions of California's Proposition 187 which was enacted to prevent illegal aliens from receiving public benefits. The court determined that some portions of Proposition 187 were preempted by PRWORA because the state laws conflicted with PROWORA which occupied the field on the issues it regulated. The court held that Congress has expressly exercised its authority to establish the procedure that must be followed in verifying immigrant eligibility for federal, state, and local benefits; that the states have no power to effectuate a scheme parallel to that specified in PRWORA even if the parallel scheme does not conflict with PRWORA; and that the states are bound to follow the verification procedures prescribed by PRWORA. Accordingly, the only regulations a state may promulgate are regulations implementing PRWORA.
7. The court in *Martinez v. Regents of University of California*, 83 Cal. Rptr. 3d 518 (2008), struck a California law which made illegal aliens eligible for in-state tuition at post-secondary schools without affording in-state tuition to out-of-state United States citizens without regard to California residence. The state law conflicted with section 1623, in which Congress had expressed that illegal aliens who are residents of a state shall not receive a post-secondary education benefit that was not available to United States citizens. Thus, sections 1621 and 1623 preempted state law which conferred a "benefit" to illegal aliens within the meaning of those federal statutes. *See also Martinez v. Regents of University of California*, 50 Cal. 4th 1277, 241 P.3d 855 (2010), *cert. denied*, 79 U.S.L.W. 3685 (June 6, 2011) in which the California Supreme Court considered when, if ever, California could exempt unlawful aliens from having to pay nonresident tuition. The state statute challenged in the case provided that unlawful aliens were exempt from paying nonresident tuition at state colleges and universities under certain circumstances such as attending high school in California for at least three years. The court determined that the state statute did not conflict with 8 U.S.C. § 1623 because the state law was not based on residency but other circumstances.
8. In *County of Alameda v. Agustin*, No. A115092, 2007 Cal. App. Unpub. LEXIS 7665 (Cal. Ct. App. Sept. 24, 2007), the court held that neither child support payments nor child support collection services were "state or local public benefits" within the meaning of section 1621. Child support payments are not provided by an agency of a state or local government or by appropriated funds of a state or local government; rather, they are payments made by private individuals, and the fact that the county might assist in their collection does not change the private source of those payments. In addition, the court reasoned that child support collection services were not a "public benefit" within the meaning of section 1621 because the type of benefits listed in section 1621 are all either direct income support payments or services intended to meet the daily needs of

- disadvantaged persons; are continuing or potentially continuing benefits; and are intended to provide ongoing public support for the recipients for as long as required – which are wholly different in the nature of child support collection services.
9. The court in *Doe v. Wilson*, 67 Cal. Rptr. 2d 187 (1997), held that interim emergency regulations enacted by local officials were legally valid as PRWORA barred publicly funded medical care by the states to an alien who is not a “qualified alien” and the state’s prior regulations, which permitted public funding for routine prenatal medical services for illegal aliens, violated controlling federal law.
 10. In *Rajeh v. Steel City Corp.*, 813 N.E. 2d 697 (Ohio Ct. App. 2004), the court determined that benefits from the state’s workers’ compensation fund did not constitute a “state public benefit” for purposes of section 1621 because the listed benefits in section 1621 are either means for the government to assist people with economic hardships until they are able to manage financially on their own (welfare or food assistance) or an earned benefit such as retirement. However, workers’ compensation is a substitutionary remedy for a negligence lawsuit and is used to promote a safe and injury-free workplace.
 11. The court in *Department of Health v. Rodriguez*, 5 So. 3d 22 (Fla. Dist. Ct. App. 2009), reversed an administrative law judge’s ruling that an illegal alien was entitled to receive benefits through Florida’s brain and spinal cord injury program because the benefits constituted “state public benefits” under PRWORA and the state had not passed a law pursuant to section 1621(d) making illegal aliens eligible for the program.
 12. In *City Plan Dev., Inc. v. Office of Labor Comm’r, Dep’t of Bus. and Indus., State of Nev.*, 117 P. 3d 182 (Nev. 2005), the court determined that the payment of prevailing wage rates by a contractor to workers under a public contract was not a “local public benefit” for purposes of section 1621 because the contractor, who was a party to the public contract, was not the entity “providing” the public benefit contract under Nevada law and therefore was not included in state law’s express terms excusing payment; instead, the payment of the prevailing wage was required when an entity entered into a contract to perform a public work. State law made it clear that any worker falling within the purview of the prevailing wage laws had to be paid accordingly regardless of the status of the worker as an illegal alien.

III. ELECTRONIC VERIFICATION FOR “PUBLIC BENEFITS”

The GSICA mandates electronic verification in determining the eligibility of an applicant for public benefits and to guard against the granting of a public benefit by a Georgia state agency or political subdivision to an applicant in contravention of federal law. *See* O.C.G.A. § 50-36-1(b), (f), (m). An alien who does not meet specified conditions “is not

eligible for any Federal public benefit” or “any State or local public benefit.” 8 U.S.C. §§ 1611(a), 1621(a). Section 50-36-1 does not itself impose eligibility requirements.

As noted above, “[e]xcept as provided in [O.C.G.A. § 50-36-1(d)] or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States of any applicant for public benefits.” O.C.G.A. § 50-36-1(b). “Agency or political subdivision” is defined as “any department, agency, authority, commission, or government entity of this state or any subdivision of this state.” O.C.G.A. § 50-36-1(a)(2). “Applicant” is “any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.” O.C.G.A. § 50-36-1(a)(3).

“It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of [O.C.G.A. § 50-36-1].” O.C.G.A. § 50-36-1(i).

“Verification of lawful presence” is not required for the following:

- any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;
- assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. § 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;
- short-term, non-cash, in-kind emergency disaster relief ;
- public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General’s sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:
 - deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income and resources; and
 - are necessary for the protection of life or safety;

- prenatal care; or
- postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth. Policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. §§ 1611, 1621, or 1623.

See O.C.G.A. § 50-36-1(d)(1)-(7).

Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:

- the applicant must “[p]rovide at least one secure and verifiable document, as defined in Code Section 50-36-2;”³
- the applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or
- the applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, is 18 years of age or older, is lawfully present in the United States, and provides the applicant’s alien number issued by the Department of Homeland Security or other federal immigration agency.

See O.C.G.A. § 50-36-1(e)(1)-(2). Additionally, the affidavit to be used will be created by the State Auditor and will be available on that Department’s website. O.C.G.A. § 50-36-1(e)(3).

For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through SAVE, and until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for purposes of the GSICA. *See* O.C.G.A. § 50-36-1(f).

A state agency or political subdivision that administers a federal public benefit must have verification procedures which comply with federal regulations on verification of eligibility for federal public benefits. *See* 8 U.S.C. § 1642(b). “A State or political

³ This is a new requirement added by H.B. 87. O.C.G.A. § 50-36-1(e)(1). A “secure and verifiable document” is one “issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.” *Id.* The Attorney General is charged with making a list of such documents and posting the list on the website of the Georgia Department of Law. *Id.* That list is attached to this report as Attachment “A”; this report is available at all times on the Law Department’s website.

subdivision of a State is authorized to require an applicant for state and local public benefits . . . to provide proof of eligibility.” 8 U.S.C. § 1625. Federal regulation may allow states to participate in federal verification systems for determining an alien’s eligibility for state and local public benefits. *See* 8 U.S.C. § 1642(a)(3). Georgia law concerning such verification procedures is found in subsections (e), (f), (h), and (m) of section 50-36-1. *See* O.C.G.A. § 50-36-1(e), (f), (h), (m).

IV. SYSTEMATIC ALIEN VERIFICATION OF ENTITLEMENT (SAVE)

Pursuant to the GSICA, the Office of the Attorney General is required to prepare a detailed report indicating any public benefit that may be administered in the state and whether such benefit is subject to SAVE verification. For clarification purposes, however, a “public benefit” itself is not subject to SAVE verification under the Act. Instead, the SAVE program is the means by which authorized agencies can access immigration status information to verify that the person applying for a “public benefit” is a “qualified alien” lawfully present in the United States. The SAVE program does not make eligibility determinations with respect to any individual’s application for a specific benefit or license.⁴ That task remains the sole responsibility of the agency or political subdivision covered under the Act. *See* O.C.G.A. § 50-36-1(i).

In providing a brief history of SAVE, the United States Citizenship and Immigration Services website provides:

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA), which required the creation and implementation of a verification system that confirms immigration statuses of individuals applying for certain federally-funded benefits. This system originally came under the jurisdictional purview of legacy Immigration and Naturalization Service (INS). To successfully accommodate this federal mandate, legacy INS created the Systematic Alien Verification for Entitlements (SAVE) Program in 1987 to develop the verification system.

⁴ The SAVE program does not verify status for employment. An agency wishing to verify the status of a new employer must visit the “E-Verify Employment Verification Program” link on the United States Citizenship and Immigration Services website.
<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>.

With the creation of the Department of Homeland Security in 2003, jurisdiction is now under the United States Citizenship and Immigration Services (USCIS), Verification Division.⁵

The SAVE program defines itself as “an inter-governmental initiative designed to aid benefit-granting agencies in determining an applicant’s immigration status, and thereby ensure that only entitled applicants receive federal, state, or local public benefits and licenses. The program is an information service for benefit-issuing agencies, institutions, licensing bureaus, and other governmental entities.” An agency is eligible to participate in the SAVE program if it is (1) a federal, state, or local government agency or licensing bureau and (2) it provides a public benefit, license, or is otherwise authorized by law to engage in an activity where verification of immigration status is appropriate.

In order to apply for the SAVE program, an agency must register online and provide the name, phone number, and email address of its main point of contact (“POC”). Upon receiving a User ID and password, an agency must revisit the online SAVE system to login and provide additional information as requested, which includes: (1) agency name, (2) agency mailing address, agency POC information, (3) benefit, licenses, or other activity for which the agency will be verifying immigration status, (4) the section of law authorizing the agency to administer the benefit or license or engage in another activity for which the agency will need to verify immigration status, (5) section of law requiring or authorizing the verification of immigration status, and (6) the estimated number of queries the agency will submit annually. If an agency meets the eligibility criteria, it will receive a SAVE program checklist, which among other things, will require it to electronically file a list of all applicable legal authorities. An agency has thirty calendar days within which to return the checklist. SAVE will then conduct a legal review of the information provided to confirm that an agency has proper legal authority. Once an agency is determined to be eligible for the SAVE program, it will enter into a Memorandum of Agreement (MOA) and an Anticipated Collections Addendum with SAVE. Once enrolled in the SAVE program and assigned an account number, SAVE provides further instructions for accessing the online system and training materials on how to run verification queries.

Pursuant to section 50-36-1(j), “any and all errors and significant delays by SAVE shall be reported to the United States Department of Homeland Security.” Moreover, compliance with the GSICA by an agency or political subdivision includes taking “all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designed by the United States Department of Homeland Security or other federal agency . . .” O.C.G.A. § 50-36-1(m). An agency or political subdivision that takes all reasonable, necessary steps and submits all requested and required documentation and information, but has either not been given

⁵<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7a3414c0cee47210VgnVCM100000082ca60aRCRD&vgnnextchannel=7a3414c0cee47210VgnVCM100000082ca60aRCRD>.

access to the SAVE program or has not completed the process of obtaining access, shall not be liable for failing to use the SAVE program. *Id.*

Although it shall be unlawful for any agency to provide or administer any public benefit in violation of the GSICA, “no employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter.” O.C.G.A. § 50-36-1(o). Pursuant to H.B. 87, however, an agency head who knowingly and intentionally fails to comply with the section shall be in “violation of the code of ethics for government service,” subject to penalties and may be removed from office. O.C.G.A. § 50-36-1(o). The agency head may also be guilty of a high and aggravated misdemeanor. *Id.* Agency head is defined as “a director, commission, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.” O.C.G.A. § 50-36-1(a)(1). The Immigration Enforcement Review Board was established by H.B. 87 to accept and investigate complaints of failure to enforce Sections 13-10-91, 36-80-23, or 50-36-1 of the Georgia code. O.C.G.A. § 50-36-3. Further, the appropriations committee of each house of the General Assembly may consider noncompliance with the provisions of the GSICA in setting the state’s annual budget and appropriations. *See* O.C.G.A. § 50-36-1(n).

An agency is responsible for first determining whether it administers a “public benefit” as defined by the above-mentioned federal code sections and enrolling in the SAVE program. During the application process for a public benefit, a “secure and verifiable document” and an affidavit must be obtained from the applicant.

O.C.G.A. § 50-36-1(e)(1)-(2). In the event that an applicant for a public benefit executes an affidavit that he or she is a “qualified alien or nonimmigrant under the federal Immigration and Nationality Act, 18 years of age or older, and lawfully present in the United States,” an agency must submit the applicant’s alien number issued by the Department of Homeland Security or other federal immigration agency to SAVE. O.C.G.A. § 50-36-1(e)(2)(B); O.C.G.A. § 50-36-1(f). The affidavit is sufficient proof of an applicant’s lawful presence in the United States until proper verification has been obtained from SAVE. *See id.* However, such verification of lawful presence is not the equivalent of an eligibility determination. *Id.* An agency must consider the specific public benefit sought on a case-by-case basis and whether any exemptions apply prior to approving or denying a benefit or license to an applicant, whether lawful presence is established or not. *See* O.C.G.A. § 50-36-1(d).

V. CONCLUSION

The information provided in this report is far from exhaustive on the GSICA, PRWORA, and all the requirements therein. Further, federal and state law concerning the issues addressed in GSICA and PRWORA may change. This report will be updated and revised at least annually as required by section 50-36-1(a)(4)(B) of the GSICA.