FEDERAL LEGAL SCAN

National Health Law Program

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Overview

One aim of the RWJF EPSDT project is to place the broad EPSDT benefit into the spectrum of federal entitlements and protections that have great potential to improve child health. NHeLP has collaborated with legal experts who work with other federal programs that provide benefits that impact child health but most of which are not funded by EPSDT, including housing, food and nutrition, education, environmental, consumer, and disability. NHeLP has partnered with those legal experts to produce a comprehensive scan of how the rights and benefits set forth in the federal safety net laws interact and overlap with the broad EPSDT benefit and how the universe of these laws can be maximized to improve child health on an individual and population-wide basis. The Federal Legal Scan will aid in defining where Medicaid responsibility and authority ends and the scope of other public benefit laws begin.

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Consumer Laws & Rights

Bankruptcy Laws

Department of Justice (United States Trustee Program) and Federal Bankruptcy Courts

I. Establishing Statutory Provision(s)

11 U.S.C. §§ 101-1532 (Bankruptcy Code). Federal Rules of Bankruptcy Procedure 1001 to 9037 (Bankruptcy Rules).

II. General Description of the Program

The bankruptcy laws are intended to provide a "fresh start" for the debtor and create equity among creditors. In many cases, bankruptcy is the only option that will bring order, rational planning and permanent, or at least temporary, relief to people who are under immense financial pressure. By protecting income and assets from creditors under certain circumstances, bankruptcy laws provide an effective means of leveling the playing field between debtors and creditors, and they can profoundly improve the wellbeing of individuals and families.

III. Eligibility Criteria for the Program

Any individual residing, domiciled, or having property or a place of business in the United States may file a petition to commence a chapter 7 or chapter 13 bankruptcy case. To be eligible, the individual must, with certain limited exceptions, have received a credit counseling briefing from an approved nonprofit budget and counseling agency within the 180 days before filing the bankruptcy petition. An individual filing a chapter 13 case, which permits the restructuring of debts, must also have "regular income." An infant or incompetent person may be a debtor in a bankruptcy case that is filed by a representative or next friend.

IV. Specific Services/Benefits/Rights Included in the Program

The Bankruptcy Code explicitly provides a private right of action for violations of the automatic stay. 15 U.S.C. § 362(k). A party may ask the court to remedy a violation of the discharge injunction. 15 U.S.C. § 105. There is a split of authority on the issue, whether § 524 provides an implied private right of action, or whether debtors may seek only the § 105 remedy. *See generally* National Consumer Law Center, Consumer Bankruptcy Law and Practice, § 15.5.5.7 (11th ed. 2016), updated at www.nclc.org/library.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Federal Rules of Bankruptcy Procedure 1001 to 9037 (Bankruptcy Rules). The Federal Rules of Bankruptcy Procedure were accompanied by advisory committee explanatory notes, as was each amendment to those rules.

The Executive Office for United States Trustees has adopted regulations governing various subjects within the ambit of its authority, including requirements for credit counseling agencies and providers of financial education. 28 C.F.R. Part 58. The Judicial Conference and the Administrative Office of the United States Courts have adopted bankruptcy case policies on several topics, including guidance on implementing the chapter 7 fee waiver provisions and the protection of tax information in bankruptcy cases. Judicial Conference of the United States, Guide to Judiciary Policy, Ch 8: Bankruptcy Case Policies, §§ 820 and 830.

VII. Significant Cases

None.

VIII. References to Medicaid

None found in federal code. State laws differ regarding the imposition and collection of *Medicaid* provider fees. Medicaid is usually considered an exempt asset during bankruptcy.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Consumer Bankruptcy Law and Practice (11th ed. 2016), updated at www.nclc.org/library.

Electronic Fund Transfer Act

Consumer Financial Protection Bureau (CFPB)

I. Establishing Statutory Provision(s)

15 U.S.C. §§ 1693 to 1693r. Regulation E, 12 C.F.R. Part 1005. Regulation II, 12 C.F.R. Part 235.

II. General Description of the Program

EFTA is intended to protect individual consumers engaging in electronic fund transfers, including transfers through ATMS, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans, and remote banking programs. The Act prohibits compulsory electronic fund transfer as a condition of the extension for credit, and it grants the right to cancel a periodic fund transfer so that the consumer can prioritize expenses. The Act also requires consumers to opt in before overdraft fees can be imposed on bank account overdrafts. EFTA includes provisions that allow consumers to challenge errors and have them corrected within a 45-day period (with limited financial penalties), and the Act requires banks to provide certain information to consumers, including information explaining how consumers can limit liability in the case of a lost or stolen ATM or debit card. Regulation E covers prepaid cards used for federal government cash benefits,

most non-needs-based state government benefits, and payroll cards used by employers to pay wages.

III. Eligibility Criteria for the Program

EFTA generally refers to a "consumer account" and provides protections to a "consumer," which is defined as a "natural person." The account must be established primarily for personal, family or household purposes.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Private enforcement for violations is available, including actual damages, statutory damages, attorneys fees and costs. 15 U.S.C. § 1693m.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Regulation E, 12 C.F.R. Part 1005. Regulation II, 12 C.F.R. Part 235.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Consumer Banking and Payments Law chapters 5 and 7 (5th ed. 2013), updated at www.nclc.org/library.

Equal Credit Opportunity Act

Department of Justice. Consumer Financial Protection Bureau.[1]

[1] The Department of Justice (DOJ) may file a lawsuit under ECOA where there is a pattern or practice of discrimination. The CFPB has rule-writing authority over virtually every type of entity in the financial services area, including banks, credit unions, mortgage lenders, credit bureaus, automobile finance companies, debt collectors, student lenders, and payday lenders. Automobile dealers themselves are generally exempt from CFPB authority. The CFPB also has full enforcement authority over banks and credit unions with $10 billion or more in assets (and all of their subsidiaries). In addition to enforcement authority, the CFPB also has regulatory supervision and examinations for banks and credit unions with $10 billion or more in assets. For other banks and credit unions, federal bank regulators retain supervision responsibility, but the CFPB can participate in examinations and seek information on a sampling basis. The CFPB has supervision authority over the same non-banks under its enforcement authority: the mortgage industry, private education and payday lenders, the larger participants in other

I. Establishing Statutory Provision(s)

15 U.S.C. § 1691c; Regulation B, 12 C.F.R. 1002.1, and 12 C.F.R. Part 1002, Appendix A.

II. General Description of the Program

The ECOA establishes a general rule that creditors cannot discriminate in any way against any applicant in any stage of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, receipt of public assistance income, or the exercise of rights under the Consumer Credit Protection Act (which includes TILA, the FCRA and the Fair Debt Collection Practices Act).

III. Eligibility Criteria for the Program

Only applicants are protected under most ECOA provisions. The term "applicant" is defined as "any person who applies to a creditor directly for an extension, renewal, or continuation of credit or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit."

IV. Specific Services/Benefits/Rights Included in the Program

markets, and those shown to pose risks to consumers. The Federal Trade Commission's (FTC) primary jurisdiction for enforcing the ECOA was moved to the CFPB, but most dealers of automobiles, motorcycles, boats, recreational vehicles, and motor homes are exempt and stay under FTC authority. While the FTC no longer has ECOA authority over many lenders, it retains authority to enforce the FTC Act against those entities. Until the passage of the Dodd-Frank Act, the Federal Reserve Board (FRB) played the most important role in setting ECOA standards by promulgating regulations and staff interpretations of the rule. The CFPB now also has that role, although the FRB retains jurisdiction over smaller banks previously under its jurisdiction, and the FRB version of Regulation B is still in place.

The ECOA delegates specific enforcement authority to nine different federal agencies, each having jurisdiction over a particular type of credit institution (such as federal banks and state banks). These agencies monitor creditors for their compliance with the ECOA, which requires such agencies to refer matters to the DOJ when there is reason to believe that a creditor is engaged in a pattern or practice of discrimination that violates the Act. Here is a list of banking regulators other than the CFPB and their areas of responsibility (subject to the previous discussion on the shift of authority to the CFPB): (1) the Comptroller of the Currency for national banks and federal branches of foreign banks; (2) the Federal Reserve Board (FRB) for member banks of the Federal Reserve System (other than national banks) and foreign bank branches (other than foreign bank federal and insured state branches); (3) the Federal Deposit Insurance Corporation (FDIC) for banks insured by the FDIC (other than member banks of the Federal Reserve System) and insured state branches of foreign banks; (4) the National Credit Union Administration for federal credit unions; (5) the Secretary of Transportation for carriers regulated by the Surface Transportation Board and for regulated air carriers; (6) the Secretary of Agriculture for activities related to the Packers and Stockyards Act; (7) the Farm Credit Administration for federal land banks and associations, federal intermediate credit banks, and production credit associations; (8) the Securities and Exchange Commission for brokers and dealers; and (9) the Small Business Administration for small business investment companies. Generally speaking, ECOA violations may be enforced with the same remedies and powers that these agencies possess for other matters.

Enforcement: Private enforcement available. Remedies available under the ECOA include actual damages, punitive damages (up to a maximum of $10,000 in an individual action), equitable relief, and attorney fees. 15 U.S.C. § 1691e.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Regulation B, 12 C.F.R. Part 1002. Official Interpretations of Regulation B, 12 C.F.R. Part 1002, Supplement I.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Credit Discrimination (6th ed. 2013), **updated** at www.nclc.org/library.

Fair Credit Reporting Act

Consumer Financial Protection Bureau (CFPB). Federal Trade Commission. Federal Reserve Board, OCC, NCUA, Securities and Exchange Commission (SEC) and Commodities Futures Trading Commission (CFTC).

I. Establishing Statutory Provision(s)

15 U.S.C. §§ 1681 to 1681x. Regulation V, 12 C.F.R. Part 1022.

II. General Description of the Program

The FCRA aims to protect consumers' privacy and reputations by placing various obligations on people and entities that use or disseminate credit or other covered information about consumers. Consumer reporting agencies must adopt reasonable procedures to ensure the maximum possible accuracy of the information they disseminate and that the information is furnished only to users with certain permissible purposes. They must conduct reasonable investigates when consumers dispute errors in such information. Additionally, the FCRA governs an inquiry into an employee's background by an employer, or potential employer, including criminal histories provided by third

party databases. Other covered entities include companies that conduct tenant screening for landlords and check-writing history databases used for bank account approval screenings.

Two separate provisions of the FCRA permit government agencies to obtain consumer reports for use in connection with determining ability to pay and the appropriate level of child support awards. The first allows releases to child support enforcement agencies, which may be state or local. The second applies to the single state agency that administers the federal child support enforcement state plan.

III. Eligibility Criteria for the Program

The FCRA applies to "consumers," and the definition of the term includes only "natural persons."

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Private enforcement available. Any person who violates the FCRA, including consumer reporting agencies, users of consumer reports, and those who furnish information to consumer reporting agencies, may be liable for damages, as well as reasonable attorney fees. However, some of the FCRA's provisions may be enforced only by government officials and state attorneys general, and not by the injured parties via private action. 15 U.S.C. §§ 1681n through 1681p.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Regulation V, 12 C.F.R. Part 1022. 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations ("FTC Staff Summary"). The CFPB may issue guidance similar to the Staff Commentary, given that the Dodd-Frank Act granted the CFPB broad rulemaking authority over the FCRA.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Fair Credit Reporting (8th ed. 2013), updated at www.nclc.org/library.

Fair Debt Collection Practices Act

Consumer Financial Protection Bureau (CFPB)

I. Establishing Statutory Provision(s)

15 U.S.C. §§ 1692 to1692p. Regulation F, 12 C.F.R. Part 1006.

II. General Description of the Program

The FDCPA establishes general standards of proscribed conduct, defines and restricts abusive collection acts (in detail), and provides specific rights for consumers. These prohibitions protect consumers from invasions of privacy, harassment, abuse, false or deceptive representations, and unfair or unconscionable collection methods in the collection of debts by "debt collectors" as defined by the FDCPA. (Recent decisions of the U.S. Supreme Court have excluded some debt buyers and collectors collecting for government agencies.) Specific prohibited debt collection acts include late night or repetitive phone calls and false threats of legal action. The Act gives a consumer the right to require a collector to stop all collection contacts or to deal with a consumer's attorney when the consumer has one. It gives a consumer the right to require a collector to verify the existence, legality, or amount of the debt it is attempting to collect. The courts require strict adherence to the Act's explicit terms to accomplish the remedial and preventative goals of Congress.

III. Eligibility Criteria for the Program

Some provisions of the FDCPA apply broadly to protect "persons" and others are limited to protecting "consumers." The term "consumer" applies not only to persons obligated on debts, but also to persons "allegedly," but not actually obligated, to pay the debt. Many provisions also protect "persons," so that the FDCPA may protect individuals, such as relatives and roommates who are affected by debt collection misconduct even though they were not even alleged by the debt collector to owe the debt.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Private enforcement available. The Act is privately enforceable, and remedies include actual damages, statutory damages, attorney fees, and costs. 15 U.S.C. § 1692k.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

The CFPB provides its interpretation of the FDCPA in a number of ways s including amicus briefs, consent orders, guidance, and reports. The FTC also interprets the FDCPA through amicus briefs (often jointly issued with the CFPB), consent orders, and reports. As of September 1, 2017, there are

no regulations issued by the CFPB interpreting the FDCPA. However, proposed regulations are expected soon.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Fair Debt Collection (8th ed. 2014), **updated** at www.nclc.org/library.

Fair Housing Act

Department of Housing and Urban Development (HUD). The Department of Justice may bring suit on behalf of individuals based upon referrals from HUD.

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 3601 to 3631. 24 C.F.R. Part 100.

II. General Description of the Program

The FHA prohibits discrimination in residential real-estate-related transactions and prohibits discrimination in the terms or conditions of the sale or rental of a dwelling. Both section 3604 and section 3605 of the Act prohibit discrimination on the basis of race, color, religion, national origin, sex, familial status, and handicap.

The FHA (with some exceptions) prohibits housing discrimination against individuals who have children under the age of 18. This provision of the Act applies whether the applicant is the parent, a person having legal custody of a child, or a designee of the parent or guardian who has written permission for custody. The FHA also extends protection to any person who is pregnant or is in the process of securing legal custody of a child who has not attained the age of 18.

III. Eligibility Criteria for the Program

Any party aggrieved by discrimination can bring an action under the FHA.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Private enforcement available. Remedies under the FHA include actual damages, punitive damages (but unlike the ECOA, there is no limit on the size of punitive damages awards), equitable relief, and attorney fees. 42 U.S.C. § 3613;

Any entity, including individuals and community groups can file a fair housing complaint with HUD. The agency will investigate the complaint and attempt conciliation in every fair housing case. The choice to conciliate the complaint is completely voluntary on the part of both parties. Any conciliation agreement signed by HUD must protect the public's interests. 42 U.S.C.A § § 3602, 3610; 24 C.F.R. § §103.9, 103.300 through 103.320.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

24 C.F.R. Part 100.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Credit Discrimination (6th ed. 2013), updated at www.nclc.org/library.

Federal Housing Administration Rules Fostering Home Ownership

Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

12 U.S.C. §§ 1701 to 1701z-15. 24 C.F.R. §§ 203.500 to 203.681.

II. General Description of the Program

The FHA administers a variety of single-family mortgage insurance programs designed to make homeownership more readily available. These programs operate through HUD-approved banks, savings and loan associations, and mortgage companies. The lenders fund the mortgage, which HUD insures; HUD does not provide direct loans or financial assistance to purchase a home. FHA-insured lenders may not initiate foreclosure without completing specific loss mitigation steps found in federal regulations. While HUD does not guarantee an alternative for foreclosure for every FHA-insured borrower, lenders are required to review all loans for possible alternatives to foreclosure.

A complete list of HUD's current single-family housing programs can be found at http://portal.hud.gov.

III. Eligibility Criteria for the Program

Consumers.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: While courts in judicial foreclosure states have consistently upheld the defensive use of FHA-regulations, courts in non-judicial foreclosure states have not provided the same consistent protection. Borrowers have had no luck directly suing under the statute or the regulations, but courts have become more open to contract-based claims, because the mortgage documents themselves typically establish that lenders are required to investigate alternatives to foreclosure. *See, generally,* National Consumer Law Center, Foreclosures and Mortgage Servicing.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

The specific steps that FHA-insured lenders must take for loans in default are found at 24 C.F.R. §§ 203.500 to 203.681. In addition to regulations, HUD has issued handbooks, mortgagee letters, and FAQs. HUD has promulgated a handbook that discusses the various types of guidance and explains their roles, and it has also published sections of its Single Family Housing Policy Handbook, which HUD claims is "consolidated, consistent, and comprehensive source of FHA Single Family Housing policy." See U.S. Dep't of Hous. & Urban Dev. Administration of Insured Home Mortgages, Handbook 4000.1. The default servicing section of the handbook became effective on March 14, 2016, and it superseded several mortgagee letters that had contained significant loss mitigation guidance.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Foreclosures and Mortgage Servicing chapter 6 (5th ed. 2014), updated at www.nclc.org/library.

Federal Trade Commission Act

Federal Trade Commission

I. Establishing Statutory Provision(s)

15 U.S.C. §§ 41 to 58.

II. General Description of the Program

The FTC Act prohibits unfair methods of competition and unfair or deceptive acts and practices. Although there is no private right of action under the FTC Act itself to challenge unfair or deceptive practices or trade regulation rules (TRR) violations, an FTC TRR defining unfair or deceptive practices provides guidance in interpreting unfair or deceptive state UDAP statutes, and state UDAP statutes generally provide strong private remedies. Manufacturers and sellers, including those that make and sell children's products, must comply with advertising laws and regulations. Failure to comply with such laws and regulations can result in expensive enforcement actions, injunctions, corrective advertising, direct notifications to consumers, and civil penalties. Some of the more important FTC rules include:

- Children's Online Privacy Protection Rule ("COPPA")(16 C.F.R. Part 312). COPPA imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.
- Contact Lens Rule (16 C.F.R. Part 315). The Contact Lens Rule contains two key requirements. The first requirement is that contact lens prescribers (i.e., optometrists and ophthalmologists) must provide patients with a copy of their contact lens prescriptions at the completion of a contact lens fitting. The second requirement is that a contact lens seller cannot provide contact lenses to its customer unless the seller either obtains a copy of the prescription or verifies the prescription information with the prescriber through procedures set forth in the rule.
- Cooling-off Period for Sales Made at Home or Other Locations (16 C.F.R. Part 429). The Cooling Off Rule provides that it is unfair and deceptive for sellers engaged in "door-to-door" sales valued at more than $25 to fail to provide consumers with disclosures regarding their right to cancel the sales contract within three business days of the transaction.
- Credit Practices (16 C.F.R. Part 444). This rule provides prohibitions against confessions of judgment and wage assignments, taking security interests in certain household goods, and prohibits the pyramiding of late charges.
- Advertising of Warranties and Guarantees (16 C.F.R. Part 239). Advertising must tell the truth and not mislead consumers, and claims must be substantiated.
- Deceptive Pricing (16 C.F.R. Part 233). Advertising must be truthful and non-deceptive; advertisers must have evidence to back up their claims; and advertisements cannot be unfair.

- Disposal of Consumer Report Information and Records (16 C.F.R. Part 682). This rule requires businesses and individuals that maintain or otherwise possess consumer reports and records for a business purpose to take appropriate measures to dispose of sensitive information derived from such consumer reports and records.
- Eyeglass Rule (16 C.F.R. Part 456). The Eyeglass Rule requires that optometrists and ophthalmologists provide patients a copy of their prescription after the completion of an eye examination without extra cost. In addition, the rule prohibits optometrists and ophthalmologists from conditioning the availability of an examination on a requirement that patients agree to purchase any ophthalmic goods.
- Financial Privacy Rule (16 C.F.R. Part 313). The regulations require financial institutions to provide particular notices and to comply with certain limitations on disclosure of nonpublic personal information. A financial institution must provide a notice of its privacy policies and practices with respect to both affiliated and nonaffiliated third parties, and allow the consumer to opt out of the disclosure of the consumer's nonpublic personal information to a nonaffiliated third party if the disclosure is outside of the exceptions.
- Funeral Industry Practices Rule (16 C.F.R. 453). The Funeral Rule requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state price and descriptions, but also contain specific disclosures. The "General Price List" (GPL) must list all prices for funeral goods and services offered by the funeral provider, although separate price lists may be developed for caskets and outer burial containers. The GPL must contain four disclosures:
- Holder in Due Course Rule (16 C.F.R. Part 433). The Preservation of Consumers' Claims and Defenses [known as the Holder in Due Course Rule] protects consumers when merchants sell a consumer's credit contracts to other lenders. Specifically, it preserves consumers' right to assert the same legal claims and defenses against anyone who purchases the credit contract, as they would have against the seller who originally provided the credit.
- Mail, Internet, or Telephone Order Merchandise Rule (16 C.F.R. Part 435). This rule, issued in 1975, requires sellers who solicit buyers to order merchandise through the mail, via the Internet, or by phone to have a reasonable basis to expect that the sellers can ship within the advertised time frame, or, if no time frame is specified, within 30 days. The Rule also requires that, when a seller cannot ship within the promised time, the seller must obtain the buyer's consent to a delay in shipping or refund payment for the unshipped merchandise.
- Private Vocational and Distance Education Schools (16 C.F.R. Part 254). The Vocational School Guides are intended to advise proprietary businesses offering vocational training courses, either on the school's premises or through distance education, how to avoid unfair or deceptive practices in connection with the advertising, promotion, marketing, or sale of their courses or programs.
- Rebuilt, Reconditioned and Other Used Automobile Parts (16 C.F.R. Part 20). The Guides prohibit misrepresentations that a part is new or about the condition, extent of previous use, reconstruction, or repair of a part. Previously used parts must be clearly and

conspicuously identified as such in advertising and packaging, and, if the part appears new, on the part itself.

- Retail Food Store Advertising and Marketing Practices (Unavailability Rule) (16 C.F.R. Part 424). The Unavailability Rule prohibits food retailers from advertising products at a stated price unless the products are in stock and available during the effective period of the advertisement, or the ad discloses that supplies are limited or available only at some outlets. It is not a violation if the retailer meets other conditions, such as offering a "rain check" for the advertised products, or a comparable product at the advertised price.
- Safeguards Rule (16 C.F.R. Part 314). The Safeguards Rule requires financial institutions under FTC jurisdiction to have measures in place to keep customer information secure. In addition to developing their own safeguards, companies covered by the Rule are responsible for taking steps to ensure that their affiliates and service providers safeguard customer information in their care.
- Telemarketing Sales Rule (16 C.F.R. 310). The Telemarketing Sales Rule, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.
- Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (16 C.F.R. Part 308). The Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (the "900-Number Rule" or "Pay-Per Call Rule") was adopted by the Commission pursuant to the requirements of the Telephone Disclosure and Dispute Resolution Act of 1992. The Pay-Per-Call Rule, which became effective on November 1, 1993, covers the advertising and operation of pay-per-call services, as well as billing and collection procedures for those services.
- Used Car Rule (16 C.F.R. Part 455). The Used Car Rule, formally known as the Used Motor Vehicle Trade Regulation Rule, has been in effect since 1985. It requires car dealers to display a window sticker, known as a Buyers Guide, on the used cars they offer for sale. The Buyers Guide discloses whether the dealer offers a warranty and, if so, its terms and conditions, including the duration of the coverage, the percentage of total repair costs the dealer will pay, and which vehicle systems the warranty covers.

III. Eligibility Criteria for the Program

Any aggrieved consumer.

IV. Specific Services/Benefits/Rights Included in the Program

Private enforcement available *if* a state UDAP law provides one. Otherwise enforcement is through the FTC, and in some situations through state attorneys general. *See generally,* National Consumer Law Center, Unfair And Deceptive Acts and Practices, §§ 3.2.6, 3.4.5.1, App. A (9th ed. 2016) updated at www.nclc.org/library.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

See generally Federal Trade Commission, *Advertising to Kids and the FTC: A Regulatory Retrospective That Advises the Present* (2004) ("The Federal Trade Commission (FTC) has a long history of protecting children from unfair and deceptive marketing practices. In doing so, the Commission has recognized the special nature of the child audience. For example, children may be deceived by an image or a message that likely would not deceive an adult. Some of the agency's efforts have been successful, while other have not. This article explores the history of these efforts.").

See also Jennifer L. Pomeranz, *Federal Trade Commission's Authority to Regulate Marketing to Children: Deceptive vs. Unfair Rulemaking*, 21 Health Matrix 521 (2011) (analyzing "the Commission's authority to regulate food and beverage marketing directed at children under its jurisdiction over unfair and deceptive acts and practices to determine which avenue is most viable"); Jennifer Pomeranz, *Television Food Marketing to Children Revisited: The Federal Trade Commission Has the Constitutional and Statutory Authority to Regulate*, 38 J.L. Med & Ethics 98 (2010).

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Federal Deception Law (3d ed. 2017) and Unfair and Deceptive Acts and Practices (9th ed. 2016), **updated** at www.nclc.org/library.

Lifeline

The Federal Communications Commission (FCC) has jurisdiction over the Universal Service Programs (USP).The Universal Service Administrative Company (USAC) is responsible for administering the USP pursuant to FCC regulations.

I. Establishing Statutory Provision(s)

47 U.S.C. § 254 (Universal Service). The Lifeline Program Rules are found at 47 C.F.R. §§ 54.400 to 54.423.

II. General Description of the Program

Affordable voice and broadband Internet service helps facilitate the delivery of health care to low-income families. With Lifeline service, a family can contact health care providers, find healthcare information on the web, and reach emergency services. For the healthcare provider, a family with Lifeline can have a reliable and constant phone number where it can be reached, the ability to be reached by text, access to some basic Internet service, etc. The federal Lifeline program provides eligible low-income households with a $9.25 discount off of qualifying voice, broadband Internet or a bundle. Low-income consumers living on tribal lands can receive an additional $25 discount. Carriers must receive an "eligible telecommunications designation" from a state or the FCC to participate in the Lifeline program. Voice and broadband Internet offerings must meet the Lifeline minimum standards to qualify for the Lifeline reimbursement. Many wireless Lifeline providers currently have a free Lifeline service offering that includes a free device (not covered by the Lifeline fund). Currently, almost 70 percent of Lifeline subscribers are receiving broadband Internet service per the Lifeline minimum standards. The minimum standards are designed to increase over time to keep pace with the changes in communications usage of the general population. The wireless Lifeline voice plans must provide at least 500 minutes of voice a month and on December 1, 2017 that amount increases to 750 minutes. Wireless Lifeline broadband currently must be at least 3G and have a usage allowance of 500 MB. December 2017 will see an increase to a usage allowance on 1GB.

Lifeline reimburses eligible telecommunications carriers (for example, a wireless phone company) for providing discounted voice and/or broadband Internet service to qualifying low-income individuals.

FCC rules prohibit more than one Lifeline service per household.

III. Eligibility Criteria for the Program

There is a federal baseline for eligibility that is the same in all of the states and territories. To participate in the program, subscribers must either have an income that is at or below 135% of the federal poverty guidelines or participate in Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit. There is an enhanced Lifeline benefit for low-income households on tribal lands and, in addition to the qualifying programs listed above, there are additional tribal programs that confer eligibility: Bureau of Indian Affairs general assistance, tribally administered TANF, Head Start (where household meets the income qualifying standard), or the Food Distribution Program on Indian Reservations.

The Lifeline benefit is limited to "one-per-household" and defines "household." Under the Lifeline rules, a "household" is defined as "any individual or group of individuals who are living together at the same address as one economic unit. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians."

The 2016 Lifeline Modernization Order centralizes Lifeline eligibility determinations with the creation of the National Verifier (NV). The National Verifier process begins carefully with a limited

number of states (five states) in December 2017. By the end of 2018, half the states will be in the National Verifier, and by the end of 2019 all the states and territories will be migrated to the National Verifier process. With the National Verifier, low-income households will be able to apply directly to the National Verifier for Lifeline eligibility and then shop around for a Lifeline provider and service. Low-income households will also be able to find a provider and service first and then enroll in Lifeline through the carrier. Currently, consumers in almost all the states apply for Lifeline through their carrier and the carrier performs the eligibility determination by collecting information and reviewing documentation from the consumer.

When a consumer applies for Lifeline there is an automatic identity authentication check and a check to see if the consumer already has a Lifeline benefit (a duplicates check). There is already a national, centralized process, the National Lifeline Accountability Database (NLAD) for these two checks. The NLAD will be integrated with the NV process.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Lifeline contains no private enforcement mechanism.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

The FCC issues Lifeline orders from time to time. On February 6, 2012, the FCC released its Lifeline Reform Order (FCC 12-11), which made significant changes to the Lifeline program. On April 27, 2016, the FCC released its Lifeline Modernization Order (FCC 16-38), which made significant changes to the Lifeline program including the addition of broadband as a covered service, minimum standards for voice and broadband, the creation of a National Verifier to handle all eligibility determinations and changes to the eligibility criteria.

VII. Significant Cases

None.

VIII. References to Medicaid

To participate in the program, subscribers must either have an income that is at or below 135% of the federal poverty guidelines or participate in certain assistance programs. One of the specified programs is Medicaid. *See* 47 C.F.R. § 54.409(a)(2). Medicaid is one of the most common programs used to qualify consumers for Lifeline.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Access to Utility Service chapter 11 (5th ed. 2011), updated at www.nclc.org/library.

Magnuson-Moss Warranty Act

Federal Trade Commission (FTC)

I. Establishing Statutory Provision(s)

15 U.S.C. § 2301 *et seq*. 16 C.F.R. Part 700.

II. General Description of the Program

The Magnuson-Moss Warranty Act governs the disclosure of written consumer product warranty terms and conditions. The Act is intended to protect consumers from deceptive warranty practices. Consumer products are not required to have warranties, but if one is given, it must comply with the Magnuson–Moss Act. Any warrantor warranting a consumer product to a consumer by means of a written warranty must disclose, fully and conspicuously, in simple and readily understood language, the terms and conditions of the warranty to the extent required by rules of the Federal Trade Commission. The FTC has enacted regulations governing the disclosure of written consumer product warranty terms and conditions on consumer products actually costing the consumer more than $5. Under the terms of the Act, ambiguous statements in a warranty are construed against the drafter of the warranty.

Likewise, service contracts must fully, clearly, and conspicuously disclose their terms and conditions in simple and readily understood language.

Warrantors cannot require that only branded parts be used with the product in order to retain the warranty. This is commonly referred to as the "tie-in sales" provisions, and is frequently mentioned in the context of third-party computer parts, such as memory and hard drives.

III. Eligibility Criteria for the Program

See above.

IV. Specific Services/Benefits/Rights Included in the Program

The warranties themselves may require mediation and/or arbitration as a first step toward settling disputes. Private enforcement is also available so long as the amount in controversy is over $50,000 or a class action if the number of class plaintiffs is greater than 100. Prevailing plaintiffs are entitled to attorneys fees. 15 U.S.C. § 2310(d).

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Consumer Warranty Law (5th ed. 2015), **updated** at www.nclc.org/library.

Military Lending Act

Implemented by the Department of Defense (DOD), and Enforced by the Consumer Financial Protection Bureau (CFPB) and Other Federal Regulators.

I. Establishing Statutory Provision(s)

10 U.S.C. § 987. 32 C.F.R. Part 232.

II. General Description of the Program

The MLA offers service-members and their families protections from certain longstanding abusive lending practices. The Act imposes a 36% APR cap, bans mandatory arbitration, provides for military-specific disclosures, and imposes other substantive restrictions. For loans entered into before October 3, 2016, the credit may not be secured with a check, title to a personal vehicle, access to a financial account, or military allotment, though credit at or under 36% may require electronic payment, direct deposit, or a security interest in funds deposited after or in connection with the credit. The military APR must be disclosed orally and in writing, though the disclosure is not required in advertisements. Credit may not be rolled over or renewed except on terms more favorable to the borrower. Prepayment penalties are banned, and the waiver of legal rights and onerous notice requirements, in case of disputes, are also banned. For consumer credit transactions consummated on or after October 3, 2016 or for accounts for open-end consumer credit established on or after October 3, 2017, or later in the Secretary's discretion (but no later than October 3, 2018), the credit may not be secured with a check, title to a personal vehicle (except loans financed by a bank, savings association, or credit union), access to a financial account or military allotment (except loans financed through a military welfare society or service relief society), though credit at or under 36% may require electronic payment, direct deposit, or a security interest in funds deposited after and in connection with the credit. The military APR must be disclosed orally and in writing, though the disclosure is not required in advertisements. Credit may not be rolled over or renewed. Prepayment penalties are banned, and the waiver of legal rights and onerous notice requirements, in case of disputes, are also banned. The creditor cannot require as a condition for

the extension of consumer credit that the covered borrower establish an allotment to repay the obligation.

III. Eligibility Criteria for the Program

The MLA applies only to "consumer credit" that is extended to active duty members of the military and their dependents.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement*:* A private right of action is available for credit extended after January 2, 2013. Violators are liable for actual and punitive damages, costs, and reasonable attorney fees. 10 U.S.C. § 987(5).

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

32 C.F.R. Part 232.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Consumer Credit Regulation chapter 2 (2d ed. 2015), updated at www.nclc.org/library.

Protection of Federal Benefits From Seizure by Credit

Social Security Administration (SSA). Department of Veterans Affairs (VA). Department of the Treasury.

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 407(a), 1383(d)(1) (Social Security Act). 38 U.S.C. § 5301 (Veterans' Benefits). 31 C.F.R. §§ 212.1 to 212.12 (Treasury Rule regarding Garnishment of Accounts Containing Federal Benefit Payments).

II. General Description of the Program

Several federal laws authorizing federal payments to individuals provide fundamental protections against seizure of those benefits for benefit recipients of Social Security retirement and disability income, SSI benefits, VA benefits, federal Railroad Retirement, federal Railroad Unemployment and Sickness, federal Civil Service Retirement System, and federal Employee Retirement System benefits. The laws state that these benefits are not transferable or assignable, and forbid "execution, levy, attachment, garnishment or other legal process" to reach benefits paid or payable to recipients.

Additionally, a rule promulgated by the U.S. Treasury Department, effective May 1, 2011, vastly strengthens protections for these exempt federal benefits when they have been deposited into bank accounts (with some exceptions). The rule prohibits the practice of denying beneficiaries access to these essential funds. It requires all banks to determine whether certain exempt federal benefits have been electronically deposited within the preceding two months. If they have, the bank must protect whatever amount was deposited during that period. The rule protects benefits paid under any of the following programs: Social Security, SSI, VA, federal Railroad Retirement, federal Railroad Unemployment and Sickness, federal Civil Service Retirement System, and federal Employee Retirement System. The rule nullifies any requirement that the debtor take any affirmative step to assert an exemption for the protected amount. The bank has an unconditional obligation to make the protected amounts available to the debtor.

III. Eligibility Criteria for the Program

Any consumer/debtor who is a recipient of one of the named federal benefits.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement*:* Private enforcement is not available for violations of any of these statutory protections or for violating the Treasury Rule. However, collection activities in violation of these protections may violate either the Fair Debt Collection Practices Act, state debt collection statutes, and state unfair and deceptive trade practices statutes. *See,* National Consumer Law Center, Collection Actions, § 14.3 (4th ed. 2017) **updated** at www.nclc.org/library.

V. Significant Statutory Provisions

42 U.S.C. §§ 407(a), 1383(d)(1) (Social Security Act). 38 U.S.C. § 5301 (Veterans' Benefits).

VI. Key Regulatory & Major Policy Provisions

31 C.F.R. §§ 212.1 to 212.12 (Treasury Rule regarding Garnishment of Accounts Containing Federal Benefit Payments).

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Collection Actions chapter 12 (3d ed. 2014).

Protections for Remittances

Consumer Financial Protection Bureau (CFPB)

I. Establishing Statutory Provision(s)

15 U.S.C. § 16930-1. 12 C.F.R. § 5601. Regulation E, 12 C.F.R, Part 1005. Official Interpretations of Regulation E, 12 C.F.R. Part 1005, Supplement I.

II. General Description of the Program

A new section of the EFTA provides protections for consumers sending "remittances" or payments overseas; the term "remittance transfer" covers most electronic transfers of funds sent by consumers in the United States to recipients in other countries. The protections of the law, and the CFPB's regulations, include the following requirements:

- Disclosures must be provided in writing prior to initiation of the remittance.
- Disclosures must be in English and in each foreign language principally used by the remittance transfer provider, or any of its agents, to advertise, solicit or market at that office.
- Consumers must be permitted to cancel a remittance transfer within 30 minutes.
- Written receipts must be provided setting out the amount of money to be remitted and the amount to be received in the foreign currency, as well as the date and the name of the recipient.
- Error resolution procedures must be disclosed to consumers, and must be followed when the consumer has suffered a loss in the remittance transfer process, allowing for cancellation, or refunds.
- Consumers can bring actions against providers for actual damages, statutory damages, costs and attorneys fees.

III. Eligibility Criteria for the Program

Rules are applicable to "remittance transfers" by consumers for personal, family, or household purposes that are made by covered "remittance transfer providers."

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Private enforcement for violations is available, including actual damages, statutory damages, attorneys fees and costs. 15 U.S.C. § 1693m.

V. Significant Statutory Provisions

15 U.S.C. § 16930-1.

VI. Key Regulatory & Major Policy Provisions

12 C.F.R. § 5601. Regulation E, 12 C.F.R. Part 1005. Official Interpretations of Regulation E, 12 C.F.R. Part 1005, Supplement I.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Consumer Banking and Payments Law section 6.5 (5th ed. 2013), updated at www.nclc.org/library.

Real Estate Settlement Procedures Act

Consumer Financial Protection Bureau (CFPB)

I. Establishing Statutory Provision(s)

12 U.S.C. §§ 2601 to 2617. Regulation X, 12 C.F.R. Part 1024.

II. General Description of the Program

RESPA is the primary federal law providing protections in relation to both settlements of residential mortgages and the relationship between homeowners and their mortgage servicers.

The settlement provisions in RESPA are intended to ensure that consumers in real estate transactions receive timely information about the nature and cost of the settlement process and to protect consumers from high settlement charges caused by abusive practices. To this end, the statute and the CFPB regulations require very specific disclosures about the settlement of home mortgages, and prohibit payments between providers of mortgage settlement services, in order to protect consumers.

The provisions regarding mortgage servicing and escrow accounts provide specific and enforceable rights to consumers when dealing with mortgage servicers, including:

- Regular notices of changes in escrow amounts.
- Rights to request information from mortgage servicers about the servicing and dispute account errors.
- Notices about eligibility for and application requirements for loan modifications and timing of foreclosures when loan modifications are pending.

III. Eligibility Criteria for the Program

RESPA applies to settlements involving "federally related mortgage loans," and the definition of this term is very broad. The effect is to cover most consumers who have a mortgage loan.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement*:* Some parts of RESPA explicitly provide a private right of action, while others must be enforced through other statutes or through the use of common law claims. 12 U.S.C. § § 2605(f), 2608.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Regulation X, 12 C.F.R. Part 1024. Official Interpretations of Regulation X, 12 C.F.R. Part 1024, Supplement I.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Mortgage Lending chapter 3 (2d ed. 2014) and Foreclosures and Mortgage Servicing chapter 3 (5th ed. 2014), **updated** at www.nclc.org/library.

Service-Members Civil Relief Act (SCRA)

U.S. Department of Justice. The Consumer Financial Protection Bureau (CFPB) indirectly enforces SCRA.

I. Establishing Statutory Provision(s)

50 U.S.C. §§ 3901 to 4026.

II. General Description of the Program

The SCRA provides certain protections from civil actions against service-members who are called to active duty, and it regulates interest rates in some situations. The SCRA provides that the interest rate on any obligation incurred by a person before entering into military service must be reduced to 6%. The rate reduction lasts as long as the person is on active duty, plus, for mortgages, it continues for a year after active duty ends. The SCRA primarily limits judicial collection tactics and enforcement of claims against active duty military personnel.

III. Eligibility Criteria for the Program

The SCRA applies to those in military service, defined to include the armed forces and the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service. To be entitled to the Act's protections, the service-member must either be in or recently released from "military service." Military service is defined in part as active duty. All service-members on active duty are entitled to the benefits of the Act, even if they are not stationed in a war zone or have not been mobilized. Certain protections under the SCRA apply only to those service-members who obtained mortgages prior to becoming active duty.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement*:* Private enforcement available. The SCRA allows a service-member to recover "any appropriate equitable or declaratory relief" and "all other appropriate relief, including money damages." 50 U.S.C. §§ 4042, 4043.

V. Significant Statutory Provisions

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Collection Actions chapter 7 (3d ed. 2014) and Consumer Credit Regulation chapter 2 (2d ed. 2015), **updated** at www.nclc.org/library.

Student Loan Protections Regarding Collection

U.S. Department of Education (ED)

I. Establishing Statutory Provision(s)

Most of the statutory authority for federal student assistance can be found at 20 U.S.C. §§ 1070–1099e. Federal Family Education Loan (FFEL) regulations are found at 34 C.F.R. Part 682. Direct Loan regulations are found at 34 C.F.R. Part 685.

The ED's current regulations specify that it may compromise, suspend, or terminate the collection of FFELs or Perkins loans in any amount. 34 C.F.R. § 30.70(h). Due to the parallel terms and conditions between FFELs and Direct loans, this provision should also apply to Direct loans. However, in practice, the ED has not applied this broad provision to Direct loans, FFELs, or Perkins loans. Instead, it uses the standards set out by the Department of Treasury for compromise of federal claims. 34 C.F.R. § 30.70(a) (referring to 4 C.F.R. § 103; regulations now found at 31 C.F.R. Part 902).

As of February 2017, existing regulations and new guidance from the ED provide for a process that borrowers who either have Direct loans or are willing and able to consolidate other federal student loans into Direct consolidation loans may use to submit borrower defense applications seeking full or partial discharges based on their school misconduct. Additionally, on November 1, 2016, the ED finalized new Direct loan borrower defense regulations that were scheduled to go into effect on July 1, 2017. However, the Department announced that it is delaying implementation of the new rules that were slated to take effect on July 1, 2017, and is planning a new round of rulemaking. The rules in place prior to July 1, 2017 are likely still operative.

Enforcement*:* Some defensive enforcement is available. The 1994 Direct loan borrower defense regulation states: "In any proceeding to collect on a Direct loan, the borrower may assert as a defense against repayment any act or omission of the school that would give rise to a cause of action against the school under applicable State law." 34 C.F.R. § 685.206(c)(1). Collection proceedings include, but are not limited to, debt collection litigation, tax offsets, wage garnishments, and other federal benefit offset proceedings. If the defense is successful, the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees. But, in practice, there are more effective ways to protect borrowers from collection. These include other discharge options, the ED's financial hardship exceptions, and getting out of default and into an income-driven repayment plan (see below). As of late 2017, borrower defense is unlikely to actually help most borrowers.

II. General Description of the Program

The programs authorized under Title IV of the Higher Education Act are the major source of federal student aid and create the primary means by which students (of all ages, including parents) who

otherwise could not afford it, pay for college. These programs, which include loans, grants, and work-study, allow families to finance their educations (regardless of their present inability to repay) so that they can earn credentials that qualify them for higher paying jobs and career fields, enabling them to support their families. Federal grants reduce the amount that the neediest families must borrow to attend college.

The HEA statutory discharges can be difficult to obtain due to restrictive regulations and bureaucratic roadblocks. However, they are attainable. There are three "school-related" discharges: closed school, false certification, and unpaid refund. The closed school discharge applies to Federal Family Education Loan Program loans ("FFELs"), federal Direct Loan Program loans, and Perkins Loan Program loans, received at least in part on or after January 1, 1986. Borrowers are entitled to a false certification loan discharge if they received at least part of an FFEL or Direct loan after January 1, 1986, and if their eligibility to borrow was falsely certified by the school. 20 U.S.C. § 1087(c).

A chapter 7 or 13 bankruptcy discharge eliminates all of a debtor's unsecured debts, with certain statutory exceptions. While student loans are technically unsecured debts subject to discharge, the Bankruptcy Code limits their dischargeability. Educational loans can be discharged only upon a finding by a court that repayment of the debt "will impose an undue hardship on the debtor and the debtor's dependents." (11 U.S.C. § 523(a)(8)). All courts of appeals except the First and Eighth circuits have adopted the three-prong test for determining undue hardship set forth in the Second Circuit's 1987 decision in *Brunner v. New York State Higher Education Services Corporation,* 831 F.2d 395 (2d Cir. 1987). The *Brunner* test requires a showing that (1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for the debtor and the debtor's dependents if forced to repay the student loans; (2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) the debtor has made good faith efforts to repay the loans. The Eighth Circuit has endorsed a "totality of circumstances" test for determining undue hardship. This test considers (1) the debtor's past, current, and reasonably reliable future financial resources; (2) the debtor's and the debtor's dependents' reasonable necessary living expenses; and (3) any other relevant facts and circumstances applicable to the bankruptcy case. In addition to allowing courts to consider a greater range of factors, the "totality of the circumstances" test does not require that the court review the debtor's past conduct for "good faith." In the First Circuit, lower courts may apply either the *Brunner* or the "totality of circumstances" tests for undue hardship. Most First Circuit courts have gravitated toward the "totality of circumstances" test. Regardless of the test used, courts must ultimately engage in the discretionary determination of when "hardship" becomes "undue." Courts are generally in agreement that "ordinary" or "garden variety" hardship, however defined, is simply not sufficient. On the other extreme are courts that require extraordinary circumstances such as the total physical incapacity of the debtor.

Enforcement*:* Some defensive enforcement is available. While the ED has the discretion to compromise or even write off all or part of a loan, it almost never does. Borrowers harmed by fraudulent schools may often qualify for discharges or may qualify for borrower defenses to repayment in rare cases.

Again, income-driven repayment plans are generally the most helpful plans to help student loan borrowers deal with problem student loans. If an individual is not yet in default, he or she should consider the range of affordable income-driven payment options. Income-based repayment went into effect on July 1, 2009. Congress amended the IBR statute to provide for a more generous repayment formula for borrowers who take out loans after July 1, 2014. Then in December 2012, the Department implemented PAYE, designed to accelerate implementation of the more generous repayment formula. Most recently, in December 2015, the Department implemented REPAYE to extend the more generous repayment formula to all student Direct loan borrowers regardless of their borrowing dates. There are currently five separate repayment plans tied to a borrower's income: the income-based repayment plan (IBR), income-contingent repayment plan (ICR), pay as you earn plan (PAYE), revised pay as you earn plan (REPAYE), and income-sensitive repayment plan (ISR). With the exception of the FFEL ISR plan, all of the income-driven plans work in a similar way. The income-driven repayment plan calculates the borrower's monthly payment using the borrower's income and, if the borrower is unable to repay the loan within a certain number of years, the remaining balance is forgiven. The major differences among these plans are the formulas they use to calculate the monthly payments and eligibility. Borrowers who repay through ICR, IBR, PAYE, or REPAYE (or any combination) will have any remaining balances forgiven after twenty or twenty-five years. With all income-driven repayment plans, the loan holder reviews the borrower's financial circumstances to recalculate the monthly payment amount each year. In addition to the annual review process, under IBR, PAYE, and REPAYE borrowers may request at any time that their loan servicer recalculate their payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income. Doing so resets the annual payment period.

III. Eligibility Criteria for the Program

Certain regulations apply to borrowers of federal loans. Eligibility for IBR, PAYE, and REPAYE is determined by three factors: (1) the type of loan, (2) when it was originated, and (3) whether the borrower has a partial financial hardship. Eligibility is overlapping but different for each plan. IBR is available for both FFELs and Direct loans, whereas PAYE and REPAYE are only available for Direct loans. Drilling down further into types of FFELs and Direct loans, Stafford loans (both subsidized and unsubsidized) and Graduate PLUS loans are eligible for these three plans, but Parent PLUS and Perkins loans are not.

IV. Specific Services/Benefits/Rights Included in the Program

See above.

V. Significant Statutory Provisions

See above.

VI. Key Regulatory & Major Policy Provisions

The ED periodically issues "Dear Colleague" letters and electronic announcements. These are available online on the Information for Financial Aid Professionals (IFAP) website.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Student Loan Law (5th ed. 2015), **updated** at www.nclc.org/library.

NCLC's Student Loan Borrower Assistance (SLBA) website can be found at www.studentloanborrowerassistance.org. The website contains extensive information in a consumer-friendly format. NCLC staff updates the site regularly by posting new advocacy reports, announcements from the ED, and relevant changes to the student loan laws.

Title IV of the Higher Education Act

U.S. Department of Education (ED)

I. Establishing Statutory Provision(s)

Most of the statutory authority for federal student assistance can be found at 20 U.S.C. §§ 1070 to 1099e. Federal Family Education Loan regulations are found at 34 C.F.R. Part 682. Direct Loan regulations are found at 34 C.F.R. Part 685. Regulations regarding student eligibility are found at 34 C.F.R. § 668.32.

II. General Description of the Program

The programs authorized under Title IV of the HEA are the major source of federal student aid and create the primary means by which students (of all ages, including parents) who otherwise could not afford it, pay for college. These programs, which include loans, grants, and work-study, allow families to finance their educations (regardless of their present inability to repay) so that they can earn credentials that qualify them for higher paying jobs and career fields, enabling them to support their families. Federal grants reduce the amount that the neediest families must borrow to attend college.

III. Eligibility Criteria for the Program

There are general eligibility criteria that apply to most federal student loan programs. In some cases, students must show financial need. To be eligible for federal student assistance, individuals must be enrolled as regular students in eligible programs. Prospective borrowers must be United States citizens or eligible non-citizens. Students convicted under federal or state law of the sale or possession of illegal drugs are suspended from federal financial assistance programs. Incarcerated students are not eligible for federal student loans, but they are eligible for certain grants. Students must also have a high school diploma or GED.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: No private remedies available in the statute for specific violations. However, some violations may give rise to remedies under state unfair and deceptive trade practices. *See*, National Consumer Law Center, Unfair and Deceptive Acts and Practices, § 9.1.7.3 , 9.1.7.7(9th ed. 2016), updated at www.nclc.org/library; Student Loan Law, § § 5.6.4, 13.6.3 (5th ed. 2015) updated at www.nclc.org/library.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

The ED periodically issues "Dear Colleague" letters and electronic announcements. These are available online on the Information for Financial Aid Professionals (IFAP) website.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Student Loan Law (5th ed. 2015), **updated** at www.nclc.org/library. NCLC's Student Loan Borrower Assistance (SLBA) website can be found at www.studentloanborrowerassistance.org. The website contains extensive information in a consumer-friendly format. NCLC staff updates the site regularly by posting new advocacy reports, announcements from the ED, and relevant changes to the student loan laws.

Truth in Lending Act

Consumer Financial Protection Bureau (CFPB)

I. Establishing Statutory Provision(s)

15 U.S.C. §§ 1601 to 1666j. Regulation Z, 12 C.F.R. Part 226.

II. General Description of the Program

TILA applies to all transactions in which a consumer is either granted credit, payable by agreement in more than four installments or for which a finance charge is imposed. TILA is the primary federal law providing rules governing extensions of credit to consumers. Initially TILA was designed to provide accurate and meaningful disclosure of the costs and terms of consumer credit. However in the five decades since its passage, more and more substantive consumer protections have been included as well. Highlights of these substantive protections include ability to repay requirements for home mortgage loans, and substantive limits on charges and practices relating to credit cards.

- Part A of TILA contains general definitions, including the method of calculating the finance charge and annual percentage rate for consumer credit transactions, and it also outlines administrative enforcement and provides criminal sanctions for willful violations of the Act.
- Part B distinguishes "open-end" from "closed-end" credit transactions, describing the particular disclosures required for each, provides for the civil liability of creditors who fail to comply with the Act's disclosure provisions, includes protections for consumers in all mortgage loans such as appraisal requirements, mandates that lenders ascertain the consumer's ability to repay, substantive protections for higher cost mortgage loans (like prohibitions against prepayment penalties, limits on financing points and fees and balloon payments), and creates disclosure rules for reverse mortgages.
- Part C addresses the advertising of credit terms.
- Part D contains the Fair Credit Billing Act, which outlines a resolution procedure for credit card billing disputes.
- Part E contains the Consumer Leasing Act, which governs advertising and disclosures for consumer personal property leases whose terms exceed four months.

III. Eligibility Criteria for the Program

To fall within TILA's scope, credit must be offered or extended to a "consumer," which is defined as a "natural person." The credit also must be provided for personal, family, or household purposes.

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement*:* Private enforcement available. The Act provides for significant private rights of action and, with a few exceptions, violations of TILA give rise to the remedies of actual damages, statutory damages for many violations, and attorney fees. 15 U.S.C. § § 1640, 1641, 1666i, 1667d.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Regulation Z, 12 C.F.R. Part 1026. Official Interpretations of Regulation Z, 12 C.F.R. Part 1026, Supplement I.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Truth in Lending (9th ed. 2015), **updated** at www.nclc.org/library.

Weatherization Assistance Program

Administered by the States under U.S. Department of Energy (DOE) supervision.

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 6861 to 6873. 10 C.F.R. Part 440.

II. General Description of the Program

The WAP reduces energy costs for low-income households by increasing the energy efficiency of their homes while at the same time ensuring their health and safety. WAP is not an individual entitlement, but a block grant program by which each state is granted a fixed amount, which is to be allocated among eligible households according to a state plan. WAP contains no private enforcement mechanism.

III. Eligibility Criteria for the Program

A family unit is eligible for assistance under the WAP if the household income is at or below 200% of the federal poverty level. Alternatively, a family unit can qualify if any of its members has received cash assistance payments under the Social Security Act or an applicable state or local program during the twelve-month period preceding the determination of that family unit's eligibility. A state may also choose to make all of its LIHEAP-eligible households eligible for the WAP.

Each state sets its income requirements within DOE guidelines. Services are provided by the states, and each state has slightly different criteria. DOE guidelines provide that a household is automatically eligible to receive weatherization assistance if it receives Supplemental Security Income or Aid to Families with Dependent Children. States generally give preference to people over 60 years of age, families with one or more members with a disability, and families with children. The implementing regulations state that weatherization agencies must "implement procedures to

ensure that . . . priority is given to . . . families with children . . . and households with a high energy burden."

IV. Specific Services/Benefits/Rights Included in the Program

Enforcement: Lifeline contains no private enforcement mechanism. See general description.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

10 C.F.R. Part 440, Appendix A.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Consumer Law Center, Access to Utility Service chapter 9 (5th ed. 2011), updated at www.nclc.org/library.

Child and Family Support/Economic Justice

Child Care and Development Block Grant Act

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care

I. Establishing Statutory Provision(s)

- Childcare and Development Block Grant Act of 2014 (S1086), Pub. Law 113-186, 128 Stat. 1971
- Child Care and Development Block Grant Act of 1990, as amended, 42 U.S.C 9858; Consolidated and Further Continuing Appropriations Act of 2015, Public Law 113-59.

II. General Description of the Program

- Reauthorizes the Child Care and Development Block Grant Act of 1990. Provides block grants to states to help low-income families find child care for their children (states use the block grants to subsidize child care).
- Child care programs that participate must comply with State health and safety requirements.
    - Requires grant recipients have a background check and annual inspections.
- Portion (no less than 4%) used for activities to improve quality of care, like provider trainings.
- Requires increased education on child care options and other programs.
- Establishes minimum health and safety standards.
- Requires that states certify child care providers will comply with child abuse reporting requirements.
- FY2018 Federal Budget reduces budget to 2016 funding levels.

III. Eligibility Criteria for the Program

- Pre-licensure inspection and at least 1 annual inspection of providers; all individuals providing care for children with support of grant must undergo background check.
- Prioritizes families with lowest incomes.
- All 50 States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Federally recognized Tribal Governments can apply for grant.
- Beneficiaries: Children under age 13 (or, at the option of the grantee, up to age 19, if physically or mentally incapable of self-care or under court supervision), who reside with a family whose income does not exceed 85 percent of the State median income for a family

of the same size, and who reside with a parent (or parents) who is working or attending job training or educational program; or are in need of, or are receiving protective services.

IV. Specific Services/Benefits/Rights Included in the Program

- Families who initially qualify for subsidy get care for at least a year, regardless of changes in income or work, training or education status.
- At least 2 percent of total CCDBG appropriation is to be reserved for Indian tribes and tribal organizations.

V. Significant Statutory Provisions

- Criminal Background Check – Sec. 658H
- Professional Training requirements – Sec. 658E
- Activities to improve quality of child care – Sec. 658G
- Meeting needs of certain populations; priority for low-income populations – Sec. 658(c)(2)
- Eligibility and redetermination (12 months)- Sec. 658E(c)(2)(N)

VI. Key Regulatory and Major Policy Provisions

- 45 CFR 98: Child Care and Development Fund
    - Rule by the Children and Family Administration 2016 on the Child Care and Development Fund Program
- 45 CFR 99: Procedure for Hearings for the Child Care and Development Fund

VII. Significant Cases

None.

VIII. References to Medicaid

- Sec. 5 Application and Plan (b)(2)(E)(i)(IV): Plan shall include information that concerns other plans that families may be eligible for. (Page 128 Stat. 1973)
- Sec. 5 Application and Plan (b)(2)(E)(ii)(I): Plan shall include information about developmental screenings under other programs including Medicaid. (Page 128 Stat. 1974)

IX. Other Relevant Citations and Resources

- Child Care and Development Block Grant, Federal Grants Wire, http://www.federalgrantswire.com/child-care-and-development-block-grant.html (last visited Oct. 12, 2017) (providing a comprehensive overview of the CCDBG program).
- Childcare Aware of America, Federal Child Care Initiatives and Potential Impact on States (2014), http://usa.childcareaware.org/wp-content/uploads/2015/10/CCDBG-Moving-Forward-Summary-and-Background.pdf (providing a history, overview, and changes to the CCDBG).
- Nat'l Women's Law Ctr., The Child Care and Development Block Grant Reauthorization: Changes to Previous Law,

https://www.nwlc.org/sites/default/files/pdfs/ccdbg_reauthorization_comparison_chart_final_11_20_14docx.pdf (last visited Oct. 12, 2017) (provides a chart comparing the prior version of the law governing the CCDBG with provisions of the reauthorization law signed by President Obama in November 2014).

- Admin. for Children & Families, Office of Child Care, Dep't of Health & Human Servs., Child Care and Development Block Grant (CCDBG) Act of 2014: Plain Language Summary of Statutory Changes, https://www.acf.hhs.gov/sites/default/files/occ/overview_of_law_for_tribes.pdf (last visited Oct. 12, 2017).
- Child Care and Development Fund Reauthorization, Office of Child Care, Administration for Children & Families, https://www.acf.hhs.gov/occ/ccdf-reauthorization (last reviewed May 23, 2017) (overview of new rules published by the Office of Child Care providing clarity to states on how to implement the changes to the CCDBG).
- Hannah Mathews et al., Ctr. For Law & Soc. Policy & Nat'l Women's Law Ctr., Implementing the CCDBG Reauthorization: A Guide for States (2015), http://www.clasp.org/issues/child-care-and-early-education/pages/implementing-the-ccdbg-reauthorization (guide to help policymakers and advocates gain a better understanding of what is entailed in fully implementing the 2014 changes to the CCDBG).

Low Income Home Energy Assistance Program (LIHEAP)

US Department of Health and Human Services (HHS) through Administration for Children and Families (AC), Office of Community Services (OCS)

I. Establishing Statutory Provision(s)

Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35 Sections 2601-2611, 42 U.S.C. § 8621-8629

II. General Description of the Program

The federal government consolidated several temporary energy assistance programs into the 1981 Low-Income Home Energy Assistance Act (LIHEAA) which created the Low-Income Home Energy Assistance Program (LIHEAP). Originally funds were allocated for heating only, but the program was expanded in 1984 to include cooling assistance as well. The program is a block grant program, whereby the federal government gives states set amounts of money to assist households with home energy costs under three categories: regular block grant funds, emergency contingency funds for natural disasters or other emergencies, and incentive grants for states based on how much non-federal funding states secure. States can provide supplemental funding.

The program typically covers regular energy bills, emergency assistance, and heating equipment repair or replacement.

In FY 2016, the LIHEAP block grant appropriation was $3.39 billion.

III. Eligibility Criteria for the Program

The federal statute requires the state to certify in its annual application that it makes payments only to certain defined groups of households or households within specified income limits. A household is "an individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent" 42 U.S.C. § 8622 (5). States may make payments to households based on their status (recipients of TANF, SSI, food stamps, or Veteran's Benefits) or income level (income below 150% of the federal poverty level or 60% of the state's median income level). 42 U.S.C. § 8624 (a)(2). According to the FY 2014 Report to Congress, categorical eligibility is a rarely used eligibility standard.[2] The state must also agree to provide that it will provide the highest level of assistance to households with the lowest incomes and the highest energy costs or needs in relation to income with "highest home energy needs" taking into consideration vulnerable groups such as very young children, those with disabilities and frail elderly. 42 U.S.C. §§ 8624 (b); 8622 (4).

Generally, recipients must be a U.S. Citizen or "qualified alien." See 8 U.S.C. 1611, 63 Fed. Reg. 41658 (Aug. 4, 1998) and www.acf.hhs.gov/ocs/resource/interpretation-of-federal-benefits-revised (clarifying that not all services provided under LIHEAP are considered Federal public benefits because some services provided with LIHEAP funds are not provided to individual, household, or family eligibility units, and therefore do not constitute Federal public benefits that are subject to alien verification requirements. For example, a LIHEAP grantee would not need to verify eligibility or deny benefits to non-qualified aliens who wish to use a cooling center set up to provide relief to citizens suffering during hot weather, if the grantee does not verify income for users of the cooling center.)

States can establish additional eligibility requirements as well.

State plan is to describe the state's eligibility requirements and benefit levels for each type of assistance.

IV. Specific Services/Benefits/Rights Included in the Program

The statute requires states use funds to:

- Conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy,
- Intervene in energy crisis situations;
- Provide low-cost residential weatherization and other cost-effective energy-related home repair; and

[2] https://www.acf.hhs.gov/ocs/resource/liheap-report-to-congress-2014 at p. 70.

- Plan, develop, and administer the State's program under this subchapter including leveraging programs.[3]

In FY15, the 50 states and District of Columbia provided $1.7 billion in heating assistance; 18 states provided $202 million in cooling assistance; 49 states provided $680 million for crisis assistance, and 45 states provided $336 million in weatherization or other energy-related home repair. Some 6 million households received heating cost assistance.[4]

V. Significant Statutory Provisions

Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35 Sec 2602, 42 U.S.C. § 8621. Home Energy Grants Authorized

Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35 Sec 2604, 42 U.S.C. § 8623. State Allotments

Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35 Sec 2605, 42 U.S.C. § 8624. Applications and Requirements

State plan requirements are set forth in section 8624(c), with (c)(1)(A) and (B) requiring that the state plan must describe the eligibility requirements used by the state for each type of assistance and the benefit levels for each type of assistance. Subsection (b)(13) includes the requirement that the state must certify that it provides the opportunity for a fair hearing to individuals whose claims for assistance under the plan described in (c) are denied or not acted on with reasonable promptness.

VI. Key Regulatory and Major Policy Provisions

45 C.F.R. §§ 96.80-89 – Regulations concerning Low–Income Home Energy Assistance Program

VII. Significant Cases

Pre-Gonzaga

Meeker v. Manning, 540 F. Supp. 131 (D. Conn. 1982) (In challenge to termination of benefits to recipients without notice and opportunity for a hearing when the state terminated the program because it ran out of funds, the court held that there was no protected property interest in ongoing receipt of benefits when the state terminates the program. The court found that the federal statute does not prescribe specific eligibility standards. The state eligibility standards provided that payments were subject to availability of funds and that the program was not an entitlement program. However, the court held that with respect to applicants who had applied but never received a decision, the program "as designed by the federal statute and state regulations" does

[3] 42 U.S.C. § 8624.
[4] https://www.acf.hhs.gov/ocs/resource/liheap-fact-sheet-0

create the right to a timely determination of eligibility and opportunity for fair hearing to contest ineligibility decisions.)

Hunt v. Robeson Cty. Dep't of Soc. Servs., 816 F.2d 150, 153 (4th Cir. 1987) (In case claiming that the state denied plaintiffs the right to apply for emergency assistance and that applications were wrongfully denied, the court held that "nothing in any of LIHEA's provisions can be said to intend the creation of the kind of rights to which a remedy in favor of persons such as the plaintiffs could attach.")

Cabinet for Human Res., Com. of Ky. v. N. Kentucky Welfare Rights Ass'n, 954 F.2d 1179, 1184 (6th Cir. 1992) (in challenge to the state's method of calculating subsidy levels as a violation of 42 U.S.C. 8624 (f)(1), the court held that that the LIHEAP Act provided no implied right of action and no individual rights enforceable under § 1983, rejecting the contrary holding in *Crawford v. Janklow*, 710 F.2d 1321, 1325 (8th Cir. 1983) as to § 8624 (b)(5).)

Post-Gonzaga

Kapps v. Wing, 404 F.3d 105 (2d Cir. 2005) (in challenge to state's failure to provide a hearing to those whose applications were untimely processed and as a result whose eligibility notice was sent after the close of the program year, the court held that the federal LIHEAP statute does not provide a protected property interest but state law did to the extent funding remained available and held for plaintiffs on their Due Process claim. The court declined to address the "difficult" question whether the 42 U.S.C. § 8624 (b)(13) requirement to provide opportunity for a fair hearing) created privately enforceable right under §1983).

VIII. References to Medicaid

HEAP benefits do not count as income or resources for "any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs." 42 USC 8624 (f)(1).

IX. Other Relevant Citations and Resources

See https://www.acf.hhs.gov/ocs/programs/liheap for further information, including statutes, regulations, guidance, reports, including reports to Congress that provide details on state funding levels, households served, benefit levels, etc.

Temporary Assistance for Needy Families (TANF) – Funded Child Care: Title VI, Part A of the Social Security Act

U.S. Department of Health and Human Services (HHS), Office of the Administration for Children & Families (ACF), Office of Family Assistance (OFA)

I. Establishing Statutory Provision(s)

Title VI, Part A of the Social Security Act Sections 401-419 (42 U.S.C. §§ 601-619)

II. General Description of the Program

Essentially, the TANF block grant establishes a funding steam for state spending that promotes one of the purposes of the TANF in 42 U.S.C. § 601 (a). Child care is one of the permissible uses for TANF block grants. States can transfer up to 30% of their TANF grant into the Child Care and Development Fund (CCDF) (in which case CCDF rules apply) and can also spend any amount of their TANF funds directly on child care. The definition of "child care" is quite broad in practice, and can encompass anything from grants to families to help pay for child care, to expanding Head Start programs, to counseling parents about selecting child care.

States spent $1.250 billion of TANF funds directly on child care in FY 2015.[5] When states use TANF funds for child care, general TANF rules apply. For example, if a state provides child care to an unemployed person, it can qualify as "assistance" under the TANF regulations (unless subject to another exclusion) and is subject to time limits and other related restrictions.

Overall, in FY 2015 states spent a total of $2.570 billion[6] (17%)[7] of TANF funds either directly on child care or through transfers to CCDF.

III. Eligibility Criteria for the Program

Generally, there is no mandate to use TANF funds for child care, and, in any event, the TANF statute provides that it should "not be interpreted to entitle any individual or family to assistance under any State program funded under this part." 42 U.S.C. § 601 (b).

States set their own eligibility rules subject to eligibility restrictions in the TANF statute. If a state opts to use some of its TANF grant to fund a child care program, the child care program may have eligibility rules that differ from those of other state ANF-funded programs.

IV. Specific Services/Benefits/Rights Included in the Program

Because states have such broad discretion in spending their TANF funds, specific services provided vary by state.

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[5] *Red Light Green Light: State Child Care Assistance Policies 2016*, National Women's Law Center, fn. 32, nwlc.org/resources/red-light-green-light-state-child-care-assistance-policies-2016/

[6] *Red Light Green Light: State Child Care Assistance Policies 2016*, National Women's Law Center, fn. 32, nwlc.org/resources/red-light-green-light-state-child-care-assistance-policies-2016/

[7] Liz Schott and Ife Floyd, *How States Use Funds Under the TANF Block Grant*, Center on Budget and Policy Priorities (Jan. 5 2017).

Like other TANF-funded programs, TANF child care spending does not create any specific rights for recipients, and individuals have no right to receive TANF money for child care.

V. Significant Statutory Provisions

Title VI, Part A of the Social Security Act Sections 401-419 (42 U.S.C. §§ 601 - 619)

VI. Key Regulatory and Major Policy Provisions

42 U.S.C. § 607 (e)(2) – In context of TANF mandatory work requirements, state cannot terminate assistance based on refusal of single parent of child under 6 to work if the parent shows unavailability of child care for specified reasons. States that fail to comply with this requirement are subject to a penalty in the form of a reduction in their TANF block grant. 45 C.F.R. § 261.1(a) (1).

45 CFR Part 260

45 C.F.R. § 260.31(a) (3), which defines "assistance" as including "supportive services such as…child care provided to families who are not employed," (unless another exclusion applies) and 45 CFR 260.31(b) (6), which states that "assistance" does not include child care information and referrals. The distinction between "assistance" and "non-assistance" is significant, as the TANF statute imposes restrictions on the use of federal funds (including time limits) for those who receive TANF "assistance."

VII. Significant Cases

Torres v. Blass, 12-CV-3603 (E.D.N.Y. Mar. 18, 2013) (Court approved class action settlement between low-income working parents, represented by the National Center for Law and Economic Justice and Empire Justice Center, and the Commissioner of the Suffolk County Department of Social Services. The settlement followed the Court's July 26, 2012 decision holding that the County's June 2012 child care termination notices, stating only that that the county had insufficient funds and that the parent's income exceeded the new eligibility standard, violated the recipients' due process right to adequate notice. The inadequate notices failed to include information that recipients needed to understand whether the proposed action was correct and whether to appeal. The court also ordered defendant to restore child care assistance to those affected and provide constitutionally adequate notice before termination. See http://nclej.org/news/federal-court-approves-class-action-settlement-regarding-suffolk-county-new-york-constitutionally-inadequate-notice-of-child-care-termination)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- HHS, OFA: Policies, data and reports:

- See, e.g. www.acf.hhs.gov/sites/default/files/ofa/tanf_acf_im_2016_02_2014_child_care_reauthorization_and_opportunities.pdf
- *Red Light Green Light: State Child Care Assistance Policies 2016*, National Women's Law Center, nwlc.org/resources/red-light-green-light-state-child-care-assistance-policies-2016
- *Temporary Assistance for Needy Families and Child Care Assistance: A Weakened Safety Net for Families* (National Women's Law Center, Nov. 2016), nwlc.org/resources/temporary-assistance-for-needy-families-and-child-care-assistance-a-weakened-safety-net-for-families/

Temporary Assistance for Needy Families (TANF): Personal Responsibility and Work Opportunity Act

US Department of Health and Human Services (HHS) through the Administration for Children and Family (ACF), Office of Family Assistance

I. Establishing Statutory Provision(s)

Personal Responsibility and Work Opportunity Act (PRWORA) of 1996, PL 104–193, August 22, 1996, 110 Stat 2105, 42 U.S.C. §§ 601 et seq.

II. General Description of the Program

PRWORA established the federal block grant program Temporary Assistance to Needy Families (TANF), replacing Aid to Families with Dependent Children (AFDC). TANF became effective July 1, 1997. Congress reauthorized it in February 2006 under the Deficit Reduction Act of 2005 and subsequently has passed short-term extensions.

TANF gives each state a fixed grant to administer programs for low-income families with minor children. The block grant was set at $16.5 billion in 1996 and has not been increased for inflation. The Act provides some limited other federal funds for states for specific purposes. States must also maintain certain state spending requirements, called Maintenance of Effort (MOE), on programs for needy families in order to receive TANF federal funding.

States must use the federal block grant and its state spending on programs that 1) provide assistance to needy families so that children can be cared for in their own homes or those of relatives; 2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; 3) prevent and reduce out-of-wedlock pregnancies; and 4) encourage the maintenance and formation of two-parent families.

States may use the block grant for a variety of programs, including cash assistance. A state need not have a cash assistance program, although all states do so. States have wide discretion to set eligibility requirements, benefits amounts and services in their TANF-funded programs.

III. Eligibility Criteria for the Program

The federal TANF statute does not mandate that a state provide cash assistance to any particular children or families and specifically provides that it should "not be interpreted to entitle any individual or family to assistance under any State program funded under this part." 42 USC § 601 (b).

With respect to cash assistance, the federal TANF statute sets various restrictions on eligibility. These include but are not limited to a bar on assistance for families without a minor child, a lifetime 60 month time limit on receipt of federally funded TANF cash assistance, and restrictions on immigrant eligibility. 42 U.S.C. § 608; See also 8 U.S.C. § 1612 et seq. States must require specific percentages of TANF cash recipients to participate in work-related activities, which are strictly defined. 42 U.S.C. § 607. Federal law imposes penalties, in the form of specified reductions in a state's block grant, for a state's violation of specific TANF requirements, including failure to meet the work participation requirement.

Many states have adopted shorter time limits than the federal 60-month limit on receipt of federally-funded TANF cash assistance and harsh sanctions for failure to comply with work and other requirements. States typically set different requirements for non-cash assistance TANF services – for example, income requirements are generally less strict for work support, pregnancy prevention, and family formation services.[8]

IV. Specific Services/Benefits/Rights Included in the Program

With respect to state TANF cash assistance programs, in addition to establishing the eligibility rules, states set benefit levels. Benefit levels have steadily eroded over time and are way below the poverty line. According to a Center on Budget and Policy Priorities (CBPP) 2016 report, as of July 1, 2016 every state's TANF benefits for a family of three were below 50% of the poverty line, and most states' benefit levels were below 30% of the poverty line. As a result, TANF's role as a safety net program has been severely reduced. TANF cash benefits reached only 23 out of every 100 poor families in 2014, compared to 68 out of every 100 poor families in 1996. [9]

States also have wide flexibility to use the federal TANF block grant funds for a wide variety of other programs that meet the program's purposes. According to a recent CBPP report, overall, states use only half of their combined state and federal TANF funding on traditional welfare programs such as basic assistance, child care, and work-related activities and supports. States have increasingly used a large share of TANF funding on other state services such as Earned Income Tax Credits, pre-K education, child welfare, or to replace existing state funds. Using funds for these programs reduces resources for cash assistance, child care, and employment assistance. [10]

[8] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49887-tanf.pdf
[9] https://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states
[10] https://www.cbpp.org/research/family-income-support/how-states-use-funds-under-the-tanf-block-grant

As noted above, 42 USCA § 601 (b) provides that there is no individual entitlement to assistance.

V. Significant Statutory Provisions

- PL 104–193, August 22, 1996, 110 Stat 2105, Title I, Part A, Section 401(b), 42 USC § 601 (b) – No Individual Entitlement
- PL 104–193, August 22, 1996, 110 Stat 2105, Title I, Part A, Section 407, 42 USC § 607 – Mandatory Work Requirements
- PL 104–193, August 22, 1996, 110 Stat 2105, Title I, Part A, Section 408, 42 USC § 608 – Prohibitions; Requirements
- PL 104–193, August 22, 1996, 110 Stat 2105, Title I, Section 114, 42 USC § 1396u–1 – Assuring Medicaid coverage for low-income families
- PL 104–193, August 22, 1996, 110 Stat 2105, Title IV, 8 USC § 1612—Restricting Welfare and Public Benefits for Aliens

VI. Key Regulatory and Major Policy Provisions

- 45 CFR Part 260 - General Temporary Assistance for Needy Families (TANF) Provisions
- 45 CFR Part 261 - Ensuring that Recipients Work
- 45 CFR Part 262 - Accountability Provisions-General
- 45 CFR Part 263 - Expenditures of State and Federal TANF Funds
- 45 CFR Part 264 - Other Accountability Provisions
- 45 CFR Part 265 - Data Collection and Reporting Requirements

Federal policy, data, and research regarding TANF can be found at https://www.acf.hhs.gov/ofa

VII. Significant Cases

- *Weston v. Cassata*, 37 P.3d 469, 474-77 (Colo. Ct. App. 2001), *cert. denied*, 536 U.S. 923 (2002) (in a challenge to the constitutional adequacy of TANF sanction notices, Court held that although federal TANF statute does not create protected property interest in receipt of TANF cash assistance, state TANF statute created such a property interest in continued receipt of cash assistance as long as funding is available and held the notices inadequate)
- *State ex rel. K.M. v. W. Va. Dep't of Human Res.*, 575 S.E. 2d 393 (2002) (in challenge to termination of state TANF cash assistance at expiration of time limit, the state Supreme Court held there was no right to a pre-termination hearing because there was no statutory right to continued aid, that there was no state constitutional obligation to provide ongoing subsistence payments, but that the state's process for determining exemptions from the time limit was constitutionally deficient) [11]

[11] Note that New York is the only state to recognize an affirmative state constitutional obligation to aid the needy. *Tucker v. Toia*, 371 N.E.2d 449, 451-52 (N.Y. 1977).

- *Reynolds v. Giuliani, 35 F. Supp. 2d 331, 341 (S.D.N.Y. 1999)* (in challenge to various practices regarding the application process for food stamps, Medicaid, and cash assistance, the court found, *inter alia*, that plaintiffs had a property interest in receipt of cash assistance and stated a viable due process claim under §1983).

VIII. References to Medicaid

- PRWORA includes a provision allowing states to terminate medical assistance if a recipient fails to comply with cash assistance work requirements. However, it has an exception for minor children who are not the head of household. Pub .L. 104-193, Title I, § 114(a)(2), 42 U.S.C. § 1396u-1.[12]
- 42 U.S.C. 608 (a)(11) requires state to provide transitional Medicaid to certain families who lose eligibility because of increased support collections and to certain families who lose eligibility based on earnings.
- PRWORA also includes a provision stating that TANF block grant funds may not be used for any medical services. Pub.L. 104-193, Title I, § 103(a)(1), 42 U.S.C. § 608.

IX. Other Relevant Citations and Resources

- National Center for Law and Economic Justice:
    - Mary R. Mannix and Henry A. Freedman, TANF and Racial Justice, 47 Clearinghouse Rev. 221 (2013) available at http://nclej.org/wp-content/uploads/2015/11/TANF_RaceDiscriminationClearinghouseReview.pdf
    - Gina Mannix and Marc Cohan, Reflections on TANF's 20th Anniversary, published in Shriver Center's Clearinghouse Community 2016 and available at http://nclej.org/wp-content/uploads/2016/08/Mannix-Cohan-TANF-Clearinghouse-article-2016.pdf
- Center on Budget and Policy Priorities:
    - CBPP (www.cbpp.org) has numerous helpful publications on TANF. See, e.g.:
        - https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf
        - https://www.cbpp.org/research/family-income-support/chart-book-temporary-assistance-for-needy-families
- Urban Institute (www.urban.org):
    - The Urban Institute is a source of research re TANF. See. e.g.:
        - https://www.urban.org/policy-centers/income-and-benefits-policy-center/projects/welfare-rules-databook-and-database (this database is a

[12] In *Comacho v. Texas Workforce Comm'n*, 408 F.3d 229, 237 (5th Cir. 2005), the Court held that Texas could not terminate the Medicaid of TANF parents for failing to comply with the state TANF program's personal responsibility requirements (child immunizations, wellness check-ups, child school attendance or substance abuse avoidance), which the state had unsuccessfully argued were "work requirements" and therefore basis for Medicaid termination under 42 U.S.C. § 1396u-1.

source of information re state TANF rules on a wide variety of eligibility requirements)

- Center for Law and Social Policy:
  - CLASP has numerous TANF-related publications. Go to: http://www.clasp.org/issues/temporary-assistance.
- Selected Other Items:
  - Greg Duncan and Katherine Magnuson, The Long Reach of Early Childhood Poverty, https://web.stanford.edu/group/scspi/_media/pdf/pathways/winter_2011/Pathways_Winter11_Duncan.pdf
  - https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49887-tanf.pdf

Title IV-D Child Support Enforcement: Title IV, Part D of the Social Security Act of 1975

U.S. Department of Health and Human Services (HHS), Administration for Children & Families (ACF), Office of Child Support Enforcement (OCSE)

I. Establishing Statutory Provision(s)

Title IV, Part D of the Social Security Act of 1975, 42 U.S.C. §§ 651–669

II. General Description of the Program

The Federal government provides funding to the states for the administration of a program to establish and collect child support. The state administrative agency provides a range of services to families, including individuals required to assign their rights to child support and Medical support to the state (e.g. TANF and specified Medicaid applicants). The state attempts to locate non-custodial parents, establish paternity, establish and enforce support orders, and distribute child support payments pursuant to complex distribution rules. The distribution rules as to those who assigned child support rights as a condition of eligibility for benefits includes retention of collections to reimburse the state and federal governments for assistance provided.

III. Eligibility Criteria for the Program

The state must provide child support services to those applying for Temporary Assistance (TANF), Medicaid and foster care, who are required to assign their rights to child support and cooperate with the state in securing support, as a condition of eligibility for benefits. The state must also provide services to SNAP applicants who, at state option, are required to cooperate with the state in securing child support as a condition of eligibility for SNAP. The state must also provide services with respect to any other child on whose behalf an application for child support services is made.

IV. Specific Services/Benefits/Rights Included in the Program

Title IV-D Services include assistance with:

- Establishing a case record;
- Providing location of noncustodial parent including address, employment, other services of income and assets, and health care coverage;
- Establishing paternity;
- Filing court petitions to establish and modify an order;
- Making an order of support payable to Support Collection Unit;
- Collecting and distributing support payments;
- Enforcing of support obligation usually all available administrative remedies;
- Filing and prosecuting violation petitions to enforce an order of support;
- Providing some Legal services;
- Continuing of child support services listed above when family is no longer eligible for TANF, Medicaid, or foster care.

The statute does not guarantee the provision of particular services or that child support will be collected.

With respect to child support that the state does collect, there are complex rules governing distribution of the payments for current recipients, former recipients, and others. In general, the distribution scheme entails the state retaining collections on behalf of current and former recipients pursuant to the assignments, as reimbursement for TANF or foster care assistance ("assistance") provided to the child and reimbursing the federal government for its share of that assistance provided.

Generally, current recipients receive only the amount of the collection that remains after the federal and state governments have retained their shares. The prior federal mandate to pass through to the family the first $50 of support collected on behalf of cash assistance recipients was eliminated when the TANF block grant replaced the AFDC program. The current distribution rules allow the state to pass-through to a family receiving TANF or foster care assistance from the state up to $100 in a month ($200 for a family with 2 or more children), and the state need not pay the federal government for its share of this pass-through as long as the pass-through is disregarded in determining the assistance provided to the family.

The distribution rules for former assistance recipients emphasize payment of current support collections and unassigned arrears to the family and using any amount remaining to reimburse the state and federal governments for the assistance provided.

The state must distribute support collected for families that never received assistance to the family (minus the application fee that the family paid for child support services).

V. Significant Statutory Provisions

- 42 U.S.C. § 654 – state plan requirements for child and spousal support
- 42 U.S.C. § 654b – collections and disbursement requirements
- (c)(1): State plan for child and spousal support requirements:
    - "the State disbursement unit shall distribute all amounts payable… within 2 business days."
- 42 U.S.C. § 657 – Distribution requirements
- 42 U.S.C. § 652(a)(4): Enforcement scheme.
- 42 U.S.C. § 667: State guidelines for child support awards.
- 42 U.S.C. § 659: Consent to Support Enforcement: includes designation of an agent or agents to receive orders.

VI. Key Regulatory and Major Policy Provisions

- 45 CFR Parts 300-310
- ACF Policy Guidance, generally
- ACF Guidance on Referral of Medicaid cases to Title IV-D Child Support Enforcement Agencies: Referrals appropriate with cases in which the custodial parent and child(ren) are receiving Medicaid, the parent has assigned all his/her rights and those of the child(ren) to medical support to the State, and the parent is required to cooperate with the IV-D child support agency.

VII. Significant Cases[13]

Blessing v. Freestone, 520 U.S. 329 (1997) (In challenge by parents eligible for state child support services claiming that state IV-D agency failed to take adequate steps to collect child support, that IV-D system was deficient and that they were entitled to have state substantially comply with IV-D requirements, Court held that Title IV-D statute did not give individuals a federal right to force a state agency to *substantially comply* with Title IV-D. Court did not foreclose the possibility that some provisions of Title IV-D might give rise to individually enforceable rights but plaintiffs had not identified particular claims and had no individual rights to substantial compliance. To the extent that some provisions of Title IV-D may give rise to individual rights, the Court held that the Secretary's oversight powers are not comprehensive enough to close the door on § 1983 liability.)

Hughlett v. Romer-Sensky, 497 F.3d 557, 559 (6th Cir. 2006) (In challenge to implementation of a computer system that did not disburse child support payments within 2 days, the court held that 42 U.S.C. §§ 657(a)(3) and 654b(c)(1), according to the *Blessing* inquiry and Gonzaga analysis, do not confer individual rights actionable under §1983. The court also held that plaintiffs did not have a property interest to support their procedural due process claim.

[13] Lower court IV-D cases pre-*Blessing* are not included.

Cuvillier v. Sullivan, 503 F. 2d 397 (5th Cir. 2007) (In individual's challenge to the state agency's failure to take action to collect child support on her child's behalf, the court held that 42 U.S.C. § 651-652 (a)(1), (h) and § 654 (4)(B), (13) do not create individually enforceable rights.)

VIII. References to Medicaid

- §652(f) and §654a provide for automatic information exchanging between the child support enforcement program and the State Medicaid programs.
- §652(f) requires the Secretary to issue regulations requiring that states enforce medical support as part of a child support order whenever health care coverage is available to the noncustodial parent at reasonable cost. Medical support may include health care coverage and payment for medical expenses incurred on behalf of a child.
- Note that a Medicaid provision, 42 USC § 1396u-1(c) provides that a family who would become ineligible for Medicaid as a result (wholly or partly) of child support collected by the IV-D program, and who received Medicaid in at least 3 of the 6 immediately preceding months, remains eligible for Medicaid for 4 additional months.

IX. Other Relevant Citations and Resources

- NCSL State by State Child Support Data
- Administration for Children & Families, Office of Child Support Enforcement FY 2016 Preliminary Data Report
- CLASP has a number of child support related publications, including:
    - Policy Brief, Child Support Series (2005): Overview of Program
- CLASP Report: Rethinking the Medicaid Child Support Cooperation Requirement (2003): issues and concerns about the program

Child Welfare and Juvenile Justice

Child Abuse Prevention and Treatment Act (CAPTA)

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

42 U.S.C.A. §§ 5101-5108, 5111-5119c, in particular §§ 5105, 5106, 5106a, 5113, 5116, and 5117aa-11.

II. General Description of the Program

The Child Abuse Prevention and Treatment Act (CAPTA) provides funding opportunities regarding the prevention and treatment of child abuse and neglect. The law creates national standards for state child protection laws to improve the safety of children. The law also creates incentives to facilitate adoptions for older children, children of color, and children with special needs.

III. Eligibility Criteria for the Program

CAPTA does not contain any traditional eligibility criteria. The national standards created by CAPTA are for the benefit of all children. However, services funded through CAPTA grants are specifically aimed at those who have suffered child abuse or neglect, or are at risk thereof.

IV. Specific Services/Benefits/Rights Included in the Program

- §5105(b): Through this provision, the Department of Health and Human Services provides "technical assistance to State and local public and private agencies and community-based organizations, including disability organizations and persons who work with children with disabilities and providers of mental health, substance abuse treatment, and domestic violence prevention services, to assist such agencies and organizations in planning, improving, developing, and carrying out programs and activities, including replicating successful program models, relating to the prevention, assessment, identification, and treatment of child abuse and neglect." In particular, this assistance can be used to evaluate or identify "ways to minimize psychological trauma to the child victim."
- §5105(e) authorizes grants for demonstration projects and programs, to promote "safe, family-friendly physical environments for visitation and exchange," and for "educational identification, prevention, and treatment services."
- §5106(a) authorizes grants for training programs for professional and volunteer personnel who work with children, for implementing procedures to prioritize kinship care, and for linkages between child protective services and health services agencies to ensure that child victims' health needs are diagnosed and treated.
- §5016a(a) authorizes grants for improving a state's child protective services. In particular grants are authorized for

- (3) improving the case management and delivery of services and treatment to children and families
- (9) for programs that assist in obtaining or coordinating services for families of disabled infants with life-threatening conditions
- (12) for enhancing collaboration between the child protective services and the juvenile justice system for improved delivery or and continuity of treatment and services for children transitioning between systems
- (13) supporting collaboration between systems to address the health needs of victims of child abuse or neglect

- §5106a(b) provides the standards states must meet to be eligible for §5106a(a) grants. This section creates national child welfare standards. The state plan submitted in application for the grant must contain an assurance, certified by the Governor, "that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes
  - (i) provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances;
  - (ii) policies and procedures…to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants…"
  - (iii) the development of a plan of safe care for the infant born and identified as being affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder to ensure the safety and well-being of such infant following release from the care of health care providers, including through—
    - (I) addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver; and
    - (II) the development and implementation by the State of monitoring systems regarding the implementation of such plans to determine whether and in what manner local entities are providing, in accordance with State requirements, referrals to and delivery of appropriate services for the infant and affected family or caregiver;
  - …(v) triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;
  - (vi) procedures for immediate steps to be taken to ensure and protect the safety of a victim of child abuse or neglect and of any other child under the same care who may also be in danger of child abuse or neglect and ensuring their placement in a safe environment;

- … (xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development…shall be appointed to represent the child in such proceedings—
    - (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
    - (II) to make recommendations to the court concerning the best interests of the child;
- … (xvi) provisions, procedures, and mechanisms that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction—
    - (I) to have committed murder…of another child of such parent;
    - (II) to have committed voluntary manslaughter…of another child of such parent;
    - (III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter;
    - (IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;
    - (V) to have committed sexual abuse against the surviving child or another child of such parent; or
    - (VI) to be required to register with a sex offender registry…
- …(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under…the Individuals with Disabilities Education Act…; [and]
- (xxii) provisions and procedures for requiring criminal background record checks…for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household[.]" (§5106a(b)(2)(B)).
- The State plan must also contain an "assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from infants with disabilities who have life-threatening conditions)" (§5106a(b)(2)(C)).
- The State plan must describe the "policies and procedures that promote and enhance appropriate collaboration among child protective service agencies, domestic violence service agencies, substance abuse treatment agencies, and other agencies in investigations, interventions, and the delivery of services and treatment provided to children and families affected by child abuse or neglect, including children exposed to domestic violence, where appropriate." (§5106a(b)(2)(D)(v)).
- States must establish citizen review panels to examine the policies, practices, and procedures of child protection systems.
- Compliance with §5106a(b) will be monitored by the Department of Health and Human Services. (§5108).

- §5113 creates federal support for and incentives for states to promote the adoption of older children, children of color, and children with special needs. This section also provides funding (directly through HHS or by grant to state, local, or private entities) for post-adoption services to families who have adopted children with special needs, including individual, group, and family counseling. (§5113(c)).
- §5116 creates a separate community-based, formula grant program for the prevention of child abuse and neglect. These grants can be used for
    - "community-based and prevention-focused programs and activities designed to strength and support families,"
    - "fostering the development of a continuum of preventive services for children and families, including unaccompanied homeless youth,"
    - "financing the start-up, maintenance, expansion, or redesign of specific community-based child abuse and neglect prevention program services (such as respite care services, child abuse and neglect prevention activities, disability services, mental health services, substance abuse treatment services, domestic violence services, housing services, transportation, adult education, home visiting and other similar services) identified…under §5116d(3)…as an unmet need…"
- §5117aa-11 authorizes a grant program to provide assistance for abandoned infants. Programs that receive these grants must give priority to abandoned infants and young children who "are infected with, or have been perinatally exposed to, the human immunodeficiency virus, or have a life-threatening illness or other special medical need; or have been perinatally exposed to a dangerous drug." Through HHS, there may be federal technical assistance to programs in planning, developing, or operating such projects and in applying for these grants.

V. Significant Statutory Provisions

CAPTA is the primary authority governing these programs, however, the law does note connections to Parts B and E of Title IV of the Social Security Act relating to child welfare funding and requirements. (42 U.S.C.A. § 621 et seq; 671 et seq). There is no provision in CAPTA making it privately enforceable. Courts have found that CAPTA is not privately enforceable through §1983 claims. (see Section VII.)

VI. Key Regulatory & Major Policy Provisions

The Department of Health and Human Services in 2015 rescinded all existing regulations promulgated under CAPTA as unnecessary and obsolete.[14]

HHS has answered specific questions of interpretation in the Child Welfare Policy Manual. HHS detailed the changes to CAPTA as part of the 2010 reauthorization in this memorandum to states.

[14] The regulations were previously found at 45 C.F.R. § 1340 et seq. These regulations were rescinded under the final rule, Technical Regulation: Removal of Child Abuse and Neglect Prevention and Treatment Act Implementing Regulations, 80 Fed. Reg. 16577 (Mar. 30, 2015).

HHS has detailed recent additions to CAPTA that address the effects of substance use disorders in this memorandum.

VII. Significant Cases

CAPTA is regularly referenced as part of suits challenging a state's failure to enforce their child abuse prevention laws and for state failure to investigate child abuse. However, the vast majority of courts have found that CAPTA does not create a private right of action and the CAPTA claims are denied. (Tony L. ex rel Simpson v. Childers, 71 F.3d 1182 (6th Cir. 1995), *cert denied*, 517 U.S. 1212 (1996); Doe v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996); Henry A. v. Willden, 678 F.3d 991 (9th Cir. 2012); Eric L. ex rel Schierberl v. Bird, 848 F. Supp. 303 (D.N.H. 1994) (CAPTA only requires that state enact child abuse protection laws not enforce them)).[15]

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

HHS, Child Welfare Information Gateway has a lot of resources on child abuse and neglect, in particular, a document explaining the definitions from CAPTA.

Juvenile Justice Delinquency and Prevention Act

U.S. Department of Justice, U.S. Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Health and Human Services (DHHS), Homeless and Runaway Youth Provisions

I. Establishing Statutory Provision(s)

42 U.S.C.A. §§5601-5792; in particular §§ 5633, 5651, 5711, 5714, 5783.

II. General Description of the Program

The act creates a variety of grant programs for children involved in, or at risk of becoming involved in, the juvenile justice system and for homeless and runaway youth. These grant programs allocate federal funding to provide a variety of services for these youth populations including education, health care, and housing. The juvenile justice provisions also restrict how states can use the funding with a focus on alternatives to incarceration and institutionalization. The act addresses the risk factors associated with children living in high-crime and low-income areas to provide funding for extra services to counter the detrimental environmental effects on health, education, and stability.

[15] A couple of early district courts found CAPTA was privately enforceable. C.f. Jeanine B. ex rel Blondis v. Thompson, 877 F. Supp. 1268 (E.D. Wis. 1995); Marisol A. ex rel Forbes v. Giuliani, 929 F. Supp. 662 (S.D.N.Y. 1996) but these decisions were prior to the Supreme Court's *Blessing v. Freestone* decision creating a three-factor test for determining whether a statute creates an enforceable individual right.

III. Eligibility Criteria for the Program

While not "eligibility criteria," the juvenile justice provisions of the law are primarily aimed at children involved in or at risk of becoming involved in the juvenile justice system. The homeless provisions of the law are more directly limited to homeless and runaway youth.

IV. Specific Services/Benefits/Rights Included in the Program

- §5633 lays out the requirements of the plan the state must submit in order to receive a federal grant (authorized under §5631)
    - (a)(7)(B)(iv): the plan must contain a plan for providing needed mental health services to children involved in the juvenile justice system including on how the plan is being implemented and how the services will be targeted to those with the greatest need
    - (a)(9): 75% of funding received must go to certain types of programs, including programs that provide A) community-based alternatives to incarceration and institutionalization, B) that work to strengthen families, D) treatment to juvenile offenders who are victims of child abuse or neglect, E) education programs, G) counseling, training, and mentorship programs, H) training on learning disabilities, I) deter involvement in unlawful gang activity, J) substance abuse treatment, K) positive youth development, N) programs to aid those with limited-English speaking ability, O) to reduce hate crimes, P) after-school programs, and S) mental health services.
    - (a)(11) restricts states from placing certain children, in particular status offenders and alien children alleged to be dependent, abused, or neglected, in secure detention or secure correctional facilities.
    - (a)(12) restricts states from placing children to be detained in an institution where they would have contact with adult inmates and requires that staff who work with both adults and children be trained to work with children
    - (a)(13) restricts states from detaining children in adult facilities unless a limited exception is met
    - (a)(15): states must provide assurance that they will treat all youth in the juvenile justice system equitably on the basis of gender, race, family income, and disability
    - (a)(22) states must address system improvement efforts to reduce the disproportionate involvement of youth who are members of minority groups in the juvenile justice system
    - (a)(27): states must establish policies and systems to incorporate relevant child protective services records into juvenile justice records for the purpose of establishing and implementing individual treatment plans for juvenile offenders.
    - §5633(c) restricts future state funding for states not in compliance with the requirements of (a)(11, 12, 13, and 22)

- §5651 creates a federal Juvenile Delinquency Prevention block grant program under which grants can be given to states (and then to localities, especially those with high-crime under §5654) and Indian tribes for programs that provide
    - (a)(1): treatment, including for mental health, to reduce the likelihood of future violations of the law, for juvenile offenders and those at risk of becoming juvenile offenders, who are victims of child abuse or neglect or who have experienced violence at home, in school, in the community or to their family
    - (a)(2): educational projects and support services including those which encourage juveniles to remain in school, assist in the transition to work and self-sufficiency, assist in identifying learning disabilities, prevent unwarranted and arbitrary school detention and expulsion, encourage new techniques to prevent school violence, train law enforcement and juvenile justice personnel to recognize and provide for juveniles with disabilities, including learning disabilities, and provide mental health services to those with serious need
    - (a)(3): expand use of probation officers so juveniles can remain at home rather than being incarcerated
    - (a)(4): counseling, training, and mentoring programs designed to link at-risk juveniles, juvenile offenders, and those with a parent who is or was incarcerated, particularly those residing in low-income and high-crime areas, and those experiencing educational failure with trained, responsible adults
    - (a)(5): community-based projects that works with juvenile offenders, those at-risk, and their families to strengthen families and prevent involvement of juvenile family members in delinquent activities
    - (a)(6): substance abuse treatment, including mental health services
    - (a)(7): "projects which leverage funds to provide scholarships for postsecondary education and training for low-income juveniles who reside in neighborhoods with high rates of poverty, violence, and drug-related crimes"
    - (a)(8): screening of juveniles taken into custody to provide services, including mental health services, to prevent subsequent offenses
    - (a)(9): programs to prevent or reduce youth involvement in illegal gang activity, drug trafficking, and use of weapons
    - (a)(10): comprehensive juvenile delinquency prevention programs involving the collaboration of various social service agencies including schools, child protection, health care, recreation, etc.
    - (a)(11): employment and job training
    - (a)(12): "delinquency prevention activities which involve youth clubs, sports, recreation and parks, peer counseling and teaching, the arts, leadership development, community service, volunteer service, before- and after-school programs, violence prevention activities, mediation skills training, camping, environmental education, ethnic or cultural enrichment, tutoring, and academic enrichment"

- (a)(13): "to establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing treatment plans for juvenile offenders"
- (a)(14): "programs that encourage social competencies, problem-solving skills, and communication skills, youth leadership, and civic involvement"
- (a)(15): "programs that focus on the needs of young girls at- risk of delinquency or status offenses"
- (a)(16) projects that provide for the assessment of and development of a individualized treatment plan for those in need of mental health services as well as the inclusion of aftercare services in the juvenile's discharge plan and ensuring that all juveniles on psychotropic medication are under the care of a licensed mental health professional
- (a)(17): "after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities"
- (a)(18): establishment and maintenance of a school violence hotline
- (a)(19): reduce the acquisition and use of guns by juveniles
- (a)(20): counsel those who commit animal cruelty
- (a)(21): "programs that provide suicide prevention services for incarcerated juveniles and for juveniles leaving the incarceration system"
- (a)(22) and (23): good character education and training programs
- (a)(24): "local programs that provide for immediate psychological evaluation and follow-up treatment (including evaluation and treatment during a mandatory holding period for not less than 24 hours) for juveniles who bring a gun on school grounds without permission from appropriate school authorities"

- §5711 creates the Basic Center Grant Program under which grants can be given to public and private, non-profit entities to establish and operate local centers to provide services to runaway and homeless youth and their families including for temporary shelter and counseling services as appropriate, and potentially for street-based services, home-based services, drug abuse education and prevention, and voluntary testing for sexually transmitted diseases.
  - §5712: in order to receive funding under §5711, an organization must submit a plan with different assurance requirements. Depending on the type of funding sought, these assurances may require programs to plan for or provide counseling services, various types of information, or crisis services.
- §§5714-1, 5714-2 creates a transitional living grant program to fund shelter and services to homeless youth.
- §5714-11 creates a national communications system grant program to provide telephone services and assist runaway and homeless youth in communicating with their families and service providers.

- §5714-25 mandates the Secretary of Health and Human Services to compile a report, every five years, estimating the incidence and prevalence of runaway and homeless youth age 13-25, including the barriers to such individuals obtaining housing, health services, incomes, public benefits, support services, and connections to caring adults.
- §5714-41 creates the authority for the Secretary of Health and Human Services to make grants to non-profit, private agencies to provide street-based services to runaway, homeless, and street youth subjected to or at risk of sexual abuse, sexual exploitation, prostitution, and sex trafficking.
- §5714a: "The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers and transitional living youth projects."
- §5715 creates a reporting requirement detailing the effectiveness of the grant-funded projects serving homeless youth.
- §5752 restricts the use of grant funding under the homeless provisions of JJDPA to not allow such funds to be used for any sterile needle/syringe distribution for illegal drugs.
- §5783 creates a grant program through which states and Indian tribes can get funding for local delinquency prevention programs for juveniles in contact with or likely to have contact with the juvenile justice system and their families for alcohol and substance abuse prevention services, tutoring and remedial education, child and adolescent health services and mental health services, recreation services, leadership and youth development activities, teaching about accountability for your actions, and the development of job training skills.
- There is also a Juvenile Accountability Block Grant program authorized under 42 U.S.C.A. §3796ee which provides funding for early intervention and comprehensive services, including mental health, programs and for school safety programs.

V. Significant Statutory Provisions

The Act itself is the only relevant statute. The Act does not explicitly create any enforceable right to benefits, as it only creates grant programs. However, courts have found that a few particular provisions -- the requirements under §§5633(a)(11, 12, 13) that restrict states from confining juveniles charged with status offenses, from confining juveniles in institutions with adult inmates, and from detaining juveniles in adult lockups -- created federally protected rights which are privately enforceable under 42 U.S.C.A. § 1983[16].

[16] Grenier By & Through Grenier on Behalf of Grenier v. Kennebec Cty., Me., 748 F. Supp. 908 (D. Me. 1990); Horn by Parks v. Madison Cty. Fiscal Court, 22 F.3d 653 (6th Cir. 1994); Hendrickson v. Griggs, 672 F. Supp. 1126 (N.D. Iowa 1987); James v. Jones, 148 F.R.D. 196 (W.D. Ky. 1993). Note, these cases find the §§5633(a)(12, 13, 14) are privately enforceable, however, the content of these older provisions correlate to the current §§5633(a)(11, 12, 13).

VI. Key Regulatory & Major Policy Provisions

28 C.F.R. § 31.303(d)(v) prohibits states receiving funding from administratively reclassifying juveniles as adults and transferring them to adult facilities to avoid the separation requirement. The policy guidance on JJDPA is both vast and particular to specific provisions and program types. See "other resources" for links.

VII. Significant Cases

The most significant cases for children's health are those that have found that the JJDPA creates federally protected rights enforceable under Section 1983 (see question 6 above).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Campaign for Youth Justice webpage on the JJDPA, in particular see resources under "factsheets" tab and "laws, regulations, and implementation materials" tab
- The Office of Juvenile Justice and Delinquency Prevention has many resources. In particular, the Model Programs Guide site has details about the variety of juvenile justice programs. The Policy Guidance site contains links describing different priorities and resources of OJJDP. The Core Requirements page contains guidance and details on state's reporting and monitoring regarding on the key priorities of the JJDPA. Finally, the Publications page links the vast resources, especially research produced by OJJDP.[17]

Preventing Sex Trafficking and Strengthening Families Act

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

Pub.L. No. 113-183, 128 Stat. 1919, in particular §§ 104, 105, 111, 113, 114, 115.[18]

II. General Description of the Program

Act imposes a variety of requirements on state's receipt of funding for child welfare purposes including reporting requirements, requirements to develop protocols, requirements to include children in developing their own case plan, and requirements for participation in age and

[17] NCYL has focused on resources relating to the juvenile justice provisions of the JJDPA based on the understanding that the National Center on Homelessness and Poverty will provide resources specific to the runaway and homeless youth provisions.
[18] There is currently no independent U.S. Code citation for this statute. The Act amends various provisions of the codified Social Security Act.

developmentally-appropriate activities. These requirements affect the health, welfare, stability, and quality of life of children in foster care. Note that not all provisions have been included as part of this summary because a number of them fall outside the scope of this project (eg/ provisions regarding the commercial sexual exploitation of children).

III. Eligibility Criteria for the Program

In general, the law applies to foster children, though the law gives states the option to apply it to all children.

IV. Specific Services/Benefits/Rights Included in the Program

- §104 requires that States "develop and implement specific protocols for
    - (i) expeditiously locating any child missing from foster care;
    - (ii) determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements;
    - (iii) determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim…; and
    - (iv) reporting such related information as required by the Secretary."
- §105 is a requirement that the Secretary of HHS submit to Congress a report on the characteristics of children who run away from foster care and the potential factors associated with children running away.
- §111 contains multiple relevant provisions:
    - First it requires, that in order to receive federal funding, a State's plan must create or have an authority that maintains standards for foster homes and child care institutions "which shall permit use of the reasonable and prudent parent standard."
    - Second, it requires that States ensure that all foster homes and institutions have someone on-site who is authorized to apply the "reasonable and prudent parent standard" to decisions involving the participation of the child in age or developmentally-appropriate activities.
        - The provision defines such terms in relation to the health, safety, and best interests of the child.
        - The provision requires that states train caregivers on this standard, especially in this context and offers HHS technical assistance on best practices for this training.
    - The provision ensures that liability policies include liability as related to the reasonable and prudent parent standard and for the child's participation in activities.
    - This section also expanded the purpose of the Title IV Foster Care Independence Program to "ensure children who are likely to remain in foster care until 18 years of

age have regular, ongoing opportunities to engage in age or developmentally-appropriate activities."

- §112
    - Requires that at every child's permanency hearing, the state agency must document the steps taken to ensure the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including by consulting with the child.
- §113
    - Requires that for children age 14 and older, the state must develop his/her/their individual case plan for assuring they receive safe and proper care and services, and their permanency plan, in consultation with the child and, if the child so chooses, with two adults of their choosing.
    - The provision also requires that the case plan contain a list of the child's rights regarding education, health, court participation, visitation, to receive certain documents and to stay safe and avoid exploitation.
        - The child must acknowledge receipt of this list which must be explained in an age-appropriate manner.
- §114 requires that a State's case review system assures each child leaving foster care, because he/she/they age out, unless they have been in foster care less than six months, is not discharged without a certified copy of their birth certificate, social security card, health insurance information, copy of their medical records, and driver's license (or other ID).
- §115 requires the reporting of state-by-state data on the health of children in foster care, in particular about children who are pregnant or parenting and for children in care that is not a foster family home, their clinically diagnosed special needs and the extent of any specialized education, treatment, counseling or other services.

V. Significant Statutory Provisions

The Act amends various portions of Title IV, Part E of the Social Security Act (42 U.S.C.S. §§670-679) which provides federal payments for foster care and adoption assistance. The Act does not create any enforceable rights to benefits.

VI. Key Regulatory & Major Policy Provisions

No regulations; U.S. Dept. of Health and Human Services, Children's Bureau, ACYF-CB-IM-14-03, Issued Oct. 23, 2014, updated Nov. 4, 2015, Information Memorandum to State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Title IV-E and/or Title IV-B of the Social Security Act about New Legislation – Public Law 113-183, available at https://www.acf.hhs.gov/sites/default/files/cb/im1403.pdf.

VII. Significant Cases

None (yet). Note that the Preventing Sex Trafficking & Strengthening Families Act was only signed into law in 2014.

VIII. References to Medicaid

There are no references to the Medicaid Act.

IX. Other Relevant Citations and Resources

- Children's Defense Fund factsheet (Oct. 2014)
- Child Welfare Capacity Building Collaborative, Center for States (in particular information on normalcy)
- Implementing the Preventing Sex Trafficking and Strengthening Families Act to Benefit Children and Youth (Jan. 2015)
- Factsheet for Foster Youth Advocates on Implementing the Act.

Civil Rights

Section 1557 of the Patient Protection and Affordable Care Act

U.S. Department of Health and Human Services (DHHS), Office of Civil Rights (OCR)

I. Establishing Statutory Provision(s)

Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116.

II. General Description of the Program

III. Eligibility Criteria for the Program

In light of Section 1557's purpose of preserving existing administrative enforcement mechanisms and procedures, the same statutory prerequisites that apply to Title VI, Title IX, Section 504, ADA, ADEA, administrative and judicial complaints would likely apply as well to Section 1557 complaints.

IV. Specific Services/Benefits/Rights Included in the Program

In light of Section 1557 language not "to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals" under preexisting civil rights laws, it is likely that relief available under Section 1557 is likely to remain substantially similar in most cases, although the implementing Section 1557 regulations provide that "[c]ompensatory damages for violations of Section 1557 are available in appropriate administrative and judicial actions brought under this rule." *Id.* at 31376, 31377.

- HHS has highlighted several key new provisions:
    - Extending protections against sex discrimination to health coverage and care for the first time, thus resolving the principal shortcoming of Title IX, and including gender identity within the definition of sex discrimination;
    - Codifying long-standing guidance regarding meaningful access for individuals with limited English proficiency, including the use of free, accurate, and timely language assistance services;
    - Incorporating existing law that requires reasonable modifications, effective communication, and readily accessible buildings and information technology to avoid disability-based discrimination; and
    - Prohibiting discriminatory health insurance benefit design and including specific coverage protections for transgender individuals.

Another key new positions is Section 1557's express inclusion of "contracts of insurance" as a form of federal financial assistance along with the inclusion of ACA Title 1 Marketplace insurance entities

as recipients. In contrast, Title VI excluded insurance contacts as federal financial assistance. *See Title VI Legal Scan.*

The discussion in the final rule of the inclusion of Medicaid payments as federal financial assistance is also significant in light of the large number of physicians who receive Medicaid reimbursements.

Another controversial key new provision is whether Section 1557 authorizes a private right of action for disparate impact claims. In its final rule, HHS OCR stated that "OCR interprets Section 1557 as authorizing a private right of action for claims of disparate impact discrimination on the basis of any of the criteria enumerated in the legislation." Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. at 31376,31440. One of the statutes that OCR enforces, the Age Discrimination Act, permits proof of disparate impact discrimination of the criteria of age to establish liability in both administrative and judicial proceedings. The implementing regulations of Title VI and Title IX permit such proof as well but not the statutes themselves. Under the Supreme Court's *Sandoval* opinion, Title VI, Title IX and Section 504 complainants could not raise disparate impact claims in judicial proceedings. *See Title VI Legal Scan.*

OCR followed a district court opinion that:

- It appears Congress intended to create a new, health-specific, anti-discrimination cause of action that is subject to a singular standard, regardless of class status. Reading Section 1557 otherwise would lead to an illogical result, as different enforcement mechanism and standards would apply to a Section 1557 plaintiff depending on whether a plaintiff's claim is based on her race, sex, age or disability. For example, it would not make sense for a Section 1557 plaintiff claiming race discrimination to be barred from bringing a claim using a disparate impact theory but then allow a Section 1557 plaintiff alleging disability discrimination to do so.

Rumble v. Fairview Health Serv., No. 14-CV-2037, 2015 WL 1197415, at *11 (D. Minn. 2015), s*ee* Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. at 31376,31439-40.

As noted above, HHS's final rule defines discrimination on the basis of gender identification as a form of sex discrimination. See 45 CFR § 92.4 ("*On the basis of sex* includes but, but is not limited to, discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, and gender identity.") Other courts have agreed with HHS and another part of the *Rumble* ruling that the prohibition of sex discrimination extends to gender identity. *See Videckis v. Pepperdine Uni.*, 150 F.Supp.3d 1151, 1159 (C.D. Cal. 2015) (Title IX case) ("[T]he line between sex discrimination and sexual orientation discrimination is 'difficult to draw' because that line does not exist, save as a lingering and faulty judicial construct.").

Other courts have disagreed with HHS and these courts as to whether gender identity is a form of sex discrimination. A district court, indeed, has issued a nationwide injunction enjoining OCR's regulations implementing Section 1557 with respect to enforcing "gender identity" and

"termination of pregnancy" as sex discrimination based on existing construction of Title IX as not including gender identity or termination of pregnancy. *See Franciscan Alliance, Inc. v. Burwell,* 227 F.Supp.3d 660 (N.D. Tex. 2016).

In addition to recent federal appellate opinions, the Supreme Court will hear arguments this Term on whether Title IX's prohibition on sex discrimination extends to gender identity in a transgender bathroom case, *Gloucester County School Board v. G.G. ex. rel Grimm*, 136 S.Ct. 2442 (2016).

With respect to sexual orientation, HHS states that the final rule does not resolve the issue of whether Section 1557's prohibition of sex discrimination extends to discrimination based on sexual orientation alone while noting that sexual orientation discrimination is prohibited under Section 1557 when it is based on gender stereotypes.

Whether gender identity and sexual orientation are prohibited sex discrimination is likely to be decided by the courts. Theories being litigated include the idea that sexual orientation and transgender status is sex discrimination because it is rooted in sex stereotypes, following the Supreme Court's opinion in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (sex stereotyping is sex discrimination under Title VII). *See, e.g., Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 346 (7th Cir. 2017) (*en banc*). Another theory is that sexual orientation is sex discrimination because it treats otherwise similarly-situated people differently because of the sex of the people they associate with, analogizing to *Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriage case). *See Christiansen v. Omnicom Grp., Inc.*, 852 F.3d 195, 204 (2d Cir. 2017). Another theory is based on the idea that sexual orientation is inseparable from sex. *Id.* at 202; *Baldwin v. Foxx*, EEOC DOC 0120133080, 2015 WL 4397641, at *5 (EEOC 2015). Last, it is argued that coverage of sexual orientation and gender identity reflects the evolving legal landscape. *See Christiansen*, 852 F.3d at 202; *Hively*, 853 F.3d at 349.

It is also uncertain whether HHS or the present Administration will continue to adhere to the position of OCR in the final rule on sex discrimination and on issues such as judicial disparate impact claims.

HHS also points out that the regulations have not set specific accessibility standards for medical equipment for people with disabilities, pending action by the U.S. Access Board.

The fate of the ACA, Section 1557 and HHS's final rule is uncertain. Even if Section 1557 survives, it is unclear how many new key provisions would survive and in what form.

V. Significant Statutory Provisions

Significant statutes, regulations, policy provisions, cases and resources are mentioned above.

VI. Key Regulatory & Major Policy Provisions

Significant regulations and policy provisions are mentioned above.

VII. Significant Cases

Significant cases are mentioned above.

VIII. References to Medicaid

As mentioned above, HHS's discussion of the final rule states that Medicaid is a form of federal financial assistance.

IX. Other Relevant Citations and Resources

None.

Title VI of the Civil Rights Act of 1964

U.S. Department of Health and Human Services (DHHS), Office of Civil Rights (OCR)

I. Establishing Statutory Provision(s)

42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.")

42 U.S.C. § 2000d-1 ("Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.")

II. General Description of the Program

OCR administratively implements the protections of Title VI by (a) issuing regulations and guidance of general applicability, including establishing and regulating a complaint system to effectuate Section 2000d, (b) investigating complaints of discrimination submitted by complainants, and (c) issuing determinations on complaints. OCR performs these duties pursuant to regulations originally issued in 1965 by HHS' predecessor agency, the U.S. Department of Health, Education and Welfare, and approved by the President. HHS regulations are codified at 45 C.F.R § 80.

Recipient states, state entities, localities, and their contractors who receive Federal financial assistance to operate any program or activity agree that they will abide by Title VI's prohibition of discrimination. Beneficiaries of any program or activity receiving Federal financial assistance may file complaints of discrimination against a recipient with OCR on behalf of individuals, groups, and classes. Organizations may also file complaints.

The U.S. Department of Justice, Civil Rights Division, assists federal agencies in their administrative implementation of Title VI by issuing regulations and guidance to assure consistent enforcement by agencies across the federal government. The Department of Justice played a historic role in drafting Tile VI and agency-specific regulations are based upon the initial 1965 DOJ regulations. DOJ's Civil Rights Division coordinates and reviews agencies' administrative enforcement of Title VI.

Section 602 of Title VI authorizes DOJ to enforce Title VI by filing civil actions for injunctive relief, specific performance or other remedies, including actions against states when agencies have referred determinations of recipients' noncompliance to DOJ for judicial enforcement. DOJ may also submit statements of interest and amicus briefs regarding Title VI issues in private litigation.

In addition to administrative enforcement remedies, a complainant also has a separate right to bring a civil action in federal court against a recipient to complain of discrimination in a recipient's program or activity. Although Title VI is silent about the right of complainants to bring a separate civil enforcement action, courts have recognized that the right to do so is implied.

Title VI served as the model for several subsequent civil rights laws concerning federal financial assistance for other programs. The major statutes are Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (sex discrimination in education programs); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (disability discrimination), the Age Discrimination Act of 1975, 42 U.S.C. § 6101 (age discrimination) and Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 (comprehensive health care civil rights law). See above.

Courts generally follow Title VI precedent in construing the later statutes modeled on Title VI and precedent developed on the later statutes is used to construe Title VI. An exception is the more limited scope of Title IX and exceptions to Title IX coverage.

For further discussion and case law citations concerning the role of the DOJ and other statutes. *See* Civil Rights Div., U.S. Dep't of Justice, *Title VI Legal Manual*, Section III & IV, (December 2016), https://www.justice.gov/crt/case-document/file/931026/download. The *Title VI Legal Manual* was issued by the Civil Rights Division for the use of agencies in enforcing Title VI administratively, and is a valuable resource for complainants and advocates.

III. Eligibility Criteria for the Program

The prerequisites developed by federal agencies and courts for submitting an administrative complaint to HHS OCR are the same as those for a separate civil action to enforce Title VI.

- **"Any Person."** Title VI protects "any person" in the United States who is excluded from participation, denied benefits or subjected to discrimination, including citizens, non-citizens, and undocumented persons. The same term "person" in the Fifth or Fourteenth Amendment has been construed to include undocumented persons. The scope of Title VI has been found to be the same as the scope of those constitutional amendments.
- A "person" includes a child. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

- A private entity that receives federal financial assistance from a recipient or that seeks to contract with a recipient is also a "person", but an entity's receipt of a procurement contract does not subject that contractor to Title VI claims.
- Some courts have found that a city, political division or other state instrumentality is not a "person" who may challenge a recipient state under Title VI. However, a school district or other political division may file a Title VI complaint on its own behalf or on behalf of its students or other constituents.

For further discussion and case law citations, see *Title VI Legal Manual*, Section V(A).

- **"Federal Financial Assistance."** The statutory term "Federal Financial Assistance" is defined by 45 C.F.R § 80.13(f) as including: "(1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or contract which has as one of its purposes the provision of assistance."
- An entity may receive grant money directly from an agency or indirectly through another entity. In either case, the direct recipient as well as the secondary or sub-recipient are considered to have received federal funds.
- While cases suggest that typical tax benefits are not considered federal financial assistance, a few courts have found instances where a tax benefit would be considered federal financial assistance.
- A typical example of a federal agreement, arrangement, or contract is training conducted by federal personnel.
- Some items of value in non-monetary form that have been found not to be federal financial assistance include licenses, federal statutory programs or regulations, programs owned or operated by the federal government, guaranty and insurance contracts, procurement contracts, and assistance to ultimate beneficiaries. Insurance contracts would exclude health insurance under Title VI. Section 1557, on the other hand, covers HHS-funded Title I entities and health insurance contracts.
- OCR must establish HHS or one of its subparts has provided federal financial assistance to a recipient engaged in alleged discriminatory conduct before undertaking an investigation. DOJ advises OCR to determine whether an entity receives such assistance by seeking information from program offices responsible for providing grants, use data requests of the target of the request, contact possible primary recipients for assistance identifying pass-through funds, and conduct internet research (e.g., county board minutes).
- To determine if an entity is a recipient of federal financial assistance, complainants may conduct research on https://taggs.hhs.gov/ (TAGGS database, a central repository of grants

awarded by the eleven HHS operating divisions) and the USA Spending.gov website (database of recipients and sub-recipients of various kinds of federal financial assistance).

For further discussion and case law citations, see *Title VI Legal Manual*, Section V(C).

- "**Recipient.**" The statutory term "recipient" is defined by 45 C.F.R § 80.13(i) as "any State. Political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or other transferee thereof, but such term does not include any ultimate beneficiary." A "primary recipient" is defined by § 80.13(j) as "any recipient which is authorized or required to extend Federal financial assistance to another recipient."
- A recipient may be liable for failure to take steps to ensure the compliance of its sub-recipients.
- The Supreme Court found that a college was an indirect recipient under Title IX because students paid for their educational expenses in part with federally subsidized loans because colleges and universities were the intended recipients of the grant program. *Grove City Coll. v. Bell*, 465 U.S. 555, 564-65 (1984); *see also Spann v. Word of Faith Christian Center Church*, 589 F.Supp.2d 759, 765-67 (S.D. Miss. 2008) (same reasoning applied to finding a day care center as the intended recipient because a federally-funded subsidy was earmarked for a childcare provider the purpose of the subsidy was to improve child care available to low income families). An entity that merely benefits from aid from a recipient may not be considered an indirect recipient.

For further discussion and case law citations, *see Title VI Legal Manual*, Section V(D).

- "**Program or Activity.**" After the Supreme Court narrowed earlier rulings that "program or activity" was intended to apply institution-wide and as broadly as necessary to eliminate discriminatory practices in *Grove City Coll.*, 465 U.S. at 571, Congress enacted the Civil Rights Restoration Act of 1987 to restore the broad definition of "program or activity." The broad definition is codified in 42 U.S.C. § 2000d-4a.
- Generally, with respect to public institutions or private institutions that serve a public purpose, "program or activity" covers the entire institution and not just the part of the institution that receives federal financial assistance even if the part of the institution receiving the assistance is distinct from the part that engaged in alleged discrimination.
- Title VI, as amended, provides that the following instrumentalities of a state or local government may constitute a "program or activity."
    - [A]ll of the operations of:
        - (1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

        - (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
        - . . . any part of which is extended Federal financial assistance.
- Title VI, as amended, provides that the following educational institutions constitute a "program or activity."
    - [A]ll of the operations of:
        - (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
        - (B) a local education agency (as defined in Section 7801 of Title 20), system of vocational education, or other school system;
        - . . . any part of which is extended Federal financial assistance.

With respect to corporations and other private entities, the scope of "program or activity" depends on the operational purpose of the entity, the purpose of the federal funding, and the structure of the entity.

- For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of:
    - (3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship-- (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
    - (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship;
    - . . . any part of which is extended Federal financial assistance.

A catch-all provision includes the operations of entities formed by any combination of the above entities are also encompassed by "program or activity." 42 U.S.C. § 2000d-4a (4).

- **Judicial Enforcement of Title VI.** The Department of Justice's Civil Rights Division coordinates and reviews agencies' administrative enforcement of Title VI. Title VI also authorizes DOJ to enforce Title VI by filing civil actions for injunctive relief, specific performance or other remedies, including actions against states when agencies have referred determinations of recipients' noncompliance to DOJ for judicial enforcement. DOJ may also submit statements of interest and amicus briefs regarding Title VI issues in private litigation.
- In addition to administrative enforcement and DOJ judicial remedies, a complainant also has a separate right to bring a private civil action in federal court against a recipient to complain of discrimination. Although Title VI is silent about the right of a complainant to

bring a separate civil enforcement action, the Supreme Court has recognized that the right to do so is implied. *See Barnes v. Gorman*, 536 U.S. 181, 185 (2002); *see Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979) (individual has a private right of action under Title IX).

- In a private civil action, a complainant may challenge facial or intentional discrimination, but not disparate impact discrimination under Title VI. *Alexander v. Sandoval*, 532 U.S. 275, 284-85 (2001). A complainant in an administrative proceeding and the DOJ in a judicial proceeding may challenge disparate impact discrimination as well as other forms of discrimination.
- A complainant need not exhaust administrative remedies before bringing a private civil action. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) (Title IX case). Congress has abrogated the State's immunity for suits under Title VI and other related statutes. *See* 42 U.S.C. § 2000d-7.

For further discussion and case law citations, *see Title VI Legal Manual*, Section V(A) & E, and Section IX.

IV. Specific Services/Benefits/Rights Included in the Program

Available Relief. Injunctive relief is available. Monetary relief is available for intentional or facial discrimination, but not for disparate impact discrimination.

For further discussion and case law citations, *see Title VI Legal Manual*, Section IX.

Methods of Proving Discrimination. For a complainant to obtain the relief, OCR must find that discriminatory conduct occurred that harmed complainant. Examples of unlawful discriminatory practices include but are not limited to the following:

- **Facial Discrimination.** Facial discrimination in the form of laws and regulations that classify individuals and provide them aid, benefits or services on the basis of their inclusion or exclusion from a protected individuals or a class, are prohibited as illegal per se, except to the extent they lawfully benefit members of a protected class or as part of a lawful affirmative action plan. The same is true of practices that are the equivalent of laws or regulations classifying individuals and providing them benefits on the basis of their inclusion or exclusion from a protected class status.
- **Intentional Discrimination**. Practices that intentionally discriminate against protected individuals or a protected class are prohibited.
    - Admissions, expressions of bias, or other direct evidence of discrimination are often probative of purpose or intent, but are not necessary to demonstrate that a practice is intentional discrimination.
    - Circumstantial evidence is often relied upon to demonstrate intentional discrimination. All probative sources of information or methods for determining discrimination should be used to analyze circumstances that shed light on whether

discrimination has occurred. Such sources of information and methods include, but are not limited to, information concerning the disproportionate, adverse effect of a decision affecting a protected class or decisions on comparable matters, the historical background of the challenged practice, specific antecedent events leading to the challenged decision, departures from normal procedures or substantive conclusions, and contemporary statements of decision-makers and other legislative history, and a pattern of harm to the protected individuals or classes. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-68 (1977*).* Information showing that discrimination against members of a protected class is the standard operating procedure based on statistical data that the practice has a disproportionate, adverse effect on members of the protected class and supporting anecdotal evidence, *See Teamsters v. United States*, 431 U.S. 324 (1977), and the use of presumptions, burden shifting and comparisons between a protected class and other individuals, *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

- Information showing a discriminatory effect on a protected individuals or class is circumstantial evidence that a program, activity, or practice is purposeful discrimination includes, but is not limited to, the following:
  - Statistical data or anecdotal evidence showing that a group of individuals, other than the protected class, concurrently received better or more effective benefits under the same or a similar program or activity *See Navajo Nation v. New Mexico*, 975 F.2d 741 (10th Cir. 1992); or
  - Statistical data or anecdotal evidence showing that the benefits of the program or activity were better or more effective when other individuals utilized a program or activity than when members of the protected class utilized the same or similar program or activity more. *See Whitfield v. Oliver*, 399 F.Supp. 348 (M.D. Ala. 1973); *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690 (9th Cir. 2009).
- Because the administrative context is different than the adversarial court processes, OCR often chooses to make a preliminary prima facie finding and require the recipient to articulate its defenses in the next step

For further discussion and case law citations, *see Title VI Legal Manual*, Section VI.

- **Disparate Impact Discrimination.** Disparate impact discrimination is prohibited even if the practice is not facial or intentional discrimination.
  - Disparate impact discrimination is prohibited under OCR's 45 C.F.R § 80 regulations issued pursuant to 42 U.S.C. § 2000d-1, based on the disproportionate, adverse effect of a facially neutral criteria or method of administration.
    - A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services,

financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, *may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin*.

The facially neutral criteria or method of administration may nevertheless still be lawful if supported by a legally sufficient justification. The burdens of proof for establishing a violation under this subpart are set forth below.

- Because the administrative context is different than court processes, OCR often chooses to make a preliminary prima facie finding and require the respondent to articulate its defenses in the next step.
- Discriminatory Effect. A facially neutral criteria or method of administration has a discriminatory effect where it causes adverse harm or predictably results in a disparate impact on a protected class; creates, increases, reinforces, or perpetuates discrimination against a protected class.

In showing that a discriminatory effect on a protected class has "the effect of defeating or substantially impairing the accomplishment of the objectives of a program or activity", evidence of disproportionate impact may include evidence that adverse effects fall disproportionately on a protected class, and/or that the benefits of the program or activity were reduced, or were less effective, or more burdensome to obtain, when members of a protected class utilized a program or activity than when other individuals utilized the same or similar program or activity. *See Comm. Concerning Cmty. Improvement,* 583 F.3d 690.

- Legally Sufficient Justification.
  - A legally sufficient justification exists where the recipient proves that there exists an overriding legitimate purpose that the criteria or method of administration is necessary to the safe and efficient operation of the program or activity and the challenged method or criteria of administration effectively fulfills the purpose the program or activity is supposed to serve. The criteria or method of administration may still be impermissible where it is shown that there exists an alternative criteria or method of administration which would accomplish the purpose of the program or activity equally well with a lesser discriminatory impact.
  - A legally sufficient necessity must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for

establishing each of the two elements of a legally sufficient justification are set forth below.

- Burdens of Proof in Disparate Impact Cases.
  - The recipient has the burden of proving that the criteria or method of administration caused or predictably will cause a discriminatory effect.
  - Once the recipient satisfies the burden of proof, the respondent has the burden of proving that the challenged criteria or method of administration is necessary to the safe and efficient operation of the respondent's program or activity.
  - If the respondent satisfies the burden of proof, the complainant may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged criteria or method of administration could be served by another criteria or method of administration that has a less discriminatory effect.
- A demonstration that a criteria or method of administration is supported by a legally sufficient necessity, may not be used as a defense against a claim of intentional discrimination. A complainant may assert that the same information is probative of more than one form of discrimination. Information probative of one form of discrimination may also be probative of other forms of discrimination.

- **Methods of Proof Are Illustrative.** The evidence and methods of proof described above with respect to facial discrimination, intentional discrimination and disparate impact discrimination are illustrative and not limiting.
- **Retaliation.** Retaliation against a complainant is prohibited by Title VI. For further discussion and case law, *see Title VI Legal Manual*, Section VIII.

For further discussion and case law, *see Title VI Legal Manual*, Section VII.

V. Significant Statutory Provisions

Significant statutes are mentioned above.

VI. Key Regulatory & Major Policy Provisions

Significant regulations and policy provisions are mentioned above.

VII. Significant Cases

Significant cases are mentioned above.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

None.

Community Development

Community Service Block Grant: Omnibus Reconciliation Act

U.S. Department of Health and Human Services (DHHS), Office of Community Services, the Administration of Children and Families

I. Establishing Statutory Provision(s)

- Omnibus Reconciliation Act of 1981, P.L. 97-35
- Amended by Coates Human Services Reauthorization Act of 1998, P.L. 105-285.
- 42 USC § 9901 et seq.

II. General Description of the Program

- Provides funds to alleviate causes and conditions of poverty in communities.
    - Goals: reduce poverty, revitalize low-income communities, and empower low-income families and individuals to become self-sufficient.
- Funds projects that:
    - Lessen poverty in communities
    - Address the needs of low-income individuals including homeless, migrants, and the elderly
    - Provide services and activities addressing employment, education, better use of available income, housing, nutrition, emergency services, and/or health.
- With support of CSBG funding, states and Community Action Agencies work together to achieve following goals for low-income individuals:
    - Increased self-sufficiency
    - Improved living conditions
    - Ownership of and pride in their communities
    - Strong family and support systems
- Program varies by region.
    - Each Community Action Agency (or Community Action Partnership) completes a biennial community needs assessment
- FY2018 budget eliminates this program. (https://www.cbpp.org/research/federal-budget/trump-budgets-deep-cuts-to-block-grants-underscore-danger-of-block-granting)

III. Eligibility Criteria for the Program

- Grants available to: States, District of Columbia, Commonwealth of Puerto Rico, U.S. Territories, federally and state-recognized Indian Tribes and tribal organizations, Community Action Agencies, migrant and seasonal farmworkers' agencies, other organizations specifically designated by the states.
- Determines each jurisdiction's funding level based on poverty population

IV. Specific Services/Benefits/Rights Included in the Program

None.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

- Policy and Guidance: https://www.acf.hhs.gov/ocs/resource/policy-and-guidance-0
- CSBG Regulation 45 CFR 96 Block Grants, Subpart 1: Community Service Block Grants: https://www.acf.hhs.gov/ocs/resource/policy-and-guidance-0
  - Audit requirements and termination of funding

VII. Significant Cases

None.

VIII. References to Medicaid

None in P.L. 105-285 (amending Community Services Block Grant).

IX. Other Relevant Citations and Resources

- https://www.acf.hhs.gov/ocs/programs/csbg/about
- State Assessments: https://www.acf.hhs.gov/ocs/resource/csbg-state-assessments
- National Association for State Community Services Programs: http://nascsp.org/CSBG.aspx
- Idaho: http://www.idahocommunityaction.org/programs/programscommunityserviceblockgrant/
- Pennsylvania: http://dced.pa.gov/programs/community-services-block-grant-csbg/

Rural Community Development Initiative Grants

U.S. Department of Agriculture

I. Establishing Regulatory Provision(s)

2 CFR 200.

II. General Description of the Program

Rural Community Development Initiative grants are awarded to help non-profit housing and community development organizations, low-income rural communities and federally recognized

tribes support housing, community facilities and community and economic development projects in rural areas.

- Program funding: $4,000,000
    - Awarded through a competitive process
    - Minimum grant award: $50,000
    - Maximum grant award: $250,000

III. Eligibility Criteria for the Program

- Who may apply for the program?
    - Public bodies
    - Non-profit organizations
    - Qualified private organizations
- What is an eligible area?
    - Rural areas – any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

IV. Specific Services/Benefits/Rights Included in the Program

- Rural Community Development Initiative grants may be used for, but are not limited to:
    - Training sub-grantees to conduct:
        - Home-ownership education
        - Minority business entrepreneur education
    - Providing technical assistance to sub-grantees on
        - Strategic plan development
        - Accessing alternative funding sources
        - Board training
        - Developing successful child care facilities
        - Creating training tools, such as videos, workbooks, and reference guides
        - Effective fundraising techniques

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

https://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants

Rural Community Development Program: Community Services Block Grant Act; the Coats Human Services Reauthorization Act

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services

I. Establishing Statutory Provision(s)

Community Services Block Grant Act § 680(a)(3)(B), as amended; the Coats Human Services Reauthorization Act of 1998 (P.L. 105-285).

II. General Description of the Program

The Rural Community Development Program is a federal grant program that works with regional and tribal organizations to manage safe water systems in rural communities. The Program funds projects designed to provide low-income individuals access to safe and affordable drinking water in their homes, strengthen economic conditions and opportunities in communities through water supply and waste water disposal training and technical assistance, and projects that are designed to construct, improve and preserve water supply and disposal systems in a cost-effective manner. The Program also provides training and technical assistance to low-income rural communities in developing and managing affordable and safe water and wastewater treatment facilities.

- Appropriations 2016: 6.5 million

III. Eligibility Criteria for the Program

Eligible Applicants: multi-state regional, private, non-profit 501(c)(3) tax-exempt organizations that can provide training and technical assistance to small, low-income, rural and tribal communities concerning their community facility needs.

IV. Specific Services/Benefits/Rights Included in the Program

- "RCD funds are used to provide training and technical assistance to:
    - Increase access for families with low incomes to water supply and waste disposal services;
    - Preserve affordable water and waste disposal services in low-income rural communities;

- Increase local capacity and expertise to establish and maintain needed community facilities;
- Increase economic opportunities for low-income rural communities by ensuring they have basic water and sanitation;
- Utilize technical assistance to leverage additional public and private resources;
- Support coordination with relevant homeland security activities; and
- Promote improved coordination of federal, state, and local agencies and financing programs to benefit low-income communities."

The Rural Community Development Program also supports the RCD/Homeland Security Program, which provides safety and security training and technical assistance to state, regional, and national grantees.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- https://www.acf.hhs.gov/ocs/programs/rcd/about
- https://www.acf.hhs.gov/ocs/resource/rcd-fact-sheet-0

Social Services Block Grant: Omnibus Reconciliation Act

U.S. Department of Health and Human Services Administration for Children and Families, Office of Community Services

I. Establishing Statutory Provision(s)

The Omnibus Reconciliation Act of 1981 [P.L. 97-35] (amended title XX of the Social Security Act which established the Social Services Block Grant)

II. General Description of the Program

- A flexible funding source that allows States and Territories to tailor social service programming to their population needs.
- Allows States to provide essential social services that help achieve a myriad of goals to reduce dependency and promote self-sufficiency; protect children and adults from neglect, abuse and exploitation; and help individuals who are unable to take care of themselves to stay in their homes or to find the best institutional arrangements.
    - States have broad discretion in which services they support and can change funds over time to meet the needs of their populations.
- FY16 SSBG allocations to states and territories = more than 1.5 billion.
- FY 18 federal budget effectively eliminates the SSBG (https://www.hhs.gov/about/budget/fy2018/budget-in-brief/acf/mandatory/index.html)
- Federal law establishes five broad goals for the Social Services Block Grant, and the services funded by States/Territories must be linked to at least one of these statutory goals:
    - "1. Achieve or maintain economic self-support to prevent, reduce, or eliminate dependency;
    - 2. Achieve or maintain self-sufficiency, including reduction or prevention of dependency;
    - 3. Prevent or remedy neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserve, rehabilitate, or reunite families;
    - 4. Prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and
    - 5. Secure referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions."
- Requires states and territories to submit a plan specifying how grant funds will be used, as well as an annual post-expenditure report.
- States may transfer 10% of TANF funds to SSBG.

III. Eligibility Criteria for the Program

- Eligible Applicants: States, District of Columbia, Commonwealth of Puerto Rico, and U.S. territories (Guam, Virgin Islands, Commonwealth of the Northern Mariana Islands, and American Samoa).
- States have discretion to set eligibility criteria.
    - Exception: welfare reform established income limit of 200% of poverty level for recipients of services funded by TANF allotments that are transferred to SSBG.

IV. Specific Services/Benefits/Rights Included in the Program

- Varies by state. Services most frequently supported include child care, child welfare, services for persons with disabilities, case management services, and protective services for adults.

V. Significant Statutory Provisions

- 42 U.S.C. §1397: Federal law establishing 5 broad goals.

VI. Key Regulatory & Major Policy Provisions

- 45 CFR 96.70-96.74 (Subpart G).

VII. Significant Cases

- Maryland Dept. of Human Resources v. Dept., of Health and Human Services, 845 F.2d 49 (4th Cir. 1988)
- Board of Sup'rs of Warren County v. Virginia Dept. of Social Services, 731 F. Supp. 735 (W.D. Va. 1990)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- https://www.acf.hhs.gov/ocs/resource/ssbg-fact-sheet
- https://fas.org/sgp/crs/misc/94-953.pdf

USDA Community Facilities Direct Load and Grant Program: Title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act

U.S. Department of Agriculture (USDA)

I. Establishing Regulatory Provision(s)

- Loans governed by 7 CFR Part 1942, Subpart A
- Grants governed by 7 CFR Part 3570, Subpart A

II. General Description of the Program

- Provides affordable funding to develop essential community facilities in rural areas.
    - Essential community facility defined as a facility that provides essential services to the local community for the orderly development of the community in a primarily rural area, and does not include private, commercial, or business undertakings.

        - Priority given to healthcare, education, and public safety projects.
    - Funds can be used to purchase, construct, and / or improve essential community facilities, purchase equipment and pay related project expenses.
        - Examples of essential community facilities include:
            - Health care facilities such as hospitals, medical clinics, dental clinics, nursing homes or assisted living facilities
            - Public facilities such as town halls, courthouses, airport hangars or street improvements
            - Community support services such as child care centers, community centers, fairgrounds or transitional housing
            - Public safety services such as fire departments, police stations, prisons, police vehicles, fire trucks, public works vehicles or equipment
            - Educational services such as museums, libraries or private schools
            - Utility services such as telemedicine or distance learning equipment
            - Local food systems such as community gardens, food pantries, community kitchens, food banks, food hubs or greenhouses.
- Interest rates for 4th Quarter of Fiscal Year 2017 (July 1 – Sept. 30, 2017)
    - Poverty: 4.500%
    - Intermediate: 3.875%
    - Market: 3.250%

III. Eligibility Criteria for the Program

- Who may apply for this program?
    - Public bodies such as municipalities, counties, and special-purpose districts
    - Community-based non-profit corporations
    - Federally-recognized Tribes
- What is an eligible area?
    - Rural areas including cities, villages, townships and towns including Federally Recognized Tribal Lands with no more than 20,000 residents according to the latest US Census Data.

IV. Specific Services/Benefits/Rights Included in the Program

See above.

V. Significant Statutory Provisions

See above.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- https://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program
- https://www.ruralhealthinfo.org/funding/91

Disability Rights

Americans with Disabilities Act

U.S. Department of Justice

I. Establishing Statutory Provision(s)

- Section 504 of the Rehabilitation Act
- 42 U.S.C.A. § 12101

II. General Description of the Program

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.

III. Eligibility Criteria for the Program

- A person is protected by the act if they have a disability which is defined as:
  - a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - a record of such an impairment; or
  - being regarded as having such an impairment

IV. Specific Services/Benefits/Rights Included in the Program

The ADA prohibits discrimination on the basis of disability. An aggrieved person can file a complaint with the Department of Justice.

V. Significant Statutory Provisions

- 42 U.S.C.A. § 12101
- 42 U.S.C.A. § 12102

VI. Key Regulatory & Major Policy Provisions

- 28 C.F.R. Part 35

VII. Significant Cases

- *Sutton v. United Air Lines, Inc.*, 527 US 471 (1999)his ADA bias brought by twin sisters who had applied for pilot positions with United Air Lines, but were rejected because they did not meet United's minimum requirement of uncorrected visual ability. The Supreme Court determined they were not disabled because they could see fine with corrective measures,

such as glasses. The justices also established a standard that whether an impairment "substantially limits" a major life activity under the ADA is to be determined based on the effects of mitigating measures.

- *Toyota Motor Manufacturing Kentucky Inc. v. Williams*, 534 U.S. 184 (2002)The Supreme Court ruled that merely having an impairment does not make one disabled for purposes of the ADA and that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled."

- *Bragdon v. Abbott*, 524 U.S. 624 (1998)The Supreme Court held that HIV infection qualifies as a disability under the Americans with Disabilities Act (ADA).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- https://www.ada.gov/ (The Department of Justice ADA informational website)

Section 504 of the Rehabilitation Act of 1973

U.S. Department of Justice. Enforced by multiple U.S. agencies.

I. Establishing Statutory Provision(s)

Rehabilitation Act of 1973**,** [As Amended] Through P.L. 114–95, Enacted December 10, 2015, 29 U.S.C. § 701 note, Title IV, §504 at 29 U.S.C. 794.

II. General Description of the Program

Section 504 of the Rehabilitation Act of 1973 (§504) is a federal law that protects qualified individuals, including children and youth, from discrimination based on their disability by government entities and organizations that receive federal financial assistance. §504 addresses areas of education, vocational training, employment, reasonable accommodations and program accessibility. §504 is the precursor to the ADA and applies only to federal departments that receive federal financial assistance. The ADA extends the prohibition to all activities of State and local governments regardless of whether these entities receive federal financial assistance.

III. Eligibility Criteria for the Program

Individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered.

In addition to meeting the above definition, for purposes of receiving services, education or training, qualified individuals with disabilities are persons who meet normal and essential eligibility requirements.

IV. Specific Services/Benefits/Rights Included in the Program

The "right or benefit" of §504 is the prohibition of discrimination on the basis of disability by employers and entities that receive financial assistance from any Federal department or agency. §504 regulations make clear that covered entities must, among other things:

- Provide services and programs in the most integrated setting appropriate to the needs of the qualified individual with a disability;
- Ensure that programs, services, activities, and facilities are accessible;
- Make reasonable modifications in their policies, practices, and procedures to avoid discrimination on the basis of disability, unless it would result in a fundamental alteration of the program;
- Provide auxiliary aids to persons with disabilities, at no additional cost, where necessary to afford an equal opportunity to participate in or benefit from a program or activity;
- Provide students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. This could include: education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

V. Significant Statutory Provisions

P.L. 110–325 revised the meaning and interpretation of the definition of "disability" under §504 to align with the ADA.

VI. Key Regulatory & Major Policy Provisions

- 34 C.F.R. Part 104
- *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, December 2015 https://www2.ed.gov/about/offices/list/ocr/504faq.html
- *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools,* issued December 2016, https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf
- *Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973,* August 2010, www.ed.gov/ocr/docs/edlite-FAPE504.html.

- *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act,* August 2010 www.ed.gov/ocr/docs/placpub.html.
- *HHS and DOJ joint Technical Assistance to State and Local Child Welfare Agencies and Courts on the requirements of Title II of the ADA and Section 504 of the Rehabilitation Act*, August 2015, https://www.hhs.gov/sites/default/files/disability.pdf

VII. Significant Cases

- *Sch. Bd. of Nassau Cty. v. Arline*, 480 U.S. 273 (1987) (an individual with a contagious disease is considered a "handicapped individual" and thus is entitled to the protections of the Rehabilitation Act);
- *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985) (Section 504 may require reasonable modifications to a program or benefit to assure meaningful access to qualified persons with disabilities);
- *Se. Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (Section 504 does not prohibit a college from excluding a person with a serious hearing impairment as not qualified where accommodating the impairment would require a fundamental alteration in the college's program.)
- *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013), *cert. denied,* 134 S. Ct. 1493 (2014) (School districts must therefore ensure that they comply with both the IDEA and the effective communication requirements under Title II for students with disabilities.);

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- P.L. 93-112, 87 Stat. 394, 29 U.S.C. § 794
- Wright's Law resources on §504 http://www.wrightslaw.com/info/sec504.index.htm

Title I of the Rehabilitation Act of 1973 as Amended by Title IV of the Workforce Innovation and Opportunity Act of 2014 (WIOA), State Vocational Rehab Programs

U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration

I. Establishing Statutory Provision(s)

34 CFR Parts 361, Final Rule August 19, 2016.

II. General Description of the Program

Title I of the Rehabilitation Act, State Vocational Rehabilitation (VR) programs provide services that enable individuals with disabilities to prepare for and engage in gainful employment. Services provided must be consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Services available through VR programs vary depending upon the state. Services must be related to the employment goal and can include: vocational evaluation; counseling and guidance; and job search and placement.

The foundation of the State VR Program is the principle that individuals with disabilities, including individuals with the most significant disabilities, are capable of achieving high-quality, competitive integrated employment when provided necessary services and supports. Some especially valuable VR services for youth include pre-employment transition services for all students with disabilities. These services can be offered as early as 14 years of age and could include, postsecondary education, vocational training, independent living and daily living skills and community participation, among other things.

III. Eligibility Criteria for the Program

An individual must: 1) have a physical or mental impairment that results in a substantial impediment to employment (individuals eligible for SSI are presumed eligible); 2) be able to benefit from receiving VR services ; and require VR services to prepare for, secure, retain or regain employment.

Transition services are available to youth with disabilities as young as 14 years of age.

Prior to any determination that an individual is unable to benefit from VR services, the state must: conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations; and develop a written plan through the use of trial work experiences, with appropriate accommodations.

When a state does not have the funds to serve everyone eligible, they are required to first serve people with the "most significant disabilities" first.

IV. Specific Services/Benefits/Rights Included in the Program

Services available through VR programs vary depending upon the state. Services must be related to an employment goal and are designed to help individuals with disabilities get and keep a job. Services may include:

- Eligibility determinations to figure out if an individual qualifies for services.
- Assessment of vocational needs to learn more about an individuals' interests, skills, and support needs.
- Development of an Individualized Plan for Employment that outlines an individuals' goals and the services you will receive.

- Transition services, among them, postsecondary education, vocational training, independent living and daily living skills and community participation, among other things.
- Coordination of services to reach an individuals' goal of employment, such as, counseling, job search, trial work periods, and placement in supported employment or customized integrated employment. And;
- Post-employment services to help an individual keep a job once employed.

V. Significant Statutory Provisions

Title I of the Rehabilitation Act of 1973, P.L. 114-95 (as amended by Title IV of the Workforce Innovation and Opportunity Act of 2014 (WIOA) PL. 113-128 (2014)).

VI. Key Regulatory & Major Policy Provisions

- 34 CFR Parts 361
- State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage — Final Rule, August 2016.
- A Transition Guide to Postsecondary Education and Employment for Students and Youth with Disabilities, May 2017.

VII. Significant Cases

- 11th Amendment Immunity: *Hurst v. Texas Dep't of Assistive & Rehab. Services*, 5th Cir. (2007) ("even though in 1998 Congress provided under § 102(c)(5)(J) for the right to seek review of a VR administrative decision in federal or state court, it did not clearly [and unambiguously] indicate that by accepting VR funds, the state waived its sovereign immunity").
- VR's preference for in-state services: *Gant v. Mountjoy*, (D. Ky. 2009) (VR only covers in-state services unless out of state services are shown to be "necessary to obtain the skills for rehabilitation").
- VR's "comparable services or benefits provision": Weiss v. Indiana Family Services, 741 N.E.2d 398, (2000) (except in a few circumstances, VR should not provide services "If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome").

VIII. References to Medicaid

- 29 U.S.C. 720 – Section 101 of Title I of the Rehabilitation Act requires states to submit a plan for the provision of VR services.
- 34 C.F.R. §361.24(f) of the final rule implementing this provision specifies that the VR plan include an assurance that the state has entered into a formal cooperative agreement with the State Medicaid Agency and the State agency with primary responsibility for providing services and supports for individuals with intellectual disabilities and individuals with developmental disabilities, with respect to the delivery of vocational rehabilitation services,

including extended services for individuals with the most significant disabilities who have been determined eligible for home and community-based services.

- 34 C.F.R. §361.24(g) requires that the state plan describe how the designated State agency will collaborate with the State agency responsible for administering the State Medicaid Program, the State agency responsible for providing services for individuals with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable. And;
- 34 C.F.R. §361.27 of the final rule specifies that if the vocational rehabilitation services portion of state plan provides for the designated State agency to share funding and administrative responsibility with another agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary of Education for approval a plan that describes its shared financing and administration.
- 34 C.F.R. § 361.24 requires agreements between state VR systems and state Medicaid systems, and state intellectual and developmental disability agencies.
- 34 C.F.R. § 361.65 requires that, when invited, a VR representative must attend Medicaid person- centered planning meetings.
- 34 C.F.R. §101 also states that VR services provided for the benefit of groups of individuals with disabilities may also include "[T]ransition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with…Medicaid program."
- 34 C.F.R. §609. Creates an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities and requires it to include a designee from the Centers for Medicare & Medicaid Services.

IX. Other Relevant Citations and Resources

Title I of the Rehabilitation Act of 1973, P.L. 114-95

- **Department of Labor, Employment and Training Administration, WIOA website at** https://www.doleta.gov/wioa/
- **Department of Education WIOA websites:**
  Office of Career, Technical and Adult Education (OCTAE): http://www.ed.gov/AEFLA
  Office of Special Education and Rehabilitative (OSERS) - Rehabilitation Services Administration: https://rsa.ed.gov/wioa.cfm
- **Department of Health and Human Services, WIOA website at:**
  https://peerta.acf.hhs.gov/ofa-initiative/426

Title II of the Americans with Disabilities Act

U.S. Department of Justice

I. Establishing Statutory Provision(s)

The ADA is codified at 42 U.S.C. 12101 et seq. Title II regulations are at: 28 CFR Part 35, as amended by the final rule published on August 11, 2016 to implement the requirements of the ADA Amendments Act of 2008 (Public Law 110–325, 122 Stat. 3553 (2008)).

II. General Description of the Program

The ADA Title II protects qualified individuals with disabilities, of all ages, from discrimination or exclusion on the basis of disability in services, programs, and activities provided by State and local government entities. To comply with Title II public entities must reasonable modifications to their policies, procedures, or practices when necessary to avoid discrimination. Title II applies to any department, agency, or other instrumentality of a state or local government, and it applies to all services, programs, and activities provided or made available by public entities, and their contractors. It extends the anti- discrimination provisions of §504 of the Rehabilitation Act, to all activities of public entities regardless of whether the entities receive federal financial assistance.

The ADA "integration mandate" arises from Title II regulations requiring public entities to administer services, programs, and activities in the most integrated setting appropriate to an individuals' needs.

III. Eligibility Criteria for the Program

The ADA protects the rights of people who have a physical or mental impairment that substantially limits their ability to perform one or more major life activities, such as breathing, walking, reading, thinking, seeing, hearing, or working.This includes people whose disability is substantial but can be moderated or mitigated (e.g., through medication or assistive devices) as well as to people who are temporarily substantially limited in their ability to perform a major life activity.

The ADA also applies to people who have a record of having a substantial impairment (e.g., a person with cancer that is in remission) or are regarded as having such an impairment (e.g., a person who has scars from a severe burn).

IV. Specific Services/Benefits/Rights Included in the Program

The "right or benefit" of the ADA Title II is the prohibition of discrimination on the basis of disability. The specific types of discrimination are listed in § 35.130 (a) to (h).

V. Significant Statutory Provisions

- The ADA Amendments Act of 2008 (Public Law 110–325, 122 Stat. 3553)
- Part A - §12132. Prohibition on Discrimination.
- Part B §12132 Discrimination applicable to Public Transportation.

- Part A §12133. Enforcement.

VI. Key Regulatory & Major Policy Provisions

- 28 CFR Part 35 (Title II regulations)
- Title II DOJ Technical Assistance Materials Specifically for State and Local Governments https://www.ada.gov/ta-pubs-pg2.htm#titleii
- CMS Medicaid Director Letter: The Olmstead Decision and Medicaid, January 14, 2000
- The ADA Title II Technical Assistance Manual https://www.ada.gov/taman2.html
- DOJ FAQ: Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary, 2015 www.ada.gov/doe_doj_eff_comm/doe_doj_eff_comm_faqs.pdf.

DOJ Statement on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C., https://www.ada.gov/olmstead/q&a_olmstead.htm

VII. Significant Cases

- *Olmstead v. L.C and E.W., 527 U.S. 581, 597 (1999)* Holds that Title II prohibits the unjustified segregation of individuals with disabilities and requires public entities to provide services and supports in the most integrated setting appropriate)
- *Radaszewski v. Maram,* 383 F.3d 599 (7th Cir. 2004) Emblematic of one line of cases that have held that in certain circumstances states must "alter" their Medicaid optional services, as a reasonable accommodation, to comply with ADA Title II.
- *S.S. by S.Y. v. City of Springfield, Massachusetts*, 146 F.Supp.3d 414 (2015) The Massachusetts federal District Court held that Title II imposes obligations on public school districts with respect to the educational placement of students with disabilities that are independent of the obligations imposed by the Individuals with Disabilities in Education Act.
- *A.R. v. Florida Sec. of Heath Care Admin.* (on appeal in 11th Cir) asserts that the Florida's failure to provide appropriate Medicaid EPSDT services has resulted in their placement in nursing facilities, or risk of such placement, in violation of ADA Title II. Also significant because Florida, filed a motion to dismiss arguing that the DOJ does not have authority to enforce Title II of the ADA. The case is currently on appeal in the 11th Circuit Court of Appeals.

VIII. References to Medicaid

The ADA Title II does not specifically reference Medicaid, however, the regulatory protection found at 42 C.F.R. §35.103 is clearly applicable to the Medicaid Act. §35.103 provides that the protections of Title II do not invalidate or limit the protections provided by any other federal, state or local laws, in these laws provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

IX. Other Relevant Citations and Resources

- P.L. 93-112, 87 Stat. 394, 29 U.S.C. § 794
- Wright's Law resources on §504 http://www.wrightslaw.com/info/sec504.index.htm

Title III of the Americans with Disabilities Act

U.S. Department of Justice

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 12181 - 12189

II. General Description of the Program

Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 - 12189 prohibits discrimination on the basis of disability by those who own, operate, lease, or lease to places of public accommodation -- essentially, most private businesses. It contains a private right of action and thus may be enforced by individuals who are subject to discrimination. Its remedies include injunctive relief and attorneys' fees but no damages. The Department of Justice is in charge of implementation, and has issued regulations, sub-regulatory guidance, and technical assistance, and has the authority to investigate and mediate claims of discrimination, and to file suit on behalf of victims of discrimination.

III. Eligibility Criteria for the Program

- Who may sue
  - A person with a disability who was harmed by discrimination may sue for injunctive relief only.
  - 42 U.S.C. § 12102 provides the definition of disability for all titles of the ADA.
  - The Department of Justice may bring suit for injunctive relief and civil penalties up to $100,000. DOJ suits may be the result of an individual complaint or a Department-initiated investigation.
  - Individuals may file complaints for investigation by the DOJ, 28 C.F.R. § 36.502, which often can assist parties to reach a settlement. Investigation by the DOJ is not a prerequisite to filing a civil suit.
  - "Associational claim": A person without a disability, who has a known relationship or association with a person who has a known disability may bring suit if they face discrimination based on that relationship.
  - Because individuals may only seek injunctive relief, they will only have standing to sue if it is likely that they will encounter the same type of discrimination by the same defendant in the future.
  - Prevailing plaintiffs are entitled to recover their reasonable attorneys' and costs.

IV. Specific Services/Benefits/Rights Included in the Program

- Discrimination. Prohibited discrimination includes denial of participation, participation in an unequal benefit, and providing only a separate benefit.
- Reasonable Modifications. Prohibited discrimination includes failure to make reasonable modifications in policies practices or procedures where necessary to make goods and services available to people with disabilities. This is subject to the defense that the requested modification would fundamentally alter the nature of the goods or services.
- Effective Communication. "A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities."
- Charges. A place of public accommodation may not charge people with disabilities for reasonable modifications, auxiliary aids and services, or architectural barrier removal.
- Integration. One of the key principles of the ADA is that people with disabilities should be integrated into society to the extent possible. Title III requires that goods and services must be provided to people with disabilities "in the most integrated setting appropriate to the needs of the individual."
- Architectural Accessibility.
    - New construction (buildings built after January 26, 1993) are required to be "readily accessible to and useable by" people with disabilities
    - In a facility built before that time, but altered since January 26, 1992, the altered with respect to alterations performed on existing facilities after January 26, 1992:
        - The altered portion must be readily accessible to and useable by people with disabilities to the maximum extent feasible; and
        - The path of travel to the area, and restrooms and several other types of amenities serving the altered area, must also be made accessible at a cost of up to 20% of the overall budget
    - Public Accommodations must remove barriers from existing facilities – that is, facilities or parts of facilities that have not been altered since January 26, 1992 – where it is "readily achievable" to do so.
    - Disparate Impact/Administrative Methods/Eligibility Criteria. Title III explicitly prohibits disparate impact discrimination, through two provisions.
    - Transportation
        - Title III governs both private entities primarily in the business of providing transportation (for example, private bus companies), and private entities that are not primarily in that business, but provide transportation incidental to another business (for example, hotels that provide shuttles.
        - The regulations governing when accessible vehicles are required and when only "equivalent service" is required are complex. At the very minimum, such transportation must "when viewed in its entirety" provide equivalent service to people with disabilities.
        - The ADA does not require private taxis to be accessible, but prohibits them from refusing service to people with disabilities, refusing the stow mobility

devices, or charging higher fares for transporting people with disabilities or their equipment.

- It is illegal to engage in retaliation, interference, coercion or intimidation against a person who has asserted a right under the ADA.

V. Significant Statutory Provisions

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability by recipients of federal financial assistance. Most schools and medical facilities fall into this category, as well as some other public accommodations. Check www.usaspending.gov to see if the private entity accepts federal financial assistance.

- Title II of the ADA prohibits discrimination on the basis of disability by public entities.

- The Individuals with Disabilities Education Act. 28 U.S.C. § 1400 et seq. governs the requirements to provide a free appropriate public education to children with disabilities.

- Title III implementing regulations can be found at 28 C.F.R. pt. 36.

- Currently-applicable architectural standards can be found at 36 C.F.R. pt 1191, apps B &D. A much easier way to access them is to view the standards and guidance at https://www.ada.gov/2010ADAstandards_index.htm

- Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. § 18116), provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under (among other provisions) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments.

VI. Key Regulatory & Major Policy Provisions

- Regulations implementing Section 1557 specifically incorporate by reference a number of regulations implementing section 504 of the Rehabilitation Act of 1973, as well as one very specific set of regulations implementing Title II of the Americans with Disabilities Act, the provision governing public entities.
- Legislative History of the ADA. H.R. Rep. 101-485 pts. 1-4, 1990 U.S.C.C.A.N. 267, 303, 445, and 512.
- Regulatory Commentary. The Title III regulations were originally promulgated in 1991, and amended in 2010. There are thus two major sources of regulatory commentary:
    - Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities, 28 C.F.R. pt 36, app. A.

- Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Originally Published on July 26, 1991, 28 C.F.R. pt 36, app. C.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Title III Technical Assistance Manual. https://www.ada.gov/taman3.html
- The DOJ's website www.ADA.gov has a number of useful publications, including
  - "Access to Medical Care for Individuals with Mobility Disabilities," https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm
  - "ADA Business Brief: Communicating with People who are Deaf or Hard of Hearing in Hospital Settings," https://www.ada.gov/hospcombr.htm
  - "Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS," https://www.ada.gov/hiv/ada_q&a_hiv.htm
  - "Commonly Asked Questions About Child Care Centers and the Americans With Disabilities Act," https://www.ada.gov/childqanda.htm
  - "Effective Communication," https://www.ada.gov/effective-comm.pdf
  - "Testing Accommodations," https://www.ada.gov/regs2014/testing_accommodations.pdf
  - "Service Animals," https://www.ada.gov/service_animals_2010.htm
  - "Frequently Asked Questions about Service Animals and the ADA," https://www.ada.gov/regs2010/service_animal_qa.pdf
  - "ADA Update: A Primer for Small Business," https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.pdf

Youth Workforce Investment Programs Under Work Innovation and Opportunity Act of 2014 (WIOA), Titles I and III

U.S. Department of Labor

I. Establishing Statutory Provision(s)

Workforce Innovation and Opportunity Act of 2014 (WIOA) Pub. L. 113-128 (2014).

II. General Description of the Program

Provide that youth, especially out-of-school and at-risk youth, are connected through American Job Centers to education and jobs; particularly work experience, career guidance, financial literacy education, and entrepreneurial skills training. Specific programs for youth include:

- §686 YouthBuild which funds job training and educational activities for at-risk youth who work on housing programs for the homeless.
- §688 Job Corps provides academic, career and technical education, service-learning, and social opportunities primarily in a residential setting, for low-income youth
- Wagner-Peyser -One-Stop Career Centers is a nationwide system of public employment offices that allow workers, job seekers and businesses to find the services they need in one stop. The system provides specialized attention and services to individuals with disabilities, migrant and seasonal farm-workers, ex-offenders, youth, minorities and older workers.

Each program has unique criteria. For YouthBuild and Job Corps Programs, generally speaking, individuals to be at least 16 and no older than 24 on the date of enrollment. Have been a school dropout at some point in their youth and have at least one of certain risk factors, such as, be low-income, homeless, basis skills deficient, or have a disability, among other possible risk factors.

One-Stops are open to All job seekers and employers. Special programs are available to veterans as well as people who have the hardest time finding employment, such as the long-term unemployed, individuals with disabilities, at-risk youth, parents receiving Temporary Assistance for Needy Family support, and dislocated workers.

III. Eligibility Criteria for the Program

Each program has unique criteria. For YouthBuild and Job Corps Programs, generally speaking, individuals to be at least 16 and no older than 24 on the date of enrollment. Have been a school dropout at some point in their youth and have at least one of certain risk factors, such as, be low-income, homeless, basis skills deficient, or have a disability, among other possible risk factors.

One-Stops are open to All job seekers and employers. Special programs are available to veterans as well as people who have the hardest time finding employment, such as the long-term unemployed, individuals with disabilities, at-risk youth, parents receiving Temporary Assistance for Needy Family support, and dislocated workers.

IV. Specific Services/Benefits/Rights Included in the Program

All the Youth Programs are required to provide youth, especially out-of-school and at-risk youth, education and jobs; particularly work experience, career guidance, financial literacy education, and entrepreneurial skills training. In addition, YouthBuild programs also provide hands on training that involves helping to construct or rehabilitate housing for homeless individuals and families and low-income families.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

- 20 CFR Parts 603 – 688
- 34 CFR Parts 361 and 463.
- Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions: 80 FR 20574.
- Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act, https://www2.ed.gov/policy/speced/guid/rsa/subregulatory/tac-15-01.pdf

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- **DOL, WIOA website,** https://www.doleta.gov/wioa/
- **D. Ed. WIOA websites:**
  - Office of Career, Technical and Adult Education (OCTAE): http://www.ed.gov/AEFLA
  - Office of Special Education and Rehabilitative (OSERS) - https://rsa.ed.gov/wioa.cfm
- **HHS, WIOA website at**: https://peerta.acf.hhs.gov/ofa-initiative/426

Education

Family Educational Rights and Privacy Act (FERPA)

U.S. Department of Education, Family Policy Compliance Office

I. Establishing Statutory Provision(s)

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

II. General Description of the Program

The Family Educational Rights and Privacy Act (FERPA) is the primary federal law governing the authorized use of education records. It seeks to protect individual student privacy while securing parental rights to view education records. FERPA applies to both state and local educational agencies. It prohibits the improper disclosure of personally identifiable information from education records.[19]

III. Eligibility Criteria for the Program

An eligible student is one who has reached 18 years of age or is attending an institution of postsecondary education.[20] An eligible parent is a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.[21]

IV. Specific Services/Benefits/Rights Included in the Program

The following rights are available under FERPA:

- Right for parents to have access to their children's education records
- Right to seek to have the records amended
- Right to a hearing if the educational agency or institution decides not to amend the record as requested.[22]
- Right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student.[23]
- Right to refuse to let the agency or institution designate any or all types of information about the student as directory information.[24]

[19] 20 U.S.C. § 1232(g); U.S. Dep't of Educ., Family Educational Rights and Privacy Act (FERPA) (2015).
[20] 20 U.S.C. 1232g(d)
[21] 20 U.S.C. 1232g
[22] 20 U.S.C. 1232g(a)(2)
[23] 20 U.S.C. 1232g(d)
[24] 20 U.S.C. 1232g(a)(5) (A) and (B)

- FERPA can help protect important privacy matters, including current residence, for homeless children and domestic violence and sexual assault survivors and their children. Many homeless students are survivors of domestic violence or have other safety issues that must be taken into account in student records and information release procedures. Failure to protect personal information, particularly where there has been a court order that terminates one parent's rights to access school records, can result in an inappropriate release of information that endangers students, their caregivers, and possibly even school personnel.[25]

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

- 34 C.F.R. Part 99
- U.S. Department of Education, IDEA and FERPA Confidentiality Provisions (June 2014).
- U.S. Dep't of Educ., The Family Educational Rights and Privacy Act Guidance for Parents (February, 2011).
- U.S. Dep't of Educ., Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices (February 2014).
- U.S. Dep't of Educ., Protecting Student Privacy While Using Online Educational Services: Model Terms of Service (January 2015).
- U.S. Dep't of Educ., The Family Educational Rights and Privacy Act Guidance for Eligible Students (February 2011).
- U.S. Dep't of Educ., Dear Colleague Letter to School Officials at Institutions of Higher Education (August 2016).

VII. Significant Cases

- *Gonzaga University vs. John Doe,* 536 U.S. 273 (2002) (holding that FERPA does not establish individual rights through §1983).
- *U.S. v. Miami University,* 91 Supp. 2d 1132 (2000) (holding that student disciplinary records are education records and are protected under FERPA).
- *Osborn v. The Board of Regents of the University of Wisconsin,* 247 Wis. 2d 957 (2002) (holding that FERPA does not prohibit disclosure of all information contained in education records, only personally identifiable information).

VIII. References to Medicaid

- U.S. Dep't of Educ., Letter to Iowa Department of Education re: Disclosure of Education Records to Medicaid Agency for Reimbursement Purposes (October 2015).

[25] 20 U.S.C. § 1232(g); U.S. Dep't of Educ., Family Educational Rights and Privacy Act (2015).

- U.S. Dep't of Educ., Memorandum (May 2007).

IX. Other Relevant Citations and Resources

- Nat'l Law Ctr. on Homelessness & Poverty, Homeless Students Count (2017).
- Nat'l Law Ctr. on Homelessness & Poverty, No Barriers: A Legal Advocate's Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act (2d ed.) (November 2016).
- Electronic Privacy Information Center, Family Educational Rights and Privacy Act.
- U.S. Dep't of Educ., FERPA General Guidance for Parents and Eligible Students.
- U.S. Dep't of Educ., The Family Educational Rights and Privacy Act Guidance on Sharing Information with Community-Based Organizations.
- FERPA for School Officials

Individuals with Disabilities Education Act (IDEA)

Department of Education

I. Establishing Statutory Provision(s)

- Pub. L. 101-476, 104 Stat. 1142.
- 20 USC § 1400 et seq.: Education of Individuals with Disabilities.
- 34 CFR 300 et. Seq.

II. General Description of the Program

- IDEA makes available a free public education to eligible children with disabilities that is designed to meet their unique needs and prepare them for further education. In the findings and purposes of IDEA, Congress makes clear that access to education is a social determinant of health, and that it is national policy to improve the lives of children with disabilities through the provision of education.
- The purpose of the IDEA, as explained at 20 U.S.C. § 1400 (d)(1)-(4), is to:
    - ***(1) (A)*** *to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;* ***(B)*** *to ensure that the rights of children with disabilities and parents of such children are protected; and* ***(C)*** *to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;*
    - ***(2)*** *to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;*

- ***(3)*** *to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and*
- ***(4)*** *to assess, and ensure the effectiveness of, efforts to educate children with disabilities.*

- Four parts:
  - Part A: general provisions
  - Part B: Children and youth (3-21 years old) receive special education and related services.
  - Part C: Infants and toddlers (bith-2 years old) with disabilities and their families receive early intervention services.
  - Part D: national support programs
- 6 main elements
  - Individualized education program
  - Free and appropriate public education
  - Least restrictive environment
  - Appropriate evaluation
  - Parent and teacher participation
  - Procedural safeguards

III. Eligibility Criteria for the Program

- IDEA applies to children with disabilities in public school, from birth through age 21. Part B, applies to children with disabilities ages three through 21 and Part C applies to children with disabilities ages birth through two.
- Parentally-placed private school children with disabilities are also able to enforce their rights to "equitable services" under the IDEA.
- "Child with a disability" means a child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.
  - Defined 20 U.S.C Section 1401(3)
- But also: Child with a disability, defined at 34 CFR § 300.8(a)(1), means, "*a child evaluated in accordance with §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health*

impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services."

- "Equitable Services" for parentally-placed private school children with disabilities is defined at 34 CFR § 300.138 (a)-(c), and reads, in part: *(a)(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of § 300.18.; (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.*

IV. Specific Services/Benefits/Rights Included in the Program

- IDEA requires free and appropriate public education be available to all children with disabilities residing in the state between the ages of 3-12. This means special education and related services that A) are provided at the public's expense, under public supervision and direction, and without charge, B) meet the standards of the State educational agency, C) include an appropriate preschool, elementary, or secondary school education in the State involved; and D) are provided in conformity with the individualized education program under section 614(d)." 20 USC § 1412 (a)(1)(A).
    - The term "special education," defined at 20 U.S.C. § 1401 (29), means "*[s]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including— (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education."*
    - The term "related services" defined at 20 U.S.C. § 1401 (26), means "*(A) In general - transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. (B) Exception - The term does not include a medical device that is surgically implanted, or the replacement of such device"*
- Requires that public schools create an Individualized Education Program for each student eligible under federal and state standards.

- Requires the education provided be in the least restrictive environment: "To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 USC § 1412 (a)(5)(A)
- For each infant or toddler with a disability, requires an Individualized Family Service Plan: 20 USC § 1436
- Authorizes the Office of Special Education Programs to administer formula grant programs.
    - Awarded to states annually to support early intervention services to infants and toddlers with disabilities and their families, preschool children ages three through five, and special education for children and youth with disabilities.

Authorizes the Office of Special Education to distribute discretionary grants.

V. Significant Statutory Provisions

- 20 USC § 1414 - Evaluations, eligibility determinations, individualized education programs, and educational placements
- 20 USC § 1412 (a)(5)(A) – least restrictive environment
- 20 USC § 1412 (a)(1)(A) – free appropriate public education
- 20 USC § 1436 – Individualized Family Service Program
- 34 CFR § 300.34 – Related services. (Authority: 20 U.S.C. 1401(26))

VI. Key Regulatory & Major Policy Provisions

- 34 CFR Part 300: Assistance to States for the Education of Children with Disabilities – IDEA Part B Regulations
- 34 CFR Part 303: Early Intervention Program for Infants and Toddlers with Disabilities – IDEA Part C Regulations
- Guidance from 2017 to 2001 is available at: https://sites.ed.gov/idea/policy-guidance/
    - Eligibility Determinations for Children Suspected of Having a Visual Impairment under IDEA (May 22, 2017): https://sites.ed.gov/idea/files/letter-on-visual-impairment-5-22-17.pdf
    - Policy Guidance: Joint Statement of Collaboration and Coordination of the MIECHV and IDEA Part C Programs (Jan. 19, 2017): https://sites.ed.gov/idea/files/ed-hhs-miechv-partc-guidance.pdf

VII. Significant Cases

- *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) (holding, among other things, that a deaf child was not statutorily entitled to a sign-language interpreter when that child received personalized instruction and related services that school administrators had determined were calculated to meet her educational needs).

- *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999) (Supreme Court issued a favorable decision on behalf of child who needed related services to attend school).
- *Schaffer v. Weast*, 546 U.S. 49 (2005) (holding that under the IDEA, the burden of proof in an administrative hearing challenging an individualized education program was properly placed on the student, who was the party seeking relief, rather than the school district).
- *Arlington Central School Dist. Bd. Of Ed. v. Murphy*, 548 U.S. 291 (2006) (holding, among other things, that non-attorney experts' fees for services rendered to prevailing parents in IDEA action are not "costs" recoverable from a state under IDEA's fee-shifting provision).
- *Winkelman v. Parma City School District*, 550 U.S. 516 (2007) (holding that because parents have rights under IDEA, they are entitled to prosecute IDEA claims on their own behalf).
- *Forest Grove School District v. T.A.*, 129 S. Ct. 2484 (2009) (holding that the 1997 amendments to IDEA did not categorically bar reimbursement of private-education tuition if a child had not previously received special education and related services through the public school, and that IDEA authorized reimbursement of the costs of a child's private special-education services).
- *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017) (holding that, to meet its substantive obligation under the Individuals with Disabilities Education Act, a school must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances).
- *Irving Independent School Dist. v. Tatro*, 468 U.S. 883 (1984) (holding that a medical treatment, such as clean intermittent catheterization (CIC), is a related service under the Education for All Handicapped Children Act and that a school is required to provide it).

VIII. References to Medicaid

- Subchapter II – Assistance for Education of All Children with Disabilities – Section 1411(e)(3)(H) Medicaid services not affected: Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
- Subchapter II – Assistance for Education of All Children with Disabilities – State eligibility section 1412(a)(12)(A) Agency financial responsibility: an identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).
- Subchapter II – Assistance for Education of All Children with Disabilities – payor of last resort section 1440(c) Reduction of other benefits: Nothing in this subchapter shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act [42 U.S.C. 701 et seq.] (relating to maternal

and child health) or title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (relating to medicaid for infants or toddlers with disabilities) within the State.

- Subchapter II – Assistance for Education of All Children with Disabilities – state interagency coordinating council section 1441(b)(1)(G): Not less than 1 member shall be from the agency responsible for the State medicaid program.
- Related Regulation(s): Final Regulations Related to Parental Consent for the Use of Public Benefits or Insurance (March 18, 2013)
    - https://sites.ed.gov/idea/idea-files/final-regulations-related-to-parental-consent-for-the-use-of-public-benefits-or-insurance/

IX. Other Relevant Citations and Resources

- US Dept of Education's IDEA website: https://sites.ed.gov/idea/
- The Individuals with Disabilities Education Act: Provisions Related to Children with Disabilities Enrolled by their Parents in Private Schools. U.S. Dept. of Education. https://www2.ed.gov/admins/lead/speced/privateschools/idea.pdf
- Amended by Every Student Succeeds Act, Pub. L. 114-95 (2015).
- School Is Not Supposed to Hurt: The U.S. Department of Education Must Do More to Protect School Children from Restraint and Seclusion (March 2012): http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf
- Foster Despair: Improving Access to Education Services for Youth with Intellectual Disabilities in State Custody (November 2013): http://www.ndrn.org/images/Documents/Media/Foster_Despair_Master__FINAL.pdf
- Wrightslaw: http://www.wrightslaw.com/

Migrant Education Program: Elementary and Secondary Education Act

U.S. Department of Education (ED), Office of Migrant Education

I. Establishing Statutory Provision(s)

Title I, Part C of the Elementary and Secondary Education Act, 20 U.S.C. §§ 6391-6399.

II. General Description of the Program

The goal of the Migrant Education Program is to ensure that all migrant students reach challenging academic standards and graduate with a high school diploma (or complete a GED) that prepares them for responsible citizenship, further learning, and productive employment. Funds support high quality education programs for migratory children and help ensure that migratory children who move among the states are not penalized in any manner by disparities among states in curriculum, graduation requirements, or state academic content and student academic achievement standards. Funds also ensure that migratory children not only are provided with appropriate education

services (including supportive services) that address their special needs but also that such children receive full and appropriate opportunities to meet the same challenging state academic content and student academic achievement standards that all children are expected to meet. Federal funds are allocated by formula to SEAs, based on each state's per pupil expenditure for education and counts of eligible migratory children, age 3 through 21, residing within the state.

III. Eligibility Criteria for the Program

In order to qualify for MEP program, the child must meet the definition of migratory child who made a qualifying move in the past 36 months.[26] A migratory child is a child or youth who moved as a migratory agricultural worker or a migratory fisher or who moved with or joined a parent or spouse who is a migratory agricultural worker or a migratory fisher.[27] A qualifying move is a move due to economic necessity from one residence to another residence and from one school district to another school district.[28]

IV. Specific Services/Benefits/Rights Included in the Program

States use program funds to identify eligible children and provide education and support services. These services include: academic instruction; remedial and compensatory instruction; bilingual and multicultural instruction; vocational instruction; career education services; special guidance; counseling and testing services; health services; and preschool services.[29] Generally, state and local educational agencies have the flexibility to determine what services to provide under MEP. MEP funds must first be used to meet the identified needs of migratory children that result from their migratory lifestyle, and to permit these children to participate effectively in school.[30] Note that MEP eligible students are also eligible to receive supports and services under Title I, Part A.

V. Significant Statutory Provisions

20 U.S.C. § 6396 – Requires states to submit a state plan addressing the unique educational needs of migratory children

VI. Key Regulatory & Major Policy Provisions

34 C.F.R. Part 200.81 – 200.89

VII. Significant Cases

None.

[26] 20 U.S.C. § 6399(3).
[27] 20 U.S.C. § 6399(3).
[28] 20 U.S.C. § 6399(5).
[29] U.S. Dep't of Educ., Migrant Education—Basic State Formula Grants (2015).
[30] 20 U.S.C. § 6396(b)(1).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- U.S. Dep't of Educ., Education of Migratory Children under Title I, Part C of the Elementary and Secondary Education Act of 1965 Guidance (Mar. 2017).
- U.S. Dep't of Educ., Migrant Education—Basic State Formula Grants (2015).

Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out: Elementary and Secondary Education Act

U.S. Department of Education (ED), Office of Safe and Healthy Students

I. Establishing Statutory Provision(s)

Title I, Part D of the Elementary and Secondary Education Act, 20 U.S.C. §§ 6421-6472.

II. General Description of the Program

- The Neglected and Delinquent Program consists of 2 subparts. Subpart 1 is the State Agency (SA) Neglected and Delinquent formula grant program; subpart 2 is the Local Educational Agency (LEA) program. The SA program funds supplementary education services to help provide education continuity for children and youth in State-run institutions for juveniles and in adult correctional institutions, so that these youth can make successful transitions to school or employment once they are released from State institutions. The LEA program funds LEAs with high proportions of youth in local correctional facilities for dropout prevention programs for at-risk youth.
- Title I, Part D (1) improves educational services for children and youth in local and State institutions for neglected or delinquent children and youth so that they have the opportunity to meet the same challenging State academic content and State student achievement standards that all children in the State are expected to meet; (2) provides these children with services to enable them to transition successfully from institutionalization to further schooling or employment; and (3) prevents at-risk youth from dropping out of school as well as to provide dropouts and children and youth returning from correctional facilities or institutions for neglected or delinquent children and youth, with a support system to ensure their continued education.

III. Eligibility Criteria for the Program

- To be eligible for Title I, Part D funds, juvenile institutions must provide 20 hours a week of instruction from nonfederal funds; adult correctional institutions must provide 15 hours. The LEA Program requires each state educational agency to reserve from its Title I, Part A, allocation, funds generated by the number of children in locally operated institutions for delinquent youths.[31]

IV. Specific Services/Benefits/Rights Included in the Program

- Title I, Part D provides services to children and youth identified as failing or most at-risk of failing to meet the State's challenging academic standards. The SA program supplements and improves the quality of educational services and materials provided, which may include reading, mathematics, language arts, and vocationally oriented programs that include academic classroom instruction.[32]
- The LEA program funds services to prepare children and youth complete high school, enter training or employment programs, or further their education; to help transition children and youth from correctional program in an institution to further education or employment; dropout prevention programs; coordination of health and social services; special programs that meet the unique academic needs of at-risk children and youth; and mentoring and peer mediation programs.[33]

V. Significant Statutory Provisions

- 20 U.S.C. §§ 6431-6439 – Program requirements and allocation of funds for state agencies.
- 20 U.S.C. §§ 6451-6456 – Program requirements and allocation of funds for local educational agencies.

VI. Key Regulatory & Major Policy Provisions

- 34 C.F.R. Part 200.90 – 200.99

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

[31] U.S. Dep't of Educ., Prevention and Intervention Programs for Children and Youths Who Are Neglected, Delinquent, or At Risk (2014).
[32] U.S. Dep't of Educ., Non-regulatory Policy Guidance for Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk (2006).
[33] U.S. Dep't of Educ., Non-regulatory Policy Guidance for Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk (2006).

- U.S. Dep't of Educ., Prevention and Intervention Programs for Children and Youths Who Are Neglected, Delinquent, or At Risk (2014).
- U.S. Dep't of Educ., Non-regulatory Policy Guidance for Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk (2006).

Title I Part A: Elementary and Secondary Education Act

U.S. Department of Education (ED), Office of State Support

I. Establishing Statutory Provision(s)

Title I, Part A of the Elementary and Secondary Education Act, 20 U.S.C. §§ 6311-6339.

II. General Description of the Program

Title I, Part A provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards. Federal funds are currently allocated through four statutory formulas that are based primarily on census poverty estimates and the cost of education in each state. Title I, Part A funds could be used either for school-wide programs or for targeted assistance.

III. Eligibility Criteria for the Program

- For funds used for school-wide programs, Title I, Part A funds may be consolidated with other federal, state, and local funds if the school serves 40% or more of the children are from low-income families.
- For funds used for targeted assistance, students to be served must be determined. Children who are identified by the school as failing, or most at risk of failing, children who are economically disadvantaged, children with disabilities, migrant children or English learners, Head Start and preschool children, neglected or delinquent children, and homeless children are eligible for support.

IV. Specific Services/Benefits/Rights Included in the Program

- Services vary from one school to another, depending on the school's plan and strategies to improve learning outcomes for students, particularly those students who are failing, or most at-risk of failing, to meet State academic achievement standards, including students living in poverty, students with disabilities, and English language learners.
- Title I services often include extra academic help and resources such as tutoring. Services may include counseling, school-based mental health programs, specialized instructional

support services, mentoring services, and other strategies to improve students' skills outside the academic subject areas; preparation for and awareness of opportunities for postsecondary education and the workforce, which may include career and technical education programs and broadening secondary school students' access to coursework to earn postsecondary credit while still in high school (such as Advanced Placement, International Baccalaureate, dual or concurrent enrollment, or early college high schools); afterschool and summer programs; early intervention services and similar activities and services carried out under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).[34]

V. Significant Statutory Provisions

- 20 U.S.C. § 6314 – School-wide programs – describes how Title I, Part A funds may be used for school-wide programs.
- 20 U.S.C. § 6315 – Targeted assistance schools – describes how Title I, Part A funds may be used for targeted assistance schools.
- 20 U.S.C. § 6321(b) – Fiscal Requirements – requires that federal funds must supplement, and may not supplant, state and local funds.

VI. Key Regulatory & Major Policy Provisions

- 34 CFR Parts 200.1-200.79.
- U.S. Dep't of Educ., Supporting School Reform by Leveraging Federal Funds in a School-wide Program Non-Regulatory Guidance (September 2016).

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

U.S. Dep't of Educ., Improving Basic Programs Operated by Local Educational Agencies (Title I, part A) (2015).

[34] 20 U.S.C. § 6314(b)(7)(A)(iii); 20 U.S.C. § 6315(b).

Title IX of the Education Amendments of 1972

U.S. Department of Health and Human Services (DHHS), Office of Civil Rights (OCR)

I. Establishing Statutory Provision(s)

- Title IX of the Education Amendments of 1972, 42 U.S.C. § 1681.
- 42 U.S.C. § 1682.

II. General Description of the Program

Congress enacted Title IX as the identically-worded equivalent of Title VI to bar sex discrimination in educational programs and activities that receive federal financial assistance. Title IX non-discrimination protections apply to student recruitment, admissions, educational programs (including individual courses), housing, counseling, financial and employment assistance, health and insurance benefits and services. *See* 45 C.F.R Part 86. OCR, the agency within each federal department that administratively enforces Title VI, also enforces Title IX and applies similar standards with respect to jurisdictional prerequisites and proof of discrimination.

III. Eligibility Criteria for the Program

The same statutory prerequisites that apply to Title VI administrative and judicial complaints apply as well to Title IX administrative and judicial complaints.

IV. Specific Services/Benefits/Rights Included in the Program

Relief available under Title VI and methods of proving discrimination are substantially similar. Because of similar statutory and regulatory provisions, disparate impact claims cannot be enforced in judicial proceedings.

The principal substantive shortcomings of Title IX in health care are the restriction of its scope to educational programs and activities and the health insurance exception, which are addressed in Section 1557's implementing regulations. *See Section 1557 Legal Scan.*

V. Significant Statutory Provisions

Significant statutes, regulations, policy provisions and resources are mentioned above.

VI. Key Regulatory & Major Policy Provisions

Significant statutes, regulations, policy provisions and resources are mentioned above.

VII. Significant Cases

A recent case did extend Title IX's protections for sex discrimination to educational programs and activities outside an educational institution in applying Title IX to a hospital internship program. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545 (3d Cir. 2017). Congress did address the very limited

protections for sex discrimination available under Title IX in health care in Section 1557 of the Affordable Care Act, and several specific programs and block grants which squarely prohibit sex discrimination in health care programs that receive federal financial assistance. *See above.*

The breadth of the protection against sex discrimination under federal civil rights laws is unclear as courts grapple with whether the prohibition against sex discrimination in Title IX and other laws extends to sexual orientation and to gender identity in the wake of Supreme Court sexual orientation decisions such as *Obergefell v. Hodges,* 135 S.Ct. 2584 (2015); *United States v. Windsor*, 133 S.Ct. 2675 (2013); *Oncale v. Sundowner Offshore Servs., Inc*., 523 U.S. 75 (1998), EEOC construction of the prohibition of sex discrimination Title VII, *see Baldwin v. Foxx*, EEOC DOC 0120133080, 2015 WL 4397641, at *5 (EEOC 2015), and the expanded definition of sex discrimination in Section 1557's implementing regulations. *See Section 1557 Legal Scan.*

A district court has issued a nationwide injunction enjoining OCR's regulations implementing § 1557 with respect to enforcing "gender identity" and "termination of pregnancy" as sex discrimination based on existing construction of Title IX as not including gender identity or termination of pregnancy. *See Franciscan Alliance, Inc. v. Burwell*, 227 F.Supp.3d 660 (N.D. Tex. 2016). Other district courts have ruled that gender identity is sex discrimination. *See Videckis v. Pepperdine Uni.*, 150 F.Supp.3d 1151, 1159 (C.D. Cal. 2015) (Title IX case) *Rumble v. Fairview Health Serv.*, Case No. 14-cv-(SRN/FLN), 2015 WL 1197415 (D. Minn. 2015) (Section 1557's prohibition of sex discrimination extends to gender identity claims).

Theories being litigated include the idea that sexual orientation and transgender status is sex discrimination because it is rooted in sex stereotypes, following the Supreme Court's opinion in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (sex stereotyping is sex discrimination under Title VII). *See, e.g., Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 346 (7th Cir. 2017) (*en banc*). Another theory is that sexual orientation is sex discrimination because it treats otherwise similarly-situated people differently because of the sex of the people they associate with, analogizing to *Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriage case). *See Christiansen v. Omnicom Grp., Inc*., 852 F.3d 195, 204 (2d Cir. 2017). Another theory is based on the idea sexual orientation is inseparable from and inescapably linked to sex. *Id* at 202; *Baldwin,* 2015 WL 4397641, at *5. Last, it is argued that coverage of sexual orientation and gender identity reflect the evolving legal landscape. *See Christiansen*, 852 F.3d at 202; *Hively*, 853 F.3d at 349.

In addition to recent federal appellate opinions, the Supreme Court will hear arguments this Term on whether Title IX's prohibition on sex discrimination may extend to gender identity in a transgender bathroom case, *Gloucester County School Board v. G.G. ex rel. Grimm*, 136 S.Ct. 2442 (2016).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

None.

Environmental

Clean Air Act

Environmental Protection Agency

I. Establishing Statutory Provision(s)

Clean Air Act, 42 U.S.C. §§ 7401-7671q (2012).

II. General Description of the Program

- Requires the EPA to list pollutants that are 1) emitted from numerous and diverse sources and 2) emission of which may endanger public health or welfare. EPA must establish an ambient standard for the pollutant, which applies nationally. Standards represent air quality goals that states must achieve when designing State Implementation Plans (SIPs). EPA must set primary and secondary National Ambient Air Quality Standards (NAAQS).
- States required to adopt enforceable plans to achieve and maintain air quality meeting the air quality standards that EPA establishes.
    - Includes plan to control emissions that drift across state lines.
    - If state fails to meet requirements, EPA can issue sanctions and can take over enforcement of Clean Air Act in that area.
- Provision included to minimize pollution from growing number of motor vehicles and new or expanded industrial plants.

III. Eligibility Criteria for the Program

None.

IV. Specific Services/Benefits/Rights Included in the Program

- Citizen Suit Provision, 42 U.S.C. § 7604 (2012).
    - Allows citizens to bring suit "against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of . . . an emission standard or limitation under this chapter.
- Public can comment on EPA rules.

V. Significant Statutory Provisions

General provisions:

- § 7401. Congressional findings and declaration of purpose
- 42 U.S.C. § 7413. Federal enforcement

VI. Key Regulatory & Major Policy Provisions

- 1990 Amendments: https://www.epa.gov/sites/production/files/2015-11/documents/the_clean_air_act_-_highlights_of_the_1990_amendments.pdf

- Designed to curb threats by acid rain, urban air pollution, toxic air emissions, and stratospheric ozone depletion

VII. Significant Cases

- *Train v. Natural Resource Defense Council*, Inc., 421 U.S. 60 (1975) (holding that "the EPA's construction of the Clean Air Act permitting treatment of individual variances from state requirements as 'revisions,' under § 110(a)(3), of state implementation plans if they will not interfere with timely attainment and subsequent maintenance of national air quality standards, rather than as 'postponements' under § 110(f), was sufficiently reasonable to preclude the Court of Appeals from substituting its judgment for that of the EPA.").
- *Whitman v. American Trucking Associations*, Inc., 531 U.S. 457 (2001) (holding that the Clean Air Act properly delegated legislative power to the EPA, and that the EPA could not consider implementation costs in setting primary and secondary National Ambient Air Quality Standards).
- *Massachusetts v. EPA*, 549 U.S. 497 (2007) (holding that Massachusetts had standing to sue the EPA and that the Clean Air Act gives the EPA the authority to regulate carbon dioxide and other greenhouse gases).
- *Union Electric Co. v. EPA*, 427 U.S. 246 (1976) (holding that Congress did not intend for the EPA to consider economic or technological feasibility grounds).
- *Citizens Against the Refinery's Effects, Inc. v. EPA*, 643 F.2d 183 (4th Cir. 1981) (holding that the EPA properly approved a state implementation plan that required state highway departments to decrease use of certain types of asphalt in order to reduce hydrocarbon pollution by more than enough to offset expected pollution from a proposed refinery).
- *National Mining Association v. EPA*, 59 F.3d 1351 (DC Cir. 1995) (reviewing an EPA rule and concluding that the agency's definition of "major source" and its requirement that certain emissions be included when determining whether a site was a "major source" were reasonable, but that the EPA exceeded its authority by considering only federally enforceable emission controls in determining a plant site's potential to emit for purposes of determining whether that site was a "major source").
- *Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990), *superseded by statute as stated in* Ober v. E.P.A. 84 F.3d 304, 311-12 (1996) (concluding that the EPA's approval of counties' Clean Air Act implementation plans was arbitrary and capricious).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- The Clean Air Act in a Nutshell: How it works: https://www.epa.gov/sites/production/files/2015-05/documents/caa_nutshell.pdf
- The Plain English Guide to the Clean Air Act: https://www.epa.gov/sites/production/files/2015-08/documents/peg.pdf

- http://www.cnn.com/2017/04/13/health/epa-cuts-children-health/: Article from CNN about concerns that cuts to EPAs budget will impact the health of children: "Legislation such as the Clean Air Act, enforced and regulated by the EPA, has helped cut ground-level ozone -- a component of smog -- by more than 32% nationwide since 1980, according to the agency's air trends data. Although the proposed cuts would not change the law, enforcement and funding would fall largely to states and local government, as would be the case with many other environmental regulations and programs."

Clean Water Act

Environmental Protection Agency

I. Establishing Statutory Provision(s)

Clean Water Act, 33 U.S.C. §§ 1251-1388 (2012).

II. General Description of the Program

- Establishes the basic structure for regulating discharges of pollutants into water in the US.
    - Made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is obtained.
- Reorganization and expansion of the Federal Water Pollution Control Act (1948).
- Employs regulatory and non-regulatory tools to reduce direct pollutant discharges into waterways, establish ambient water quality standards, finance municipal wastewater treatment facilities, and manage polluted runoff.
- Goal: restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."
- States required to establish water quality standards that define goals and pollution limits for waters in their jurisdictions.
- Summary: Authorizes EPA to regulate discharges/runoff that can pollute surface waters (which can pollute groundwater supply) so it affects recreational water use and drinking water. It also regulates how a lot of food is produced in this country – from large and small ag farms to meat and fish producers.

III. Eligibility Criteria for the Program

None.

IV. Specific Services/Benefits/Rights Included in the Program

- Each state is required to hold regular public hearings on adequacy of its water quality standards.
    - Public can weigh in on water quality standards issued in their states.
- Citizens can inform EPA about existing and emerging water quality issues.

- EPA says that "to be consistent with the [goal] of the Act, states must provide water quality for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water where attainable."
- Citizen Suit Authority: CWA section 505(a)
    - Clean Water Act allows citizens to sue the EPA in federal court to force the agency to fulfill "nondiscretionary" duties which include requiring states to correct deficiencies in water quality standards.
    - Citizens can also file a Clean Water Act suit against a permittee for not complying with its permit.
- Note: We are not experts on this topic but like many of the other federal laws that address "upstream" social determinants of health, the challenge here will be maintaining federal budget levels that allow for adequate enforcement of existing provisions.

V. Significant Statutory Provisions

Citizen Suit Authority: 33 U.S.C. § 1365 (2012).

VI. Key Regulatory & Major Policy Provisions

- Antidegradation Policy: 40 CFR 131.12
- Public hearings on water quality standards: 40 CFR 131.20.
- Water Enforcement Policy, Guidance, and Publications: https://www.epa.gov/enforcement/water-enforcement-policyguidance-and-publications#General

VII. Significant Cases

- *Milwaukee v. Illinois*, 451 U.S. 304 (1981) (holding that the Federal Water Pollution Act Amendments of 1972 displaced federal common law with respect to Illinois' claim arising out of the discharge of sewage into Lake Michigan, and that federal common law could not be used to impose more stringent effluent standards than those set by the Act).
- *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987) (holding that the CWA preempted Vermont nuisance law to the extent that the law sought to impose liability on a New York point source, but that the CWA did not bar aggrieved individuals from bringing nuisance claims pursuant to the law of the source state).
- *NRDC v. Costle*, 568 F.2d 1369 (DC Cir. 1977) (affirming a decision of the United States District Court for the District of Columbia that granted summary judgment to the plaintiff on its claim challenging the authority of the EPA Administrator to exempt categories of point sources from permit requirements under the Federal Water Pollution Control Act Amendments of 1972).
- *Sierra Club v. Abston Construction Company*, 620 F.2d 41 (1980) (holding that summary judgment in favor of coal miners on the Sierra Club's claim that the mining activities were proscribed "point sources" of pollution was not proper because, as a matter of law, channeling of uncollected surface waters in connection with mining operations is a point

source, and because genuine issues of material fact existed as to whether the defendants' activities constituted such channeling).

- *Concerned Area Residents for the Environment v. Southview Farm*, 34 F.3d 114 (2d Cir 1994) (holding that an animal feeding lot operation was a point source under the CWA that was not subject to any agricultural exemption).
- *E. I. Du Pond de Nemours & Co. v. Train*, 430 U.S. 112 (1977) (holding that effluent limitations for existing plant sources for 1977 and 1983 were to be established by regulation, and not as a part of the individual permitting process; that review of such regulations was to be by the Court of Appeals; and that individual plants were not entitled to variances from standards of performance for new sources).
- *Chemical Manufacturers Association v. EPA*, 870 F.2d 177 (1990) (holding that regulations regarding best practicable technology and best available technology were reasonable, and that a separate regulation establishing pretreatment standards for existing sources was also reasonable, but the EPA arbitrarily failed to consider wastestream recycling as model technology when promulgating new source performance standards).
- *Energy Corp. v. Riverkeeper, Inc. et al.*, 129 S. Ct. 1498 (2009) (holding that the EPA permissibly relied on cost-benefit analysis in promulgating regulations that applied to cooling-water intake structures at existing power plants).
- *Arkansas v. Oklahoma*, 503 U.S. 91 (1992) (holding that (1) the EPA properly issued a NPDES permit to allow an Arkansas sewage treatment plant to discharge effluent into an Illinois river that ultimately reached Oklahoma, and (2) the EPA's interpretation of Oklahoma's water quality standards was entitled to substantial deference).
- *Solid Waste Agency of Northern Cook County (SWANCC) v. US Army Corps of Engineers*, 531 U.S. 159 (2001) (holding that the United States Army Corps of Engineers' rule extending the definition of "navigable waters" under the CWA to include intrastate waters used as habitat by migratory birds exceeded its authority under the CWA).
- *Rapanos v. United States*, 547 U.S. 715 (2006) (holding that under the CWA, the term "navigable waters" includes only relatively permanent, standing or flowing bodies of water, not intermittent or ephemeral flows of water; and that only those wetlands with a continuous surface connection to bodies that are waters of the United States in their own right are adjacent to such waters and covered by the CWA).
- *Environmental Defense Center, Inc. v. EPA*, 344 F.3d 832 (9th Cir. 2003) (holding that the EPA had authority to impose a rule requiring NPDES permits for discharges from small municipal storm sewers and construction sites and rejecting several additional challenges to the rule, but determining that the rule improperly failed to provide for review of notices of intent and public participation in the permitting process).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Introduction to the Clean Water Act
- The Clean Water Act: Owner's Manual by the River Network

Executive Order: 12898

I. Title

Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. Overview

- "Each federal agency shall make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations in the United States."
- Creates an interagency Working Group on Environmental Justice which shall provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low income populations and assist in coordination and examination of data and studies on environmental justice.
    - Working Group also is to hold public meetings and receive public comments.
- "Each federal agency shall develop an agency-wide environmental justice strategy . . . that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."
- Requires that environmental human health research, whenever practical and appropriate, include diverse segments of the population, including segments at high risk from environmental hazards such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.
- "Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns."
- Public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies.

Executive Order: 13045

I. Title

Protection of Children from Environmental Health Risks and Safety Risks, 62 FR 19885

II. Overview

- Amended by Executive Order 13229, FR Vol. 66, No. 197
- Amended by Executive Order 13296, FR Vol. 68, No. 78
- Each Federal agency "shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children" and "shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks."
- Creates a Task Force on Environmental Health Risks and Safety Risks to Children.
    - Task Force shall recommend to the President federal strategies for children's environmental health and safety.
    - Task for shall prepare a biennial report.
- "For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OITA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decision-making process, unless prohibited by law: (a) an evaluation of the environmental health or safety effects of the planned regulation on children; and (b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency."
- Director of OMB shall convene an Interagency Forum on Child and Family Statistics. This forum is to produce an annual compendium of most important indicators of the wellbeing of children.

Food and Nutrition

Child and Adult Care Food Program: Richard B. Russell National School Lunch Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS). State Agency.

I. Establishing Statutory Provision(s)

CACFP is created by Section 17 of the Richard B. Russell National School Lunch Act and is codified at 42 U.S.C. §1766 and 42 U.S.C. §1766a.

II. General Description of the Program

CACFP pays for nutritious meals and snacks for eligible children who are enrolled at participating child care centers, child care homes, and Head Start and Early Head Start programs. CACFP also provides meals and snacks to children and youth who participate in afterschool enrichment programs[35] or reside in emergency shelters,[36] and to adults who attend eligible and participating adult day care programs.[37]

This Federal Legal Scan highlights the vital role CACFP plays in providing nutrition to infants, toddlers, and preschoolers enrolled at participating child care centers, child care homes, and Head Start programs; improving the quality of child care; and making it more affordable for many low-income families.

Children ages 12 and younger, children ages 15 and under of migrant workers, and children with disabilities are eligible to receive up to two meals and one snack daily at a child care home, center or Head Start program. By October 1, 2017, participating centers and homes must implement new, improved nutrition standards based on the U.S. Dietary Guidelines.

Head Start and Early Head Start centers which are licensed or approved to provide day care services are required to participate in CACFP. Generally, nonprofit child care centers are eligible to participate if licensed. For-profit, licensed centers are eligible to participate if at least 25 percent of the children in care are eligible for free or reduced-price meals, or in some cases, the centers receive

[35] For more information, see *CACFP "At-Risk" Afterschool Meal Program Legal Scan*.
[36] Children 18 years of age and under who are residing in emergency shelters (e.g., homeless, runaway, or domestic violence) can receive up to three free meals per day, year-round, through CACFP shelter funds. This funding is also available to provide meals to adults with disabilities who reside in shelters where children receive free meals through CACFP. All meals are reimbursed at the free meal rate and all participants are automatically eligible for free meals. *See* 42 U.S.C. §1766(t); 7 CFR §226.2 *Definitions*, Emergency Shelters.
[37] CACFP is available to non-residential day care institutions serving persons 60 years of age or older or to chronically impaired disabled persons. *See* 42 U.S.C. §1766(o).

benefits from Title XX of the Social Security Act. *See* 42 U.S.C. §1766(a)(2)(B). CACFP also provides reimbursement for meals and snacks served to children in private homes that are licensed, registered, or approved to provide family child care. *See* 42 U.S.C. §1766(a)(2)(E); 7 C.F.R. §226.18

Child care centers have the option to participate either under a sponsoring organization or independently in direct agreement with the State administering agency, whereas family care homes must participate through a sponsor.

CACFP reduces food insecurity, and helps assure good nutrition and high quality, affordable child care. 4.3 children participate in CACFP, yet only about half of the licensed child care centers and family child care homes in the U.S. participate in CACFP, leaving approximately 61,000 centers and 120,000 homes unserved and hundreds of millions of federal dollars on the table that could be invested in the nutrition of our youngest children.

III. Eligibility Criteria for the Program

Children at participating centers can receive CACFP meals and snacks if they are:

- Age 12 and under;
- Age 15 and under and children of migrant workers; or
- Children with disabilities.

See 42 U.S.C. §1766(a)(3).

Child care homes serve all children free meals. Child care homes and centers participating in CACFP must offer CACFP meals and snacks to all children in care.

Generally, children attending child care centers must complete an income eligibility form for the CACFP-participating institution to see if the child is eligible for free, reduced-price, or paid meals. However, children are automatically eligible for free CACFP meals if they are a member of a household participating in the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution Program on Indian Reservations (FDPIR). Foster children and children in Head Start are also automatically eligible. *See* 42 U.S.C. §1766(c)(5); 7 C.F.R. §226.23.

Centers must submit a free and reduced-price policy statement on pricing for approval as part of the CACFP application. Centers have two options:

- "***Non-Pricing":*** All enrolled children receive all meals for free.
- "***Pricing":*** Families must pay for meals if the household does not qualify for free meals. Fees for reduced-price or paid meals are collected either from the child at meal time or from the family as a recurring charge. Very few centers use the pricing provisions.

IV. Specific Services/Benefits/Rights Included in the Program

There are a number of statutory provisions governing services, benefits, and rights of children enrolled at child development centers, Head Start and Early Head Start programs, and child care homes participating in CACFP. They include:

- Nutritious Meals*:* Children can receive "a daily maximum of two meals (breakfast and/or lunch and/or supper) and one supplement (snack), or two snacks and one meal … The meals/snacks must meet or exceed the meal pattern requirements." 42 U.S.C. §1766 (f)(2)(B); 7 CFR 226.20.
- Special dietary needs: Foods can be substituted "to accommodate the medical or other special dietary needs of individual participants." 42 U.S.C. §1766(g)(2)(C)(i).
- Water: "Participating child care centers and family or group day care homes shall make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times." 42 U.S.C. §1766(u)(2).
- Outreach: Centers and homes that participate in CACFP are required to provide families with information describing the program and its benefits, and the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program. These materials, to the maximum extent practicable, should be in a language that the child's family can easily understand. 42 U.S.C. §1766(d)(3).
- **Dissemination of information to families:** Each State agency shall ensure that each participating family and group day care home and child care center receives materials to distribute "to parents of enrolled children at enrollment," including information on the benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and on the benefits and requirements for applying to receive CACFP meals. 42 U.S.C. §1766(s)(2).
- Restrictions on the use of food: "Institutions, family or group day care homes, and sponsored centers shall ensure that reimbursable meal service contributes to the development and socialization of enrolled children by providing that food is not used as a punishment or reward." 42 U.S.C. §1766(g)(3).
- Protections Against Discrimination: "State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37.

V. Significant Statutory Provisions

CACFP was initially established in 1968 under the name the Child Care Food Program, was made permanent in 1978 (Pub. L. 95-627), and was eventually given its current name in 1990, following the passage of the Older Americans Act of 1987 (Pub. L. 100–175). The statute has been amended multiple times between 1968 and 2010.

CACFP is codified at 42 U.S.C. §1766.

VI. Key Regulatory & Major Policy Provisions

CACFP regulations can be found at 7 C.F.R. §§226.1–226.27

There is USDA guidance interpreting and implementing CACFP, including:

- Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program; https://fns-prod.azureedge.net/sites/default/files/cacfp/CACFP14-2017_SFSP10-2017os.pdf
- Documenting Meals in the Child and Adult Care Food Program; https://fns-prod.azureedge.net/sites/default/files/cacfp/CACFP17-2017os.pdf
- Transition Period for Updated CACFP, Infant, Preschool Meal Patterns; https://fns-prod.azureedge.net/sites/default/files/cn/SP30_CACFP13-2017os.pdf;
- Child Nutrition Program Waiver Request Guidance and Protocol; https://fns-prod.azureedge.net/sites/default/files/cn/SP27-2017_CACFP12-2017_SFSP08-2017os.pdf
- Vegetable and Fruit Requirements in CACFP: Q&As. https://fns-prod.azureedge.net/sites/default/files/cacfp/CACFP09-2017os2.pdf

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. § 1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. In his dissent, Justice Powell included the National School Lunch Act as one on a (non-comprehensive) list of statutes that likely would be enforceable under Section 1983, given the majority's decision. 448 U.S. 1, 34-36. CACFP is part of the National School Lunch Act. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536 U.S. 273 (2002), courts continue to apply Section 1983 – or assume the existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- USDA webpage CACFP https://www.fns.usda.gov/cacfp/child-and-adult-care-food-program
- USDA Child Day Care Centers webpage https://www.fns.usda.gov/cacfp/child-day-care-centers
- USDA Day Care Homes webpage https://www.fns.usda.gov/cacfp/family-day-care-homes
- Food Research & Action Center CACFP webpage http://frac.org/programs/child-adult-care-food-program

Fresh Fruit and Vegetable Program: Richard B. Russell National School Lunch Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS). State Agency.

I. Establishing Statutory Provision(s)

FFVP is created by Section 19 of the Richard B. Russell National School Lunch Act and is codified in 42 U.S.C. §1769a.

II. General Description of the Program

To improve overall diets and foster healthier eating habits among children, FFVP provides fresh fruits and vegetables at no cost to students in participating elementary schools. Elementary schools where at least 50 percent of the students are eligible for free or reduced price meals can apply for annual federal funding to participate in FFVP. Funding is capped each year. Highest priority should go to schools with the highest proportion of children eligible for free or reduced price meals. In fiscal year (FY) 2018, FNS will distribute $174.5 million to FFVP-eligible elementary schools. [hyperlink to: https://www.fns.usda.gov/ffvp-revised-fy-2017-funding-allocation-and-fy-2018-funding-allocation].

Elementary schools participating in the program receive between $50–$75 per student for the school year to purchase additional fresh fruits and vegetables, which are served free to students during the school day, but outside of the normal time frames for the National School Lunch Program and the School Breakfast Program meal service.

Schools have the flexibility to develop their own implementation plans, including what fresh produce to offer and on which days during the school week. FNS strongly encourages schools to serve the FFVP-provided fruits and vegetables no fewer than two days per week.

III. Eligibility Criteria for the Program

All 50 states, Washington, D.C., the U.S. territory of Guam, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are eligible to participate.

Elementary schools are selected according to the criteria set forth in 42 U.S.C. §1769a(d). Eligible elementary schools must have 50 percent or more students who are eligible for free or reduced-price meals. Elementary schools also must submit an application that contains an implementation plan that includes information about "efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity."

If all schools that meet the free and reduced-price threshold and application requirements have been selected and the state does not have a sufficient number of additional schools that meet

the 50 percent threshold interested in applying, then other elementary school can apply. *See* 42 U.S. Code §1769a(d)(2).

IV. Specific Services/Benefits/Rights Included in the Program

State agencies are required to conduct outreach to the poorest low-income schools regarding FFVP eligibility. *See* 42 U.S. Code §1769a(d)(3). In reviewing the applications, the state agency will "[t]o the maximum extent practicable, give the highest priority to schools with the highest proportion of children who are eligible for free or reduced-price meals." *See* 42 U.S. Code § 1769a(d)(1)(B).

FFVP operates under the National School Lunch Program. As such, all pertinent reporting, recordkeeping, and monitoring requirements apply."State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37.

V. Significant Statutory Provisions

FFVP began as a pilot program in four states and one Indian tribe in 2002 as part of the Farm Security and Rural Investment Act (Pub. L. 107–171), and then expanded to more states as part of the Child Nutrition and WIC Reauthorization Act of 2004, and again through the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–97), before being expanded to the whole country by the 2008 Farm Bill, included in the FY 2008 Omnibus Bill (Pub. L. 110–234). Funds are inadequate to reach all eligible schools.

FFVP is codified in 42 U.S.C. §1769a.

VI. Key Regulatory & Major Policy Provisions

- FFVP regulations can be found in 7 C.F.R. § 211, § 235.
- There are several USDA policy memoranda that address interpreting and implementing FFVP, including:
    - Fresh Fruit and Vegetable Program (FFVP): Revised FY 2017 Funding Allocation and FY 2018 Funding Allocation; https://fns-prod.azureedge.net/sites/default/files/cn/SP35-2017os.pdf
    - Local Agency Procurement Reviews: School Year 2015–2016; and https://fns-prod.azureedge.net/sites/default/files/cn/SP04_CACFP04_SFSP04-2016os.pdf
    - Informational Memorandum on the Fresh Fruit and Vegetable Program. https://fns-prod.azureedge.net/sites/default/files/SP_16-2008.pdf

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- USDA, FNS Fresh Fruit and Vegetable Program webpage: https://www.fns.usda.gov/ffvp/fresh-fruit-and-vegetable-program
- USDA, Economic Research Service Fruit and Vegetable Program webpage: https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/usda-fruit-and-vegetable-program.aspx

National School Lunch Program: National School Lunch Act

U.S. Department of Agriculture, Food and Nutrition Service. State Agency.

I. Establishing Statutory Provision(s)

The NSLP is codified throughout various portions of 42 U.S.C. §1751-1769j.

II. General Description of the Program

NSLP — the nation's second-largest nutrition assistance program behind the Supplemental Nutrition Assistance Program (SNAP) — makes it possible for school children in the United States to receive a nutritious lunch every school day if they attend a school that operates NSLP. Approximately 95 percent of eligible schools participate in the program, providing meals to more than 30 million children on an average school day.

Any public or nonprofit private school or residential child care institution that wants to participate in NSLP is eligible to receive federal per meal cash reimbursements to provide nutritious meals to students. In addition to cash reimbursements, schools receive USDA commodities. (NSLP also provides funding for school food authorities to be reimbursed for snacks served to children through age 18 in afterschool educational or enrichment programs.[38]) Meals must meet federal nutrition standards that were updated recently to provide students with foods more consistent with U.S. dietary guidelines. Schools certifying that they are complying with these enhanced standards receive an additional 6 cents per lunch served.

Low-income children are eligible to receive meals for free or at a reduced price based on their household income. Some students are "categorically eligible" for free school meals. Children from moderate to higher-income households pay the school lunch fee set by the school district. In some

[38]Pursuant to 42 U.S.C. § 1766a (2017), schools that operate afterschool programs in low-income areas are eligible to participate in the Child and Adult Care Food Program—"At-Risk" Afterschool Meal Program and serve meals and snacks to children age 18 or younger. See Legal Scan on this topic.

schools, particularly those with poorer student bodies, all students eat for free. This is typically through the Community Eligibility Provision (CEP)[39] through which thousands of high-poverty schools offer lunch (and breakfast, through the federal School Breakfast Program) at no charge to all students, while eliminating the traditional school meal application process.

III. Eligibility Criteria for the Program

Any student is eligible to receive a lunch at a participating NSLP school. However, students qualify for free, reduced-price, or paid meals depending on the income of a student's household.

- Children in households with incomes at or below 130 percent of the federal poverty level are eligible for free school meals.
- Children in households with incomes between 130 and 185 percent of the federal poverty level are eligible for reduced-price school meals and can be charged no more than 40 cents for lunch.
- Children from families with incomes above 185 percent of the federal poverty level may purchase a "paid meal," meaning they pay most of the cost (there is a small federal reimbursement to the school.) While prices families must pay for paid meals are set by each school food authority (SFA), Section 205 of the Healthy Hunger Free Kids Act of 2010 requires that SFAs that charge for paid lunches less than the difference between the federal reimbursements for free and paid lunch ($2.86 for SY 2017–18), to either gradually adjust paid lunch prices upward or provide non-federal funds to cover the difference. State agencies should exempt an SFA from this requirement if the SFA "has been certified as meeting the meal pattern requirements and can demonstrate that the required increase to paid lunch prices or revenue contributions would cause the SFA to exceed the 3-month operating balance limit." [hyperlink to: https://fns-prod.azureedge.net/sites/default/files/cn/SP17-2017os.pdf]

Some children are "categorically eligible" for free school meals, based on their household's receipt of another means-tested benefit, such as SNAP, TANF, or the Food Distribution Program on Indian Reservations (FDPIR). Families can simply indicate on their school meal applications the case number of the applicable means-tested benefit they are receiving to qualify for free meals for any child in the households. *See* 7 CFR 245.6(b)(7). Additionally, foster youth, migrant, homeless, or runaway youth, and Head Start participants also are deemed "categorically eligible" for free school meals.

Schools are required to directly certify children in SNAP households for free school meals. As such, schools must comply with a number of requirements, including setting up a data-matching system between schools and the state SNAP agency to readily identify students in SNAP households.

[39] School can also adopt other policies to provide free meals to all students. For example, Provision 2 allows schools to establish claiming percentages based on a base year and to serve all meals at no charge for a 4 year period, thereby reducing the application burden and simplifying meal counting and claiming procedures.

Direct certification can happen at the state or school district level. See 42 U.S.C. §1758(b)(4)(C). Many states also are extending direct certification via data matching to other means tested programs like TANF and Medicaid (see below).

IV. Specific Services/Benefits/Rights Included in the Program

Children applying for or participating in NSLP enjoy specific services, benefits, and rights, including:

- Determination of Eligibility for Meals: Upon the completion of an application, an eligibility determination shall be made as to whether the child qualifies for free, reduced-price, or paid meals. *See* 42 U.S.C. §§1758(b)(3)(A)–1758(b)(3)(B)(i).
- Protections Against Discrimination: "State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37. Additionally, schools are prohibited from physically segregating, or imposing other forms of discrimination against any child who is eligible for a free or reduced-price lunch, including "overt identification of any child by special tokens or tickets, announced or published list of names, or by other means." 42 U.S.C. §1758(b)(11).
- Protections Against Lunch Shaming: School districts participating in NSLP or the School Breakfast Program are required to establish and clearly communicate a local meal charge policy to address the issue of households who cannot pay meal fees or have accounts in arrears.[40] The federal guidance does not establish any national standards, nor does it provide any baseline for protection for children and families, what districts need to include in their policies; instead, it only requires that there be a policy.
- Access to Nutritional Meals: Section 201 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, HHFKA) amended Section 4(b) of the NSLA, 42 U.S.C. 1753(b), to require the Department of Agriculture (USDA) to issue regulations to update the meal patterns and nutrition standards for school lunches and breakfasts based on the recommendations issued by the Institute of Medicine (IOM). As a result, schools have increased the availability of fruits, vegetables, whole grains, and fat free and low-fat fluid milk in school meals to comply with these recommendations. *See* 7 C.F.R Parts 210 and 220.
- Access to Fluid Milk: Lunches served by schools participating in NSLP shall offer students a variety of fluid milk, consistent with the most recent Dietary Guidelines for Americans. 42 U.S.C. §1758(a)(2).
- Access to Water: Schools participating in NSLP "shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service." 42 U.S.C. §1758 (a)(5).
- Protection of Information: Section 9(b)(6) of the National School Lunch Act, 42 U.S.C. §1758(b)(6) (2017) and regulations found in 7 CFR §§245.6(f)–245.6(k) (2017) set forth the restrictions on the disclosure and use of information obtained from an application for free

[40] U.S. Dept. of Agriculture, Food and Nutrition Service. (2016). Memo SP 46 2016: Unpaid Meal Fees: Local Meal Charge Policies. Available at: https://fns-prod.azureedge.net/sites/default/files/cn/SP46-2016os.pdf. Accessed on April 21, 2017.

and reduced-price meals as well as the criminal penalties for improper release of information.

Schools also have obligations to ensure that households receive information related to applying for school meals. Of note, per 42 U.S.C. §1758 (B)(5), local school food authorities shall:

- publicly announce the income eligibility guidelines for free and reduced-price lunches on or before the opening of school; and
- distribute applications to the parents or guardians of children in attendance at the school that explain who qualifies for free and reduced-price meals.

Under certain circumstances, schools must allow for "the substitution of foods to accommodate the medical or other special dietary needs of individual students." 42 U.S.C. §1758(a)(1)(A)(i). For instance, students can receive a "substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk." 42 U.S.C. §1758(a)(2)(A)(iii).

Wellness Policy: Each local educational agency participating in NSLP shall establish a local school wellness policy for all schools under its jurisdiction. Among other components, the wellness policy must include goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness, and nutrition guidelines for all schools available on campus. *See* 42 U.S.C. §1758b.

V. Significant Statutory Provisions

The program was established under the National School Lunch Act, signed by President Harry Truman in 1946 (79 P.L. 396, 60 Stat. 230). It has been amended many times since, and was expanded in 1998 to include reimbursement for snacks and meals served to children in afterschool educational and enrichment programs to include children through 18 years of age.

The NSLP is codified throughout various portions of 42 U.S.C. §§1751-1769j.

VI. Key Regulatory & Major Policy Provisions

USDA's NSLP regulations can be found in:

- 7 C.F.R. §210.
- 7 C.F.R. §235.
- 7 C.F.R. §245.

There is extensive guidance on USDA policies interpreting and implementing NSLP, including (but not limited to):

- Eligibility Manual for School Meals: Determining and Verifying Eligibility; https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf

- Paid Lunch Equity: School Year 2017-2018 Calculations and Revised Tool; https://fns-prod.azureedge.net/sites/default/files/cn/SP11-2017v2os.pdf
- Community Eligibility Provision: Guidance and Updated Q&As; https://fns-prod.azureedge.net/sites/default/files/cn/SP54-2016os.pdf
- Contracting with Food Service Management Companies: Guidance for State Agencies; https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sa.pdf
- Contracting with Food Service Management Companies: Guidance for School Food Authorities; and https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sfa.pdf
- Accommodating Children with Disabilities in the School Meal Programs Guidance for School Food Service Professionals. https://fns-prod.azureedge.net/sites/default/files/cn/SP40-2017a1.pdf

NOTE: USDA School Meal Policy Memos provide policy memos for NSLP, the School Breakfast Program, and the Special Milk Program.

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. § 1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. In his dissent, Justice Powell included the National School Lunch Act as one on a (non-comprehensive) list of statutes that likely would be enforceable under Section 1983, given the majority's decision. 448 U.S. 1, 34-36. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536 U.S. 273 (2002), courts continue to apply Section 1983 – or assume the existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs.

There is relatively little litigation under the National School Lunch Act that addresses this directly, but see *Heimberger v. School District of City of Saginaw*, 881 F. 2nd 242 (6th Cir. 1989) (District Court's order giving relief under Section 1983 reversed in opinion assuming Act is enforceable but finding plaintiffs lacked standing).

VIII. References to Medicaid

Direct Certification Using Medicaid Data: Direct certification allows schools to access data to certify students for free or reduced-price school meals. As a result, there is no need for a family to complete or a school to collect a school meal application. There are two tracks for using Medicaid data for direct certification purposes:

- State agencies administering NSLP can apply to conduct a demonstration project to directly certify for free school children meals who are receiving assistance under the

Medicaid program and whose household income as measured by Medicaid does not exceed 133 percent of the poverty line. *See* 42 U.S.C. §1758(b)(15) (2017).

- In January 2016, USDA and the White House announced a new initiative expanding the use of Medicaid eligibility data to directly certify low-income students for free or reduced-price school meals. Under the new demonstrations, adopted pursuant to the administrative pilot authority in Section 18(c) of the Richard B. Russell National School Lunch Act, selected states can match school enrollment data with Medicaid eligibility data to identify children who receive Medicaid, or live with another child who receives Medicaid, and whose family income falls within the income guidelines for free or reduced-price meals:
    - Up to 130 percent of the federal poverty level for free school meal eligibility; or
    - 130 to 185 percent of the federal poverty level for reduced-price meal eligibility.

Currently, 19 states participate in one or both of these tracks; however, at the time of the publication of this Federal Legal Scan, additional states cannot apply to participate in Medicaid direct certification opportunities.

Sharing NSLP Data to Connect Children to Medicaid: Additionally, while there are many protections that bar disclosure of data about children participating in NSLP, the state Medicaid program can receive select data for the purpose of "identifying children eligible for benefits under, and enrolling children in, those programs … but only to the extent that the State and the local educational agency or school food authority so elect." 42 U.S.C. §1758(b)(6)(A)(iv).

IX. Other Relevant Citations and Resources

- USDA Child Nutrition Programs webpage;
- USDA, FNS — Evaluation of Demonstrations of National School Lunch Program and School Breakfast Program Direct Certification of Children Receiving Medicaid Benefits: Year 1 Report; and http://www.fns.usda.gov/evaluation-demonstrations-national-school-lunch-program-and-school-breakfast-program-direct
- USDA, FNS — Evaluation of Demonstrations of National School Lunch Program and School Breakfast Program Direct Certification of Children Receiving Medicaid Benefits: Access Evaluation Report. http://www.fns.usda.gov/evaluation-demonstrations-national-school-lunch-program-and-school-breakfast-program-direct-o
- Food Research & Action Center NSLP webpage
- FRAC "Establishing Unpaid Meal Fee Policies: Best Practices to Ensure Access and Prevent Stigma" available at: http://www.frac.org/wp-content/uploads/frac-unpaid-meal-fees-policy-guide.pdf

School Breakfast Program: Child Nutrition Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS). State Agency.

I. Establishing Statutory Provision(s)

SBP is codified in 42 U.S.C. §1771 *et seq.*

II. General Description of the Program

SBP provides more than 15 million children a nutritious morning meal each school day. School breakfast is a critical support for struggling families trying to stretch limited resources and provides children a significant portion of the nutrition they need to learn and be healthy. A wide body of research supports the health and educational benefits of participation in the federal breakfast program.

Any public and nonprofit private school or residential child care institution participating in SBP receives federal per meal cash reimbursements to provide nutritious meals to students. All school breakfasts must meet federal nutrition requirements, although local school food authorities can decide which specific foods to serve.

Low-income children are eligible to receive meals for free or at a reduced price based on their household income. Some students are "categorically eligible" for free school meals. Children from moderate to higher-income households pay the school lunch fee set by the school district. In some schools, particularly those with poorer student bodies, all students eat for free. This is typically through the Community Eligibility Provision (CEP)[41] through which thousands of high-poverty schools offer lunch (and breakfast, through the federal School Breakfast Program) at no charge to all students, while eliminating the traditional school meal application process.
Even though more than 90 percent of schools serving lunch now serve breakfast, too few students are accessing school breakfast. For every 100 children who participated in school lunch during school year 2015–2016, 56 low-income children participated in school breakfast. To connect more students to school breakfast, schools are implementing successful strategies such as providing breakfast as part of the school day (e.g., during first period class in the classroom), rather than serving breakfast prior to the start of school in the cafeteria, which presents a significant barrier to participation, and offering free breakfast to all students in high-poverty schools.

III. Eligibility Criteria for the Program

Any student is eligible to receive a school breakfast at a school participating in the School Breakfast Program. Students qualify for free, reduced-price, or paid breakfast depending on the income of a student's household:

[41] School can also adopt other policies to provide free meals to all students. For example, Provision 2 allows schools to establish claiming percentages based on a base year and to serve all meals at no charge for a 4 year period, thereby reducing the application burden and simplifying meal counting and claiming procedures.

- Children in households with incomes at or below 130 percent of the federal poverty level are eligible for free school meals.
- Children in households with incomes between 130 and 185 percent of the federal poverty level are eligible for reduced-price school meals and can be charged no more than 30 cents for breakfast.
- Children from families with incomes above 185 percent of the federal poverty level may purchase a "paid meal." Paid meals receive a small federal subsidy. Prices to the students for paid meals are set by each school district.

See 42 U.S.C. §1771.

Some children are "categorically eligible" for free school meals, based on their household's receipt of another means-tested benefit, such as SNAP, TANF, or the Food Distribution Program on Indian Reservations (FDPIR). Foster youth, migrant, homeless, or runaway youth, and Head Start participants also are deemed "categorically eligible" for free school meals.

Schools are required to directly certify children in SNAP households for free school meals. As such, schools must comply with a number of requirements, including setting up a data-matching system between schools and the state SNAP agency to readily identify students in SNAP households. *See* 42 U.S.C. §1758(b)(4)(C). Schools can directly certify other "categorically eligible" children, such as children who are in TANF households or foster care.

IV. Specific Services/Benefits/Rights Included in the Program

Children participating in the school breakfast program enjoy the specific services, benefits, and rights as those referenced in the National School Lunch Program legal scan.

Breakfasts "shall consist of a combination of foods and shall meet the minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research." *See* 42 U.S.C. §1771(e); 7 C.F.R. §220.8. This requirements were revised in response to statutory changes through the Healthy Hunger Free Kids Act of 2010.

V. Significant Statutory Provisions

SBP began as a pilot project in 1966 as part of the Child Nutrition Act and was made permanent in 1975.

SBP is codified in 42 U.S.C. §1771 *et seq.*

VI. Key Regulatory & Major Policy Provisions

SBP regulations can be found in 7 C.F.R. §220.

There is extensive guidance on USDA policies interpreting and implementing SBP, including:

- Eligibility Manual for School Meals: Determining and Verifying Eligibility; https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf
- Community Eligibility Provision: Guidance and Updated Q&As; https://fns-prod.azureedge.net/sites/default/files/cn/SP54-2016os.pdf
- Contracting with Food Service Management Companies: Guidance for State Agencies; https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sa.pdf
- Contracting with Food Service Management Companies: Guidance for School Food Authorities; and https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sfa.pdf
- Accommodating Children with Disabilities in the School Meal Programs Guidance for School Food Service Professionals. https://fns-prod.azureedge.net/sites/default/files/cn/SP40-2017a1.pdf

NOTE: USDA School Meal Policy Memos provide guidance for SBP, the National School Lunch Program, and the Special Milk Program.

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. §1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. In his dissent, Justice Powell included the National School Lunch Act as one on a (non-comprehensive) list of statutes that likely would be enforceable under Section 1983, given the majority's decision. 448 U.S. 1, 34-36. While the Child Nutrition Act that authorizes the School Breakfast Program is a different act, its structure is similar to the National School Lunch Act and numerous provisions cross-reference. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536 U.S. 273 (2002), courts continue to apply Section 1983 – or assume the existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs.

VIII. References to Medicaid

See the National School Lunch Program legal scan.

IX. Other Relevant Citations and Resources

- USDA School Breakfast webpage https://www.fns.usda.gov/sbp/school-breakfast-program-sbp

- Food Research & Action Center School Breakfast webpage http://www.frac.org/programs/school-breakfast-program
- FRAC's School Breakfast Scorecard - 2015–2016 School Year http://frac.org/research/resource-library/school-breakfast-scorecard-2015-2016-school-year-february-2017

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Child Nutrtition Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service. State WIC Agency.

I. Establishing Statutory Provision(s)

42 U.S.C. §1786.

II. General Description of the Program

WIC is a nutrition program available for nutritionally at-risk, low-income pregnant, non-breastfeeding post-partum, and breastfeeding mothers, infants and young children up to age five. The program aims to safeguard the health of these vulnerable populations by providing vouchers for nutritionally targeted supplemental foods, nutrition education, breastfeeding promotion, health screenings, and referrals to health care and social service providers. Repeated studies attest to WIC's effectiveness [link to: https://www.fns.usda.gov/wic/about-wic-how-wic-helps] in improving nutrition and other health outcomes (e.g., reducing premature births, low birth weight, anemia, delayed cognitive development) of participants.

The WIC food packages were revised in 2007 to align the authorized food with the latest nutrition science and guidance and include items such as infant cereal, iron-fortified adult cereal, vitamin C-rich fruit or vegetable juice, eggs, milk, cheese, peanut butter, dried and canned beans/peas, and canned fish, soy-based beverages, tofu, fruits and vegetables, baby foods, whole-wheat bread, and other whole-grain options. WIC food packages are tailored to the nutrition needs of participating individuals. The revised WIC food packages have favorable impacts on dietary intake, breastfeeding outcomes, obesity rates, and the neighborhood food environments. WIC participants receive checks or vouchers to purchase specific foods each month at participating food retailers. A growing number of states issue an electronic benefit card to participants instead of paper checks or vouchers. All state agencies will be required to implement WIC electronic benefit transfer (EBT) statewide by October 1, 2020.

States and tribes receive federal grants to administer the program. Funding is capped, so WIC is unable to grow without additional appropriations to meet growing caseloads. Each month, WIC supports approximately 4 million children, 2 million infants, and 2 million women.

III. Eligibility Criteria for the Program

WIC is available in all 50 states and Washington, D.C., the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. 42 U.S.C. §1786(d) sets forth the four components for WIC eligibility: Categorical, Residential, Income, and Nutrition Risk.

Categorical: Applicants are categorically eligible if they are one of the following: a pregnant woman; a postpartum woman (up to 6 months); a woman breastfeeding an infant under 1 year old; an infant (up to 1 year old); or a child (more than 1 year old and less than 5 years old).

Residential: Applicants must live in the state where they are applying. Applicants served in areas where WIC is administered by an Indian Tribal Organization (ITO) must meet residency requirements established by the ITO.

Income: Applicants' income must be at or below 185 percent of the federal poverty line. Alternatively, applicants can be eligible by virtue of being participants in the Supplemental Nutrition Assistance Program (SNAP), Medicaid, or the Temporary Assistance for Needy Families (TANF) program ("adjunctive eligibility"), and, in some states, having children who are eligible for free or reduced-price meals.

Nutrition Risk: Applicants must be seen by a health professional who can determine whether the applicants are at medical-based or dietary-based nutritional risk.

A WIC Prescreening Tool [https://wic.fns.usda.gov/wps/pages/start.jsf] is available on USDA's website.

IV. Specific Services/Benefits/Rights Included in the Program

42 U.S.C. §1786 includes many provisions that impact the services, benefits, and rights of WIC participants.
§1786 (e) "Nutrition Education and Drug Abuse Education" requires the state agency to ensure that, among other provisions, all pregnant, postpartum, and breastfeeding participants in the program and parents or caretakers of infant and child participants in the program receive nutrition education and drug abuse education. (Services may be extended at the state's option to other identified individuals who are not participating in WIC.)

§1786 (f) "Plan of Operation and Administration by State agency" requires each state agency to submit to the Secretary for approval an initial plan of operation and administration for a fiscal year that includes the following:

- **"** a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program." §1786(f)(1)(C)(iv).

- "a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians." §1786(f)(1)(C)(v).
- "a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas), if sufficient funds are available to carry out this clause." §1786(f)(1)(C)(vii):
- "a plan for reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants." §1786(f)(1)(C)(viii):

"a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally." §1786(f)(1)(C)(ix):

- "a plan to provide nutrition education and promote breastfeeding."§1786(f)(1)(C)(x):

§1786(f) imposes certain key responsibilities on the state agency administering WIC. Of note, state agencies *shall*:

- "establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan." §1786(f)(2).
- establish procedures to allow for migrants to continue WIC participation in states where they are present, but in which they did not originally certify for WIC. §1786(f)(3).
- "submit monthly financial reports and participation data to the Secretary." §1786(f)(4).
- "keep such accounts and records, including medical records" that "shall be available at any reasonable time for inspection and audit by representatives of the Secretary." §1786(f)(5).
- "in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas)." §1786(f)(7)(A).

Rights of WIC Households

- Local agencies participating in the program shall "notify persons of their eligibility or ineligibility for the program within 20 days of the date that the household requests to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously." §1786 (f)(6)(A).

- State agencies *may* provide for the delivery of vouchers to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. §1786(f)(6)(B).
- "The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation." §1786(f)(8)(A).
- "Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant." §1786(f)(8)(B).
- "If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of eligibility shall remain valid for the period for which the individual was originally certified." §1786(f)(9).
- State agencies may provide nutrition education, breastfeeding promotion, and drug abuse education materials and instruction in languages other than English in areas in which "a substantial number of low-income households speak a language other than English." §1786(f)(13).

Protections Against Discrimination: "State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37.

WIC Appointments

§1786(f)(19) requires that the State agency shall adopt policies that:

- "require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and
- in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification."

Supplemental Foods: "The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate." §1786(f)(11). The recently updated and improved WIC food package includes foods –typically absent in the diets of

low-income children and women--high in protein, iron, calcium, and vitamins A and C. Foods are tailored to the needs of the participant but can include formula, infant cereal, infant foods, milk, cheese, eggs, canned fish, fresh fruits and vegetables, breakfast cereal, whole wheat/whole grain bread, juice, legumes and/or peanut butter. *See* 7 CFR §246(10)(e).

Alternative Benefit Delivery Methods: "The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals." §1786(f)(16).

V. Significant Statutory Provisions

WIC was created by an amendment to section 17 of the Child Nutrition Act of 1966 in 1972. WIC began as a two-year pilot program, but was established as a permanent program in 1975 (Pub.L. 94–105, 89 Stat. 511). The statute has been amended numerous times since then, most recently, in the Healthy, Hunger-Free Kids Act of 2010 (Pub.L.111–296 — Dec. 13, 2010).

WIC is codified in 42 U.S.C. §1786.

VI. Key Regulatory & Major Policy Provisions

WIC regulations can be found in 7 C.F.R. §246. There is USDA policy guidance for interpreting and implementing WIC, including (but not limited to):

- WIC eligibility guidelines (2017–2018); https://www.gpo.gov/fdsys/pkg/FR-2017-03-15/pdf/2017-05119.pdf
- Food Package Policy and Guidance: A Guide for FNS Regional Offices and WIC State and local agencies; https://www.fns.usda.gov/sites/default/files/wic/WIC-Food-Package-Policy-Guidance.pdf
- Breastfeeding Policy and Guidance; https://www.fns.usda.gov/sites/default/files/wic/WIC-Breastfeeding-Policy-and-Guidance.pdf
- WIC Nutrition Education Guidance; https://wicworks.fns.usda.gov/wicworks//Learning_Center/ntredguidance.pdf
- Value Enhanced Nutrition Assessment Guidance: https://wicworks.fns.usda.gov/wicworks//Learning_Center/VENA/VENA_Guidance.pdf

For additional WIC policy guidance, visit: https://www.fns.usda.gov/wic/policy

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. § 1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536

U.S. 273 (2002), courts continue to apply Section 1983 – or assume the existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs, including SNAP.

- *Alexander v. Polk*, 750 F.2d 250, 259-261 (3d Cir. 1984) (recipients of benefits under WIC have a statutorily-created property interest in eligibility for WIC that forms the basis of a legally cognizable section 1983 claim charging a violation of WIC's fair hearing regulation, 7 C.F.R. §246.24(a)).

See also:

- *S. Camden Citizens in Action v. NJ Dep't of Environmental Protection*, 274 F.3d 771, 783 (3d Cir. 2001) (discussing *Alexander* and noting that the right to a fair hearing that was enforceable under section 1983 "could be traced to and was consistent with the statute," which "created a right to supplemental food for those who qualified.")
- *Song v. United States*, 1996 U.S. Dist. LEXIS 4697, *14 (W.D.Mich. Feb. 29, 1996) (citing *Alexander v. Polk* for the proposition that an "interest in receiving benefits [under WIC] is a property interest, and WIC recipients may not be terminated from program without due process.")

VIII. References to Medicaid

42 U.S.C. §1786 notes several instances where the administration of the WIC and Medicaid programs intersect:

- Adjunctive Eligibility: According to 42 U.S.C. §1786 (f)(17), "a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program." Through a state's adoption of this option, referred to as adjunctive eligibility, WIC applicants who receive Medicaid can automatically satisfy the income eligibility criterion for WIC. The Child Nutrition and WIC Reauthorization Act of 1989 established adjunctive eligibility as a way to simplify the WIC application process by connecting WIC eligibility to other means-tested programs.

- NOTE: According to the National WIC Association, [hyperlink: https://www.aap.org/en-us/advocacy-and-policy/federaladvocacy/Documents/wicadjunctiveeligibilityNWAfactsheet.pdf] "In the past 25 years, some states have expanded eligibility for these programs to include those with incomes above the WIC eligibility threshold of 185% of the Federal poverty guidelines. This means that, in certain states, women, infants, and/or children who would not normally qualify for WIC based on their income level are able to qualify based on their enrollment in Medicaid." Despite the broadening of Medicaid adjunctive availability in some states, only about 1 percent of all WIC participants have incomes above 185 percent of the federal poverty level.

- Provision of Information on Medicaid to Families Applying or Reapplying for WIC: Pursuant to 42 U.S.C. §1786 (e)(4), the State agency:
    - "shall provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (in this section referred to as the "medicaid program");
    - shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program."
- Provision of WIC Information and Referrals to Medicaid Families in States Using Coordinated Care Providers: "The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including:
    - the referral of potentially eligible women, infants, and children between the 2 programs; and
    - the timely provision of medical information related to the program authorized by this section to agencies carrying out the program." 42 U.S.C. §1786 (f)(22).

IX. Other Relevant Citations and Resources

- USDA's WIC webpage: https://www.fns.usda.gov/wic/women-infants-and-children-wic
- USDA's How WIC Helps webpage: https://www.fns.usda.gov/wic/about-wic-how-wic-helps
- Food Research & Action Center's WIC webpage: http://www.frac.org/programs/wic-women-infants-children
- National WIC Association's *WIC and Adjunctive Eligibility* resource: https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/wicadjunctiveeligibilityNWAfactsheet.pdf

Summer Food Service Program for Children: Richard B. Russell National School Lunch Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service. State-based Agency.

I. Establishing Statutory Provision(s)

42 U.S.C. §1751-1769j

II. General Description of the Program

NSLP — the nation's second-largest nutrition assistance program behind the Supplemental Nutrition Assistance Program (SNAP) — makes it possible for school children in the United States to receive a nutritious lunch every school day if they attend a school that operates NSLP. Approximately 95 percent of eligible schools participate in the program, providing meals to more than 30 million children on an average school day.

Any public or nonprofit private school or residential child care institution that wants to participate in NSLP is eligible to receive federal per meal cash reimbursements to provide nutritious meals to students. In addition to cash reimbursements, schools receive USDA commodities. (NSLP also provides funding for school food authorities to be reimbursed for snacks served to children through age 18 in afterschool educational or enrichment programs.[42]) Meals must meet federal nutrition standards that were updated recently to provide students with foods more consistent with U.S. dietary guidelines. Schools certifying that they are complying with these enhanced standards receive an additional 6 cents per lunch served.

Low-income children are eligible to receive meals for free or at a reduced price based on their household income. Some students are "categorically eligible" for free school meals. Children from moderate to higher-income households pay the school lunch fee set by the school district. In some schools, particularly those with poorer student bodies, all students eat for free. This is typically through the Community Eligibility Provision (CEP)[43] through which thousands of high-poverty schools offer lunch (and breakfast, through the federal School Breakfast Program) at no charge to all students, while eliminating the traditional school meal application process.

III. Eligibility Criteria for the Program

Any student is eligible to receive a lunch at a participating NSLP school. However, students qualify for free, reduced-price, or paid meals depending on the income of a student's household.

[42]Pursuant to 42 U.S.C. § 1766a (2017), schools that operate afterschool programs in low-income areas are eligible to participate in the Child and Adult Care Food Program—"At-Risk" Afterschool Meal Program and serve meals and snacks to children age 18 or younger. See Legal Scan on this topic.

[43] School can also adopt other policies to provide free meals to all students. For example, Provision 2 allows schools to establish claiming percentages based on a base year and to serve all meals at no charge for a 4 year period, thereby reducing the application burden and simplifying meal counting and claiming procedures.

- Children in households with incomes at or below 130 percent of the federal poverty level are eligible for free school meals.

- Children in households with incomes between 130 and 185 percent of the federal poverty level are eligible for reduced-price school meals and can be charged no more than 40 cents for lunch.

- Children from families with incomes above 185 percent of the federal poverty level may purchase a "paid meal," meaning they pay most of the cost (there is a small federal reimbursement to the school.) While prices families must pay for paid meals are set by each school food authority (SFA), Section 205 of the Healthy Hunger Free Kids Act of 2010 requires that SFAs that charge for paid lunches less than the difference between the federal reimbursements for free and paid lunch ($2.86 for SY 2017–18), to either gradually adjust paid lunch prices upward or provide non-federal funds to cover the difference. State agencies should exempt an SFA from this requirement if the SFA "has been certified as meeting the meal pattern requirements and can demonstrate that the required increase to paid lunch prices or revenue contributions would cause the SFA to exceed the 3-month operating balance limit." [hyperlink to: https://fns-prod.azureedge.net/sites/default/files/cn/SP17-2017os.pdf]

Some children are "categorically eligible" for free school meals, based on their household's receipt of another means-tested benefit, such as SNAP, TANF, or the Food Distribution Program on Indian Reservations (FDPIR). Families can simply indicate on their school meal applications the case number of the applicable means-tested benefit they are receiving to qualify for free meals for any child in the households. *See* 7 CFR 245.6(b)(7). Additionally, foster youth, migrant, homeless, or runaway youth, and Head Start participants also are deemed "categorically eligible" for free school meals.

Schools are required to directly certify children in SNAP households for free school meals. As such, schools must comply with a number of requirements, including setting up a data-matching system between schools and the state SNAP agency to readily identify students in SNAP households. Direct certification can happen at the state or school district level. See 42 U.S.C. §1758(b)(4)(C). Many states also are extending direct certification via data matching to other means tested programs like TANF and Medicaid (see below).

IV. Specific Services/Benefits/Rights Included in the Program

Children applying for or participating in NSLP enjoy specific services, benefits, and rights, including:

- Determination of Eligibility for Meals: Upon the completion of an application, an eligibility determination shall be made as to whether the child qualifies for free, reduced-price, or paid meals. *See* 42 U.S.C. §§1758(b)(3)(A)–1758(b)(3)(B)(i).

- Protections Against Discrimination: "State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37. Additionally, schools are prohibited from physically segregating, or imposing other forms of discrimination against any child who is eligible for a free or reduced-price lunch, including "overt identification of any child by special tokens or tickets, announced or published list of names, or by other means." 42 U.S.C. §1758(b)(11).
- Protections Against Lunch Shaming: School districts participating in NSLP or the School Breakfast Program are required to establish and clearly communicate a local meal charge policy to address the issue of households who cannot pay meal fees or have accounts in arrears.[44] The federal guidance does not establish any national standards, nor does it provide any baseline for protection for children and families, what districts need to include in their policies; instead, it only requires that there be a policy.
- Access to Nutritional Meals: Section 201 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, HHFKA) amended Section 4(b) of the NSLA, 42 U.S.C. 1753(b), to require the Department of Agriculture (USDA) to issue regulations to update the meal patterns and nutrition standards for school lunches and breakfasts based on the recommendations issued by the Institute of Medicine (IOM). As a result, schools have increased the availability of fruits, vegetables, whole grains, and fat free and low-fat fluid milk in school meals to comply with these recommendations. *See* 7 C.F.R Parts 210 and 220.
- Access to Fluid Milk: Lunches served by schools participating in NSLP shall offer students a variety of fluid milk, consistent with the most recent Dietary Guidelines for Americans. 42 U.S.C. §1758(a)(2).
- Access to Water: Schools participating in NSLP "shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service." 42 U.S.C. §1758 (a)(5).
- Protection of Information: Section 9(b)(6) of the National School Lunch Act, 42 U.S.C. §1758(b)(6) (2017) and regulations found in 7 CFR §§245.6(f)–245.6(k) (2017) set forth the restrictions on the disclosure and use of information obtained from an application for free and reduced-price meals as well as the criminal penalties for improper release of information.

Schools also have obligations to ensure that households receive information related to applying for school meals. Of note, per 42 U.S.C. §1758 (B)(5), local school food authorities shall:

- publicly announce the income eligibility guidelines for free and reduced-price lunches on or before the opening of school; and
- distribute applications to the parents or guardians of children in attendance at the school that explain who qualifies for free and reduced-price meals.

Under certain circumstances, schools must allow for "the substitution of foods to accommodate the medical or other special dietary needs of individual students." 42 U.S.C. §1758(a)(1)(A)(i). For

[44] U.S. Dept. of Agriculture, Food and Nutrition Service. (2016). Memo SP 46 2016: Unpaid Meal Fees: Local Meal Charge Policies. Available at: https://fns-prod.azureedge.net/sites/default/files/cn/SP46-2016os.pdf. Accessed on April 21, 2017.

instance, students can receive a "substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk." 42 U.S.C. §1758(a)(2)(A)(iii).

Wellness Policy: Each local educational agency participating in NSLP shall establish a local school wellness policy for all schools under its jurisdiction. Among other components, the wellness policy must include goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness, and nutrition guidelines for all schools available on campus. *See* 42 U.S.C. §1758b.

V. Significant Statutory Provisions

The program was established under the National School Lunch Act, signed by President Harry Truman in 1946 (79 P.L. 396, 60 Stat. 230). It has been amended many times since, and was expanded in 1998 to include reimbursement for snacks and meals served to children in afterschool educational and enrichment programs to include children through 18 years of age.

The NSLP is codified throughout various portions of 42 U.S.C. §§1751-1769j.

VI. Key Regulatory & Major Policy Provisions

- USDA's NSLP regulations can be found in:
    - 7 C.F.R. §210.
    - 7 C.F.R. §235.
    - 7 C.F.R. §245.

There is extensive guidance on USDA policies interpreting and implementing NSLP, including (but not limited to):

- Eligibility Manual for School Meals: Determining and Verifying Eligibility; https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf
- Paid Lunch Equity: School Year 2017-2018 Calculations and Revised Tool; https://fns-prod.azureedge.net/sites/default/files/cn/SP11-2017v2os.pdf
- Community Eligibility Provision: Guidance and Updated Q&As; https://fns-prod.azureedge.net/sites/default/files/cn/SP54-2016os.pdf
- Contracting with Food Service Management Companies: Guidance for State Agencies; https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sa.pdf
- Contracting with Food Service Management Companies: Guidance for School Food Authorities; and https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sfa.pdf
- Accommodating Children with Disabilities in the School Meal Programs Guidance for School Food Service Professionals. https://fns-prod.azureedge.net/sites/default/files/cn/SP40-2017a1.pdf

NOTE: USDA School Meal Policy Memos provide policy memos for NSLP, the School Breakfast Program, and the Special Milk Program.

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. § 1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. In his dissent, Justice Powell included the National School Lunch Act as one on a (non-comprehensive) list of statutes that likely would be enforceable under Section 1983, given the majority's decision. 448 U.S. 1, 34-36. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536 U.S. 273 (2002), courts continue to apply Section 1983 – or assume the existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs.

There is relatively little litigation under the National School Lunch Act that addresses this directly, but see *Heimberger v. School District of City of Saginaw*, 881 F. 2nd 242 (6th Cir. 1989) (District Court's order giving relief under Section 1983 reversed in opinion assuming Act is enforceable but finding plaintiffs lacked standing).

VIII. References to Medicaid

Direct Certification Using Medicaid Data: Direct certification allows schools to access data to certify students for free or reduced-price school meals. As a result, there is no need for a family to complete or a school to collect a school meal application. There are two tracks for using Medicaid data for direct certification purposes:

- State agencies administering NSLP can apply to conduct a demonstration project to directly certify for free school children meals who are receiving assistance under the Medicaid program and whose household income as measured by Medicaid does not exceed 133 percent of the poverty line. *See* 42 U.S.C. §1758(b)(15) (2017).
- In January 2016, USDA and the White House announced a new initiative expanding the use of Medicaid eligibility data to directly certify low-income students for free or reduced-price school meals. Under the new demonstrations, adopted pursuant to the administrative pilot authority in Section 18(c) of the Richard B. Russell National School Lunch Act, selected states can match school enrollment data with Medicaid eligibility data to identify children who receive Medicaid, or live with another child who receives Medicaid, and whose family income falls within the income guidelines for free or reduced-price meals:
    - Up to 130 percent of the federal poverty level for free school meal eligibility; or

- Between 130 to 185 percent of the federal poverty level for reduced-price meal eligibility.

Currently, 19 states participate in one or both of these tracks; however, at the time of the publication of this Federal Legal Scan, additional states cannot apply to participate in Medicaid direct certification opportunities.

Sharing NSLP Data to Connect Children to Medicaid: Additionally, while there are many protections that bar disclosure of data about children participating in NSLP, the state Medicaid program can receive select data for the purpose of "identifying children eligible for benefits under, and enrolling children in, those programs … but only to the extent that the State and the local educational agency or school food authority so elect." 42 U.S.C. §1758(b)(6)(A)(iv).

IX. Other Relevant Citations and Resources

- USDA Child Nutrition Programs webpage;
- USDA, FNS — Evaluation of Demonstrations of National School Lunch Program and School Breakfast Program Direct Certification of Children Receiving Medicaid Benefits: Year 1 Report; and http://www.fns.usda.gov/evaluation-demonstrations-national-school-lunch-program-and-school-breakfast-program-direct
- USDA, FNS — Evaluation of Demonstrations of National School Lunch Program and School Breakfast Program Direct Certification of Children Receiving Medicaid Benefits: Access Evaluation Report. http://www.fns.usda.gov/evaluation-demonstrations-national-school-lunch-program-and-school-breakfast-program-direct-o
- Food Research & Action Center NSLP webpage
- FRAC "Establishing Unpaid Meal Fee Policies: Best Practices to Ensure Access and Prevent Stigma" available at: http://www.frac.org/wp-content/uploads/frac-unpaid-meal-fees-policy-guide.pdf

Supplemental Nutrition Assistance Program (SNAP): Food and Nutrition Act

U.S. Department of Agriculture (USDA), Food and Nutrition Service. State Department of Human Services.

I. Establishing Statutory Provision(s)

7 U.S.C. §§2011–2036c.

II. General Description of the Program

The monthly benefits provided by SNAP enhance the food purchasing power of eligible low-income families. SNAP is the largest federal nutrition program and the most important one in terms of

reducing hunger and poverty and boosting family income. SNAP is the most effective antipoverty program among the non-elderly and is especially effective for poor families with children.

SNAP is not only effective at reducing poverty and food insecurity, but also improving and in improving dietary intake, weight outcomes, and health, especially among the nation's most vulnerable children. SNAP is one of the few federal programs available without regard to age, disability, or family status and serves as the foundation of the food security safety net.

Benefits reach some of America's most vulnerable households, and more than 82 percent of all benefits go to households with a child, senior, or person with a disability.[45] SNAP recipients are diverse with regards to race and ethnicity, many have earned income, and the vast majority of SNAP households do not receive cash welfare benefits.[46]

SNAP benefit allotments are calculated based on household income and size. The maximum allotment in fiscal year (FY) 2018 is $192 a month for a single person, and $640 a month for a family of four.

SNAP benefits are delivered via an Electronic Benefit Transfer (EBT) card; "food stamps" or coupons no longer are used. Participants can purchase food at authorized supermarkets, farmers' markets, and other retail outlets. Because of the entitlement structure, SNAP participation can expand to meet rising need during hard economic times in the nation, a region, or locality, or during a natural disaster.

In April 2017, more than 41.6 million Americans participated in SNAP.[47] This is a monthly number, and USDA estimates that 1.3 to 1.4 times as many people receive SNAP at some point in the year as in an average month during that year.

While SNAP has a broad reach, the program could serve millions more. Of those people eligible, almost one person in six does not participate in the program.[48] To help connect more eligible families to SNAP, states can adopt federal policies to help expand program access, streamline the administrative process, and in some instances, help households access a more robust benefit level. Additionally, state agencies and their community nonprofit and local government partners can receive federal matching reimbursement funds to create and implement Supplemental Nutrition

[45] Farson Gray, K., Fisher, S., & Lauffer, S. (2016). *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2015*. (Report No. SNAP-16-CHAR). Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support.

[46] Farson Gray, K., Fisher, S., & Lauffer, S. (2016). *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2015*. (Report No. SNAP-16-CHAR). Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support.

[47] U.S. Department of Agriculture, Food and Nutrition Service. (2017). *Supplemental Nutrition Assistance Program*. Available at: https://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf. Accessed on July 24, 2017.

[48] Farson Gray, K., & Cunnyngham, K. (2017). *Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2015*. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support.

Assistance Program (SNAP) outreach plans. The federal funds cover up to 50 percent of the cost of approved outreach activities and application assistance.

III. Eligibility Criteria for the Program

The following provides general guidance as to SNAP eligibility rules, which are largely set by federal law but which can vary in certain respects from state to state based on states' take up of policy options and waivers. For detailed eligibility requirements in a given state, consult the state's SNAP agency and refer to the state options report [hyperlink --- https://www.fns.usda.gov/snap/state-options-report].

SNAP benefits are issued to eligible households. A household is defined as a group of people living together who purchase and prepare meals together for home consumption. See 7 U.S.C. §2012; 7 C.F.R. §273.1.

Non-Financial Eligibility Criteria:

U.S. citizens, including citizen children of undocumented or otherwise non-eligible immigrants, can qualify for SNAP, and many categories of legal immigrants (provided they satisfy the other eligibility requirements). Fleeing felons, unauthorized immigrants, certain persons convicted of drug felonies (depending on state law), most strikers, and certain college students are not eligible for SNAP. *See* 7 C.F.R. 273.4.

Financial Eligibility Criteria:

To be eligible for SNAP, most households must meet the following tests:

- Asset Test: Under the categorically eligibility option ("Cat EI")(see below), most states have eliminated an asset test. The default federal standard, however, are asset limits of $2,250 in countable assets for most SNAP households and $3,500 for households that include a person who is elderly or has disabilities. Certain resources are not counted as assets, such as a home and lot, the resources of people who receive Temporary Assistance for Needy Families (TANF), and most retirement plans. *See* 7 U.S. Code §2014 (g); 7 C.F.R. 273.8.
- Gross Income Test: Under the Cat EI option, states may set SNAP gross income limits as high as 200 pernet of the federal povery level (FPL). A majority of states have opted to set higher gross income limits, typically at 165, 185 or 200 perent of the FPL. In states that do not choose Cat EI, the gross income limit for SNAP households (excluding households with a person who is elderly or disabled) is 130 percent of the federal poverty level (FPL). Gross income includes both earned and unearned income but excludes specific types of income, such as loans. *See* 7 U.S. Code §2014 (c); 7 C.F.R. §273.9.
- Net Income Test: A household's net income must be no greater than 100 percent of the FPL. Net income is determined by subtracting allowable SNAP deductions (e.g., standard deduction, work expense, dependent care, child support payment, excess shelter expense, etc.) from a household's gross income.

The income and asset limits do not apply to households that are categorically eligible for SNAP. People receiving TANF, General Assistance (GA), or Supplemental Social Security Income (SSI) are

categorically eligible for SNAP. States can use broad-based categorical eligibility rules to include people receiving a range of TANF funded services and thereby, raise the gross income threshold and eliminate or raise the asset test for most applicants and recipients.

See http://www.fns.usda.gov/broad-based-categorical-eligibility-chart for a list of states that have lifted the income and/or asset tests for most of the caseload by expanding categorical eligibility.

Employment Requirements: In general, SNAP recipients must meet work requirements in order to be eligible for SNAP, such as not quitting a job; reducing hours voluntarily; or failing to participate in employment and training programs, if assigned by the state agency.

Additionally, in some states, "Able-Bodied Adults Without Dependents" (ABAWDs) are subject to a time limit: they are required to work or participate in a work program for at least 20 hours per week, and can receive SNAP benefits for no more than three months in a 36-month period when not doing so. However, states can seek waivers of the time limit for participants in areas with insufficient jobs.

These work requirements do not apply to children, seniors, pregnant women, people with disabilities, and people who are exempt for physical or mental health reasons.

Special Eligibility Rules for Seniors (60 years of age and older) and People With Disabilities
Households with seniors or people with disabilities do not need to meet a gross income test to be eligible for SNAP, and these households have a higher asset test of not more than $3,500 in countable assets even if the state has not adopted categorical eligibility rules. Seniors and people with disabilities also can deduct out-of-pocket medical expenses in excess of $35 per month from countable gross income. Unlike other households applying for SNAP, households with seniors or people with disabilities do not have a cap on deductible shelter expenses.

Expedited SNAP: Households with very low income and few resources may qualify for "expedited service." If eligible, SNAP benefits must be issued no more than seven days after receipt of application. *See 7 C*FR §273.2(i).

IV. Specific Services/Benefits/Rights Included in the Program

SNAP regulations encompass many specific services, benefits, and rights of participants. The following is a summary of key provisions.

Benefits:
Households found eligible for SNAP receive a monthly benefit, which is based on a household's net income determination. In FY 2017, the average monthly benefit per household was $252.64.[49]

[49] U.S. Department of Agriculture, Food and Nutrition Service. (2017). *Supplemental Nutrition Assistance Program*. Available at: https://www.fns.usda.gov/snap/snap-fiscal-year-2018-cost-living-adjustments . Accessed on August 29, 2017.

SNAP expects that families will be able to spend 30 percent of the household's net income on food. Thus, the benefit is calculated by taking 30 percent of a household's net income and subtracting it from the maximum SNAP allotment for that particular household's size. If the net income is zero, then the household gets the maximum SNAP allotment for that household size (e.g., $504 for a household of three). If the net income is $300, then the family would get a maximum SNAP allotment minus 30 percent of $300 (or $90) for that household size (e.g., $414 for a household of three).

OCTOBER 1, 2017 TO SEPTEMBER 30, 2018	
48 STATES AND WASHINGTON, D.C.	
HOUSEHOLD SIZE	MAXIMUM SNAP ALLOTMENT
1	$192
2	$352
3	$504
4	$640
5	$760
6	$913
7	$1,009
8	$1,153
EACH ADDITIONAL PERSON	$144

Source: https://www.fns.usda.gov/snap/snap-fiscal-year-2018-cost-living-adjustments

Services and Rights of Participants: Numerous regulations safeguard a household's receipt of the correct SNAP benefit amount. To that end, the following are some of the key provisions.

- Program Administration: The state agency must submit a state plan and establish procedures governing the operation of SNAP offices. *See* 7 U.S.C. §2020.
- Processing Applications: The state agency must determine SNAP eligibility within 30 calendar days of a household's completion of the initial application process and comply with other office procedures related to filing and processing SNAP applications. *See* 7 C.F.R. §273.2.
- Notice: Many provisions address the need to provide notice to SNAP applicants or beneficiaries regarding agency action. For example, the SNAP agency must send a beneficiary a notice at least 10 days before it stops or reduces a household's benefits. *See* 7 C.F.R. §273.3(a)(1).
- Fair Hearings: SNAP participants have the right to request a fair hearing, to go to a fair hearing in person, to be represented at the hearing, and to see their file. *See* 7 C.F.R. §273.15(m).
- Complaint Procedure: The state agency is responsible for maintaining a system to handle program complaints and FNS must monitor the state's compliance. *See* 7 C.F.R. §271.6.
- Protections Against Discrimination: "State and local agencies must ensure that no person

shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program." 7 C.F.R. §247.37. FNS Instruction 113-1 extends this protection to religious creed and political beliefs.

V. Significant Statutory Provisions

SNAP was created under the name of the "Food Stamp Program," by the Food Stamp Act of 1964 (Pub. L. 88–525) and was eventually given its current name by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234). The statute has been amended numerous times between 1964 and 2014. SNAP is codified in 7 U.S.C. §§2011–2036c.

VI. Key Regulatory & Major Policy Provisions

- SNAP regulations can be found in 7 C.F.R. §271.1–285.5.

- There is extensive USDA policy guidance interpreting and implementing SNAP, including (but not limited to):

    - Clarification on the Three Ways Initial SNAP Application Processing Timeliness Is Measured; https://www.fns.usda.gov/snap/clarification-three-ways-initial-snap-application-processing-timeliness-measured
    - State Outreach Plan Guidance; https://www.fns.usda.gov/snap/state-outreach-plan-guidance
    - Able-Bodied Adults Without Dependents (ABAWDs); https://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds
    - Cost of Living Adjustment (COLA) Information; and https://www.fns.usda.gov/snap/cost-living-adjustment-cola-information
    - Additional SNAP guidance is available at: https://www.fns.usda.gov/snap/policy

VII. Significant Cases

In *Maine v. Thiboutot*, 442 U.S. 1 (1980) the Supreme Court held that 42 U.S.C. § 1983, giving a cause of action to remedy "deprivations of any rights, privileges, or immunities secured by the Constitution and laws," is a vehicle for enforcing federal statutes – in that particular case a federal public assistance law. In his dissent, Justice Powell included Food Stamps as one on a (non-comprehensive) list of statutes that likely would be enforceable under Section 1983, given the majority's decision. 448 U.S. 1, 34-36. While the Supreme Court subsequently has imposed stringent tests for deciding what statutory language might be enforceable, see e.g., *Gonzaga University v. Doe*, 536 U.S. 273 (2002), courts continue to apply Section 1983 – or assume the

existence of a cause of action to enforce federal statutes – to enforce clear rights under various public benefits programs, including SNAP.

Among the cases on the Private Enforceability of SNAP by Program Beneficiaries are:

- *Barry v. Lyon*, 834 F.3d 706, 716–717 (6th Cir. 2016) (in action under 42 U.S.C. §1983 households that meet federal SNAP eligibility criteria have an enforceable right of action)
- *Briggs v. Bremby*, 792 F.3d 239, 245–46 (2d Cir. 2015) (plaintiff can maintain a private right of action under 42 U.S.C. §1983 to enforce SNAP's application processing statutory time limits)
- *Gonzalez v. Pingree,* 821 F.2d 1526 (11th Cir. 1987) (same)
- *Victorian v. Miller*, 813 F.2d 718 (5th Cir. 1987) (*en banc*) (same)
- *Haskins v. Stanton*, 794 F.2d 1273 (7th Cir. 1986) (plaintiffs have a private right of action to enforce compliance with the Food Stamp Act by state officials)

See also Super, David A. *Congress Secures Private Right of Action for Low-Income Households Seeking Food Assistance,* Clearinghouse Review Jour. of Poverty Law & Policy (Nov.-Dec. 2010) at pp. 383-384. Of note, this article examines how the holdings of two cases that had undercut the ability of a plaintiff to bring a private right of action related to SNAP were overturned by subsequent Amendments to the 2008 Farm Bill.

VIII. References to Medicaid

None. However, there are opportunities to coordinate the administration of SNAP and Medicaid. For instance, many states offer combined applications. For more information, see https://www.cbpp.org/research/health/opportunities-for-states-to-coordinate-medicaid-and-snap-renewals.

IX. Other Relevant Citations and Resources

- USDA Supplemental Nutrition Assistance Program webpage: https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap
- Food Research & Action Center Supplemental Nutrition Assistance Program webpage: http://www.frac.org/programs/supplemental-nutrition-assistance-program-snap
- Center on Budget and Policy Priorities webpage: https://www.cbpp.org/topics/food-assistance

Health

Pregnancy Assistance Fund: Patient Protection Affordable Care Act of 2010

U.S. Department of Health and Human Services (DHHS), Office of Adolescent Health

I. Establishing Statutory Provision(s)

42 U.S.C.A. §§ 18201-18204. (Part of the Patient Protection Affordable Care Act of 2010)

II. General Description of the Program

The Pregnancy Assistance Fund is a "competitive grant program…with the aim of improving the health, educational, social, and economic outcomes of expectant and parenting teens, women, fathers, and their families." These grants support programs which "provide a seamless network of supportive services to young families in multiple settings, including high schools, community service centers, and institutions of higher education." (Office of Adolescent Health, *About PAF*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (last reviewed July 13, 2016), https://www.hhs.gov/ash/oah/grant-programs/pregnancy-assistance-fund/about/index.html). The grants help pregnant and parenting teens attain and maintain stability and pursue education which affects the health and welfare of them and their children.

III. Eligibility Criteria for the Program

The funding is for high schools, community services centers, and institutions of higher education to serve for pregnant and parenting teens, including the mothers, fathers, and the spouses of the eligible parents.

The funding specifically for "**improving services for pregnant women who are victims of domestic violence, sexual violence, sexual assault, and stalking" is for "**any woman who is pregnant on the date on which such woman becomes a victim of domestic violence, sexual violence, sexual assault, or stalking or who was pregnant during the one-year period before such date." (42 U.S.C.A. § 18203(d)(4)).

IV. Specific Services/Benefits/Rights Included in the Program

The Pregnancy Assistance Fund grant program allows states to apply for grants which the state then disburses to high schools, community service centers, and institutions of higher education. (42 U.S.C.A. §§ 18203(b, c)). The grants are available to "establish, maintain, or operate pregnant and parenting student services." (42 U.S.C.A. § 18203(b)(1)). The funds can be used to conduct "a needs assessment," especially regarding "(i)… maternity coverage…in student health care; (ii) family housing; (iii) child care; (iv) flexible or alternative academic scheduling, such as telecommuting

programs, to enable pregnant or parenting students to continue their education or stay in school; (v) education to improve parenting skills for mothers and fathers and to strengthen marriages; (vi) maternity and baby clothing, baby food (including formula), baby furniture, and similar items to assist parents and prospective parents in meeting the material needs of their children; [and] (vii) post-partum counseling. (42 U.S.C.A. § 18203(b)(4)(B). The funds can also be used to assist pregnant and parenting teens (mothers, fathers, and spouses) in accessing these services, including contracting with local providers to establish programs to provide the services highlighted in the needs assessment. (42 U.S.C.A. §§ 18203(b)(4)(C, D)). The programs should also, as appropriate, "provide referrals for prenatal care and delivery, infant or foster care, or adoption, to a student who requests such information." (42 U.S.C.A. § 18203(b)(4)(E)).

The State may use some of the funds to "increase public awareness and education concerning any of the services available to pregnant and parenting teens and women." (42 U.S.C.A. § 18203(e)).

Separately, States can use funding received for "intervention services, accompaniment, and supportive social services for eligible pregnant women who are victims of domestic violence, sexual violence, sexual assault, or stalking," and technical assistance and training for a variety of actors relating to such violence. (42 U.S.C.A. § 18203(d)).

V. Significant Statutory Provisions

The Pregnancy Assistance Fund is authorized under the Patient Protection and Affordable Care Act. This is a grant program and is not privately enforceable.

VI. Key Regulatory & Major Policy Provisions

There are no regulations or policy guidance specific to this program.

VII. Significant Cases

There are no cases specifically about this program, just the case law regarding the Affordable Care Act as a whole.

VIII. References to Medicaid

There are no references to the Medicaid Act.

IX. Other Relevant Citations and Resources

HHS, Office of Adolescent Health, Pregnancy Assistance Fund website

Substance Abuse and Mental Health Services Administration Grants

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

None.

II. General Description of the Program

SAMHSA conducts multiple programs, campaigns, and grant programs to improve children's mental health. These programs help states build capacity to address and improve access to mental health services. SAMHSA provides both funding and other resources for this purpose: this website details the vast array of SAMHSA's efforts in schools. Project AWARE grants have been especially useful in addressing mental health in schools.

III. Eligibility Criteria for the Program

Different grants and programs have different eligibility criteria. Some are geared towards younger children and some towards older children. Overall, SAMHSA grants and programs, including Project AWARE, are focused on school-age children.

IV. Specific Services/Benefits/Rights Included in the Program

- Project AWARE grants can be used to expand or implement
    - Access to existing funding systems that support mental health services for school-age youth
    - Access to school- and community-based mental health services
    - Capacity and leadership to sustain community-based mental health promotion, illness prevention, early identification, and treatment services and initiatives
    - Collaboration among families, schools, and communities during program planning
    - Coordination among state and local youth-serving systems
    - Culturally specific and developmentally appropriate mental health services
    - Mental Health First Aid and Youth Mental Health First Aid (YMHFA) training for adults who interact with school-age youth
    - Outreach to youth and families, behavioral health promotion, and mental illness prevention strategies
    - Systems for identifying signs and symptoms early and linking families to existing services
    - Use of a multi-tiered behavioral framework
    - Youth violence prevention strategies

V. Significant Statutory Provisions

SAMHSA grants are funded by a combination of federal laws addressing health. The SAMHSA Laws and Regulations website discusses its funding sources. In particular, grants for children's health are

funded by the Garrett Lee Smith Memorial Act, the STOP Underage Drinking Act, and the Children's Health Act.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

None.

Title V: Maternal Child Health Block Grant Program: Title V of the Social Security Act

I. Establishing Statutory Provision(s)

42 U.S.C.A. §§ 701-713.

II. General Description of the Program

Title V establishes seven federal grant programs (including three new ones authorized under the ACA) for the purpose of improving the health of all mothers and children. The majority of Title V funding supports access to quality health services for children, research, and other programs to improve children's health. Title V also provides funding for sexual education programs.

III. Eligibility Criteria for the Program

The law is intended to "improve the health of all mothers and children." As such, there are no explicit eligibility criteria for who receives services under the block grant. However, the law makes children from low income families and/or children with limited availability to health services a priority. Some particular provisions have restrictions on who is eligible. In particular, grants for providing rehabilitative services for blind and disabled individuals are restricted to services for children under 16 who already receive SSI disability benefits.

IV. Specific Services/Benefits/Rights Included in the Program

The law creates seven different grant programs.

- Formula Grant: around 85% of Title V funding is awarded to all states (that file an application) on the basis of the relative number of children in poverty and how much money the state was receiving in 1983. (42 U.S.C.A. § 702(c)).
    - States can use this money to:
        - 1) "provide…access to quality maternal and child health services;"
        - 2) "reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;"
        - 3) "provide and to promote family-centered, community-based, coordinated care…for children with special health care needs," and
        - 4) supplement other benefits in providing "rehabilitation services for blind and disabled individuals under the age of 16." (42 U.S.C.A. ¶701(a)(1)).
    - Title V formula grants provide 4/7 of the money allotted in a state to such issues, the state must provide the other 3/7. (42 U.S.C.A. § 703(a)).
    - States, in exchange for a portion of the funding, may receive federal personnel on a temporary basis to aid the state agency. (42 U.S.C.A § 703(c)).
    - States may use the formula grant funding for "the provision of health services and related activities (including planning, administration, education, and evaluation," and for to pay for technical assistance in "developing, implementing, and administering its programs," except states may not use such funding for "(1) inpatient services, other than inpatient services provided to children with special health care needs or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve; (2) cash payments to intended recipients of health services;…" (42 U.S.C.A. § 704).
    - The State's application for funding must contain a needs assessment (conducted every 5 years) and a plan for how the funding will be used to meet the identified needs. (42 U.S.C.A. § 705(a)(1, 2)).
        - There are two needs assessments that must be conducted to receive funding.
            - The original needs assessment regarding "preventive and primary care services for pregnant women, mothers, and infants up to age one; preventive and primary care services for children; and services for children with special health care needs" as required by §705(a)(1), and

- A separate needs assessment (required by the ACA) that identifies
    - "communities with concentrations of--(i) premature birth, low-birth weight infants, and infant mortality, including infant death due to neglect, or other indicators of at-risk prenatal, maternal, newborn, or child health; (ii) poverty; (iii) crime; (iv) domestic violence; (v) high rates of high-school drop-outs; (vi) substance abuse; (vii) unemployment; or (viii) child maltreatment;" and
    - "the quality and capacity of existing programs or initiatives for early childhood home visitation in the state," and
    - "the State's capacity for providing substance abuse treatment and counseling services to individuals and families in need of such treatment or services." (42 U.S.C.A. § 711(b)(1)).

- The state must use at least 30% of its funding for preventive and primary care services for children and at least 30% for services for children with special health care needs. (42 U.S.C.A. § 705(a)(3)).
- The state must "establish a fair method (as determined by the State) for allocating funds allotted to the State under this subchapter among such individuals, areas, and localities identified ... as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State...for assuring quality assessments and services." (42 U.S.C.A. § 705(a)(5)(A)).
- States cannot impose charges "with respect to services provided to low income mothers or children" and any charges must "be adjusted to reflect the income, resources, and family size of the individual provided the services." (42 U.S.C.A. § 705(a)(5)(D)).
- "The State agency (or agencies) administering the State's program under this subchapter will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this subchapter and subchapter XIX of this chapter [Medicaid] and about other relevant health and health-related providers and practitioners." (42 U.S.C.A. § 705(a)(5)(E)).
- Under §706, the Act requires that each state receiving funding annually report to HHS on children's health data including:
    - "Information (by county and by racial and ethnic group) on the rate of infant mortality and the rate of low-birth-weight births."
    - "Information (on a State-wide basis) on (I) the rate of maternal mortality, (II) the rate of neonatal death, (III) the rate of perinatal death, (IV) the number of children with chronic illness and the type of illness, (V) the proportion of infants born with fetal alcohol syndrome, (VI) the proportion

of infants born with drug dependency, (VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and (VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B."

        - "Information on the number of obstetricians, family practitioners, certified family nurse practitioners, certified nurse midwives, pediatricians, and certified pediatric nurse practitioners, who were licensed in the State in the year."

- Special Projects of Regional and National Significance (SPRANS): around 15% of Title V funds, (42 U.S.C.A. § 702(a)), are reserved for competitive grants awarded to applicants for "research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services." (42 U.S.C.A. §701(a)(2)).
- Community Integrated Service System (CISS): a percentage of Title V funds, (42 U.S.C.A. § 702(b)(1)(a)), are for competitive grants awarded to applicants for
    - 1) "maternal and infant health home visiting programs in which case management services ['services to assure access to quality preventive and primary care services for infants up to age one'] …, health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional,"
    - 2) "projects designed to increase the participation of obstetricians and pediatricians [in Title V and Medicaid programs],"
    - 3) "integrated maternal and child health service delivery systems,"
    - 4) "maternal and child health centers which (i) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one, and (ii) operate under the direction of a not-for-profit hospital,"
    - 5) "maternal and child health projects to serve rural populations," and
    - 6) "outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care." (42 U.S.C.A. § 701(a)(3)).
    - Preference for these funds goes to programs conducting activities in areas of relatively high infant mortality rates. (42 U.S.C.A. § 702(b)(2)(A)).
- Abstinence Education: For any state that submits an application, HHS allots funding "to enable the State to provide abstinence education, and at the option of the State, where

appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock." (42 U.S.C.A. § 710(b)(1)).

- The law defines "abstinence education" as an "educational or motivational program which—
  - (A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
  - (B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;
  - (C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
  - (D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;
  - (E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;
  - (F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;
  - (G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
  - (H) teaches the importance of attaining self-sufficiency before engaging in sexual activity." (42 U.S.C.A. § 710(b)(2)).

- The Patient Protection and Affordable Care Act (2010) authorized three additional grant programs that were codified as part of Title V.
  - § 711. Maternal, infant and early childhood home visiting programs. The purpose of these grant is to "improve coordination of services for at risk communities and to identify and provide comprehensive services to improve outcomes for families who reside in at risk communities." These grants are available "to enable the entities to deliver services under early childhood home visitation programs…to eligible families in order to promote improvements in maternal and prenatal health, infant health, child health and development, parenting related to child development outcomes, school readiness, and the socioeconomic status of such families, and reductions in child abuse, neglect, and injuries."
    - The early childhood home visitation programs must have "measurable 3- and 5-year benchmarks for demonstrating that the program results in improvements for the eligible families participating in the program in each of the following areas:
      - (i) Improved maternal and newborn health.
      - (ii) Prevention of child injuries, child abuse, neglect, or maltreatment, and reduction of emergency department visits.
      - (iii) Improvement in school readiness and achievement.

- (iv) Reduction in crime or domestic violence.
- (v) Improvements in family economic self-sufficiency.
- (vi) Improvements in the coordination and referrals for other community resources and supports."

- The programs are expected to produce, in participants,
  - (i) Improvements in prenatal, maternal, and newborn health, including improved pregnancy outcomes
  - (ii) Improvements in child health and development, including the prevention of child injuries and maltreatment and improvements in cognitive, language, social-emotional, and physical developmental indicators.
  - (iii) Improvements in parenting skills.
  - (iv) Improvements in school readiness and child academic achievement.
  - (v) Reductions in crime or domestic violence.
  - (vi) Improvements in family economic self-sufficiency.
  - (vii) Improvements in the coordination of referrals for, and the provision of, other community resources and supports for eligible families, consistent with State child welfare agency training.
- These programs must be evidence based or be a promising, new approach that "has been developed or identified by a national organization or institution of higher education, and will be evaluated through well-designed and rigorous process."
- Priority is given for grants serving high-risk populations (as defined by the statute).
- Federal technical assistance is available to the recipients of these grants.

- **§ 712. Services to individuals with a postpartum condition and their families. This grant program is mainly about services for the mother, though there is funding available for "d**elivering or enhancing inpatient care management services that ensure the well-being of the mother and family and the future development of the infant."
- § 713. Personal Responsibility Education program allows states, upon application, to receive funding based on the relative percentage of people in the state aged 10-20 in order to enable states to "carry out personal responsibility education programs" that are "designed to educate adolescents on—
  - 1) Both abstinence and contraception for the prevention of pregnancy and sexually transmitted infections, including HIV/AIDS. These programs must "
    - (i) "replicate evidence-based effective programs or substantially incorporate elements of effective programs that have been proven on the basis of rigorous scientific research to change behavior, which means delaying sexual activity, increasing condom or

contraceptive use for sexually active youth, or reducing pregnancy among youth."
- (ii) be "medically-accurate and complete."
- (iii) "include activities to educate youth who are sexually active regarding responsible sexual behavior with respect to both abstinence and the use of contraception."
- (iv) "place substantial emphasis on both abstinence and contraception for the prevention of pregnancy among youth and sexually transmitted infections."
- (v) "provide age-appropriate information and activities."
- (vi) be "provided in the cultural context that is most appropriate for individuals in the particular population group to which they are directed."

▪ 2) "at least 3 of the adulthood preparation subjects…
- (i) Healthy relationships, including marriage and family interactions.
- (ii) Adolescent development, such as the development of healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects.
- (iii) Financial literacy.
- (iv) Parent-child communication.
- (v) Educational and career success, such as developing skills for employment preparation, job seeking, independent living, financial self-sufficiency, and workplace productivity.
- (vi) Healthy life skills, such as goal-setting, decision making, negotiation, communication and interpersonal skills, and stress management."

▪ Personal Responsibility Education grant funds are also available for "entities to implement innovative youth pregnancy prevention strategies and target services to high-risk, vulnerable, and culturally under-represented youth populations, including youth in foster care, homeless youth, youth with HIV/AIDS, pregnant women who are under 21 years of age and their partners, mothers who are under 21 years of age and their partners, and youth residing in areas with high birth rates for youth. An entity awarded a grant under this paragraph shall agree to participate in a rigorous Federal evaluation of the activities carried out with grant funds."

- Separately, the law also requires that the Secretary of Health and Human Services develop, in all States, family-to-family health information centers which 1) "assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;" 2) "provide information regarding the health care needs of,

and resources available for, such children;" 3) "identify successful health delivery models for such children;" 4) "develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies, a model for collaboration between families of such children and health professionals;" 5) "provide training and guidance regarding caring for such children;" and 6) "conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and" which are "staffed--by such families who have expertise in Federal and State public and private health care systems; and by health professionals." (42 U.S.C.A. §§ 701(c)(2, 3)).

- Under § 708, programs funded, in whole or in part, by federal Title V dollars, cannot discriminate on the basis of age, handicap, sex, race, color, national origin, or religion.

V. Significant Statutory Provisions

Title V is integrated into the other Social Security Act provisions, including Medicaid, but it is a stand-alone program. There is nothing in Title V that explicitly makes it privately enforceable. In early cases, individuals successfully sued about programs that were in violation of Title V, but these regarded portions of the law that no longer exist. See Albino v. City of Chicago, 578 F. Supp. 1487 (N.D. Ill. 1983); Valley Family Planning v. State of N. Dakota, 475 F. Supp. 100 (D.N.D. 1979).

VI. Key Regulatory & Major Policy Provisions

The regulations governing the programs are codified at 45 C.F.R. § 96 et seq. and 42 C.F.R. § 51a et seq. 42 C.F.R. § 51a.3 details who is eligible to apply for SPRANS and CISS grants. 42 C.F.R. §51a.5 details funding priorities for SPRANS and CISS grants.[50] HHS publishes a booklet with guidance for states applying for Title V funding.

VII. Significant Cases

There is very little case law regarding Title V. The majority of cases referencing Title V are actually about other Social Security benefit programs. Other cases are older and regard provisions of Title V that no longer exist. In a single, unreported case, a federal district court in Louisiana enjoined the state's abstinence education program (funded under §710) from funding organizations that use such funding to convey a religious message and advance religion, on Constitutional grounds. (ACLA v. Foster, Civil Action No. 02-1440 Section "T"(4), 2002 U.S. Dist. LEXIS 13778 (E.D. La. July 24, 2002)).

VIII. References to Medicaid

Title V is expected to work around and coordinate with the Medicaid Act. Title V funding for certain services is only available to the extent they are not covered by Medicaid. (42 U.S.C.A. §

[50] There are strikingly few regulations on Title V. In the past, there were very detailed regulations but these no longer exist. It may be these regulations were promulgated under provisions that have since been repealed, but it is unclear why there are so few regulations specifically interpreting Title V.

701(a)(1)(C)). CISS grants are available to increase the participation of pediatricians in Medicaid. (42 U.S.C.A. § 701(a)(3)(B)). The State application for Title V funding must provide that the agency administering the program will "participate in the coordination of activities between such program and the early and periodic screening, diagnostic, and treatment program under [Medicaid]…(including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services), to ensure that such programs are carried out without duplication of effort," coordinate overlapping care and services available under Medicaid, and identify infants eligible for Medicaid and assist them in applying for Medicaid. (42 U.S.C.A. §705(a)(5)(F)).

IX. Other Relevant Citations and Resources

Understanding Title V of the Social Security Act, HHS, Maternal and Child Health Bureau

Homelessness and Poverty

Assets for Independence Program

I. Establishing Statutory Provision(s)

Title IV of the Community Opportunities, Accountability, and Training and Educational Services Human Services Reauthorization Act of 1998, P.L. 105-285, as amended, Dec. 2000.

II. General Description of the Program

"A community-based approached for giving low-income families a hand up out of poverty. Utilizing existing individual and community assets, AFI strengthens communities from within through the use of matched savings accounts called Individual Development Accounts (IDAs). Through financial education, AFI demonstrates the use and impact of IDAs to help low-income individuals move toward greater self-sufficiency."

- Main initiatives:
    - Awarding grants to non-profit organizations and government agencies that provide IDAs
    - Managing a national resource center to support AFI grantees and develop information on the use of IDAs and related asset-building strategies

Managing research on IDA usage and implementation

III. Eligibility Criteria for the Program

- Eligible applicants: nonprofit organizations with 501(c)(3) status; state, local, and tribal government agencies can apply jointly with a nonprofit 501(c)(3) organization; community development financial institutions and low-income credit unions that are federally certified and demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty; and entities deemed eligible under Section 405(g) of the AFI Act (specifically the Indiana Housing and Community Development Authority and the Pennsylvania Department of Community and Economic Development)
- Target population:
    - Members of households eligible for assistance under their state's Temporary Assistance for Needy Families (TANF) program; or
    - Persons who meet *both* of the following criteria:
        - Household adjusted gross income is equal to or less than twice the federal poverty line or within federal Earned Income Tax Credit (EITC) limits; and

- Household net worth (excluding primary residence and one vehicle) does not exceed $10,000 at the end of the calendar year before the enrollment determination.

IV. Specific Services/Benefits/Rights Included in the Program

"AFI grantees enroll participants to save earned income in special-purpose, matched savings accounts called Individual Development Accounts (IDAs). Every dollar that a participant deposits into an AFI IDA is matched (from $1 to $8 in combined federal and non-federal funds) by the AFI project. AFI project participants use their IDAs and matching funds for one of three allowable assets: 1) purchase a first home; 2) capitalize a business; or 3) fund post-secondary education or training. AFI grantees also provide training and support services to participants, such as financial education, credit counseling and repair, and guidance in obtaining refundable tax credits."

"Grantees must provide non-federal funds for the project equal to the AFI grant amount. Eighty-five percent of all project funds must be used to match participant savings to be used for the purchase of an AFI program allowable asset. The remainder is used to support data collection, to provide financial education and related services, and to administer the project. AFI grants are awarded for a five-year project period."

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

None.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Appropriations: FY 2016 $18.95 million
- https://www.acf.hhs.gov/ocs/resource/afi-fact-sheet
- https://www.acf.hhs.gov/ocs/resource/guidance-for-assets-for-independence-grantees-concerning-treatment-of-0

Basic Center Grant Program: Runaway and Homeless Youth Act as amended by Reconnecting Homeless Youth Act of 2008

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

Runaway and Homeless Youth Act as amended by Reconnecting Homeless Youth Act of 2008, 42 U.S.C. §§ 5711-5714; 34 U.S.C. §§ 11211-11214

II. General Description of the Program

This program funded public and private nonprofit organizations to establish and operate local centers to provide services for runaway and homeless youth and for the families of such youth, including temporary shelter, counseling, family reunification, and aftercare services.[51] Services were to be provided to divert runaway and homeless youth from coming into contact with the law enforcement, child welfare, mental health, and juvenile justice systems.[52]

III. Eligibility Criteria for the Program

To be eligible for the Basic Center Program, an organization must propose to establish, strengthen, or fund a runaway and homeless youth center or a locally controlled project that provides temporary shelter and counseling services to run-away and homeless youth. Many specifications exist regarding accessibility; youth and staff capacity; programming requirements; ensuring proper relations and communication with government officials, service providers, and parents; street- and home-based services requirements; and submission of various reports, plans, and other documentation.[53]

The program serves three eligible populations: (1) Homeless youth under 18 for whom it is not possible to live in a safe environment with a relative and who has no other safe alternative living arrangement; [54] (2) Runaway youth who absents himself or herself from home or a place of legal residence without the permission of a parent or legal guardian;[55] and (3) Street youth who are runaway or homeless who spends a significant amount of time on the street or in other areas that increase their risk for sexual abuse, sexual exploitation, prostitution, or drug abuse.[56] Shelter can be granted for up to 21 days.[57]

IV. Specific Services/Benefits/Rights Included in the Program

Services must include safe and appropriate shelter provided for 21 days or under and, if appropriate, trauma-informed individual, family, and group counseling.[58]

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[51] 42 U.S.C. § 5711(a)(1); 45 C.F.R. Part 1351.
[52] 42 U.S.C. § 5711(a)(2)(A).
[53] 42 U.S.C. § 5712.
[54] 42 U.S.C. § 5732a(3).
[55] 42 U.S.C. § 5732a(4).
[56] 42 U.S.C. § 5732a(6)(B).
[57] 45 C.F.R. § 1351.
[58] 42 U.S.C. § 5711(a)(2)(B).

Additionally, all basic centers must offer the following types of assistance to young people and their families: food, clothing, medical care and other services that youth need (offered either directly or by referral); recreation programs; outreach to youth who may need assistance as well as to public and private agencies that work with youth and families; and aftercare services for youth after they leave the shelter.[59]

Other services provided may include street-based services; home-based services for families with youth at risk of separation from the family; drug abuse education and prevention services; and at the request of runaway and homeless youth, testing for sexually transmitted diseases.[60]

V. Significant Statutory Provisions

34 U.S.C. §§ 11212 – Discusses eligibility for assistance.

VI. Key Regulatory & Major Policy Provisions

- U.S. Dep't of Health and Human Servs., Runaway and Homeless Youth, 81 Fed. Reg. 93,030 (December 20, 2016), (to be codified at 45 C.F.R. pt. 1351).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Information Memorandum 14-1 (2014).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, U.S. Department of Health and Human Services and U.S. Department of Education's Collaboration in Support of the Education of Homeless Youth (2008).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Family and Youth Servs. Bureau, Information Memorandum 1-2006 (2006).
- U.S. Dep't of Agric., Food & Nutrition Serv., Guidance on Determining Categorical Eligibility for Free Lunches and Breakfasts for Youth Served under the Runaway and Homeless Youth Act (2004).

VII. Significant Cases

- *In re Curran*, 488 N.Y.S.2d 983 (N.Y Fam. Ct. 1985) (holding that the Runaway and Homeless Youth Act, which does not authorize state to remove a child from parent, but merely authorizes state to provide program in which child may temporarily seek shelter and assistance, is constitutional under the due process clause.)
- *Mark N. v. Runaway Homeless Youth Shelter*, 733 N.Y.S.2d 566 (N.Y Fam. Ct. 2001) (holding that father had a due process right to seek habeas corpus relief)

VIII. References to Medicaid

RHYA states that grantees should provide the runaway and homeless youth they serve access to health care services. The 2016 HHS final rule on RHYA specifically calls on Basic Center and

[59] U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Family and Youth Servs. Bureau, Basic Center Program Fact Sheet.
[60] 42 U.S.C. § 5711(a)(2)(C).

Transitional Living Program grantees to develop and implement a plan for health care services referrals both during the services and aftercare periods. It states that these plans should include health care services and referrals and counseling on insurance coverage through family health insurance plans, or to agencies that assist youth in enrolling in Medicaid or insurance plans offered under the Affordable Care Act.[61]

IX. Other Relevant Citations and Resources

- National Center for Homeless Education, Runaway and Homeless Youth Act (Year?).
- Nat'l Network for Youth, Human Trafficking and the Runaway and Homeless Youth Population.
- Nat'l Network for Youth, Runaway and Homeless Youth Act (RHYA) Reauthorization 2013 (2013).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Basic Center Program Youth Profile (2014).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Basic Center Program Fact Sheet (2016).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth (2017).

Community Development Block Grant Program (CDBG): Housing and Community Development Act of 1974

U.S. Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 5301-5321

II. General Description of the Program

The Housing and Community Development Act of 1974 created the Community Development Block Grant (CDBG) program, which merged 7 categorical programs into a block of flexible community development funds distributed each year by a formula that considers population and measures of distress including poverty, age of housing, housing overcrowding, and growth lag. CDBG funds local community development activities such as affordable housing, anti-poverty programs, and infrastructure development.

CDBG provides annual formula grants to entitled cities and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. Grantees may determine what eligible activities to fund as long as such projects are consistent with broad national

[61] 45 C.F.R. § 1351

priorities that benefit low- and moderate-income people, that prevent or eliminate slums or blight, or that address an urgent threat to health or safety. CDBG funds may be used for community development activities (such as real estate acquisition, relocation, demolition, rehabilitation of housing and commercial buildings), construction of public facilities and improvements (such as water, sewer, and other utilities, street paving, and sidewalks), construction and maintenance of neighborhood centers, and the conversion of school buildings, public services, and economic development and job creation/retention activities. CDBG funds can also be used for preservation and restoration of historic properties in low-income neighborhoods.

III. Eligibility Criteria for the Program

The annual CDBG appropriation is allocated between States (non-entitlement) and local jurisdictions (entitlement) communities. Entitlement communities are comprised of central cities of Metropolitan Statistical Areas (MSAs); metropolitan cities with populations of at least 50,000; and qualified urban counties with a population of 200,000 or more (excluding the populations of entitlement cities). States distribute CDBG funds to non-entitlement localities not qualified as entitlement communities. HUD determines the amount of each grant by using a formula comprised of several measures of community need, including the extent of poverty, population, housing overcrowding, age of housing, and population growth lag in relationship to other metropolitan areas.

Eligibility for participation as an entitlement community is based on population data provided by the U.S. Census Bureau and metropolitan area delineations published by the Office of Management and Budget. HUD determines the amount of each entitlement grantee's annual funding allocation by a statutory dual formula which uses several objective measures of community needs, including the extent of poverty, population, housing overcrowding, age of housing and population growth lag in relationship to other metropolitan areas.

At least 70 percent of CDBG funds as selected by the grantee, over a 1, 2, or 3-year period, must be used for activities that benefit low- and moderate-income persons. Each activity must meet one of the following national objectives for the program: benefit low- and moderate-income persons, prevention or elimination of slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

A grantee must develop and follow a detailed plan that provides for and encourages citizen participation. This integral process emphasizes participation by persons of low or moderate income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. The plan must provide citizens with the following: reasonable and timely access to local meetings; an opportunity to review proposed activities and program performance; provide for timely written answers to written complaints and grievances; and identify how the needs of non-English speaking residents will be

met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

HUD Income Limits applicable to the CDBG program, include-- Extremely Low (30%), Very Low (50%) and Low (80%) of area median income.

- Eligible Activities include:
    - Acquisition of real property
    - Relocation and demolition
    - Rehabilitation of residential and non-residential structures
    - Construction of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes
    - Public services, within certain limits
    - Activities relating to energy conservation and renewable energy resources
    - Provision of assistance to profit-motivated businesses to carry out economic development and job creation/retention activities

IV. Specific Services/Benefits/Rights Included in the Program

- Entitlement Communities - The CDBG entitlement program allocates annual grants to larger cities and urban counties to develop viable communities by providing decent housing, a suitable living environment, and opportunities to expand economic opportunities, principally for low- and moderate-income persons.
- State Administered CDBG - Also known as the Small Cities CDBG program, States award grants to smaller units of general local government that carry out community development activities. Annually, each State develops funding priorities and criteria for selecting projects.
- Section 108 Loan Guarantee Program - CDBG entitlement communities are eligible to apply for assistance through the section 108 loan guarantee program. CDBG non-entitlement communities may also apply, provided their State agrees to pledge the CDBG funds necessary to secure the loan. Applicants may receive a loan guarantee directly or designate another public entity, such as an industrial development authority, to carry out their Section 108 assisted project.
- Administered Non-Entitled Counties in Hawaii Program - The HUD Honolulu Office directly administers the CDBG program for non-entitlement communities in the State of Hawaii.
- Insular Areas - The Insular Areas CDBG program provides grants to four designated insular areas: American Samoa; Guam; Northern Mariana Islands; and the Virgin Islands.
- Disaster Recovery Assistance - HUD provides flexible grants to help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations.

- Neighborhood Stabilization Program - HUD provides grants to communities hardest hit by foreclosures and delinquencies to purchase, rehabilitate or redevelop homes and stabilize neighborhoods.
- Colonias - Texas, Arizona, California, and New Mexico set aside up to 10 percent of their State CDBG funds for improving living conditions for colonias residents.

V. Significant Statutory Provisions

24 C.F.R. Part 570 (see below**)**

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. Part 570.309 - Restriction on location of activities
- 24 C.F.R. Part 570.480 – General
- 24 C.F.R. Part 570.484 - Overall benefit to low and moderate income persons
- 24 C.F.R. Part 570.497 - Condition of State election to administer State CDBG Program
- 24 C.F.R. Part 570.500 – Definitions
- 24 C.F.R. Part 570.902 - Review to determine if CDBG-funded activities are being carried out in a timely manner

VII. Significant Cases

- *City of Kansas City v. U.S. Dep't of Housing & Urban Dev.*, 861 F.2d 739 (D.C. Cir. 1988) (holding that HUD must provide notice and opportunity for a hearing when it proposes to condition, reduce or terminate city's annual community development block grant because of alleged past noncompliance that does not affect current or future performance).
- *County of Westchester v. U.S. Dep't of Housing & Urban Dev.*, 116 F.Supp.3d 251 (S.D.N.Y. 2015) (HUD did not act arbitrarily or capriciously in withholding the county's CDBG and ESG funds because the county failed to provide an accurate certification that the funds would be administered in conformity with the Fair Housing Act and to affirmatively further fair housing).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- U.S. Department of Housing and Urban Development, Community Development Block Grant Program – CDBG (Program Areas).
- U.S. Department of Housing and Urban Development, CDBG Laws and Regulations.

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Education for Homeless Children and Youth Program

U.S. Department of Education

I. Establishing Statutory Provision(s)

Title VII-B of the McKinney-Vento Homeless Assistance Act (McKinney-Vento), 42 U.S.C. §§ 11431-11435

II. General Description of the Program

McKinney-Vento provides educational continuity and stability to children and youth experiencing homelessness. Under McKinney-Vento, states and school districts have an ongoing obligation to review and revise laws, regulations, practices, and policies that may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youth to ensure equal access to the same free, appropriate public education as provided to their stably housed peers.[62]

States and school districts are required to coordinate and collaborate with multiple stakeholders, including school personnel, service providers, community organizations, and government agencies to improve the provision of comprehensive education and related services to homeless children and youth.[63] School districts must ensure that homeless students and their families receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services.[64]

III. Eligibility Criteria for the Program

- Pre-K-12 Children and youth who lack a fixed, adequate, regular nighttime residence are McKinney-Vento eligible.[65] This eligibility includes children and youth who:
    - are sharing the housing of others due to loss of housing, economic hardship, or a similar reason;
    - are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
    - are living in emergency or transitional shelters; or are abandoned in hospitals;

[62] 42 U.S.C. § 11431(2).
[63] *See e.g.*, *42* U.S.C. § 11432(f)(4).
[64] 42 U.S.C. § 11432(g)(6)(A)(iv).
[65] The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal laws. State laws vary, but generally provide access to all students until high school graduation or equivalent, or until age 18 (or over in some states). The McKinney-Vento Act also applies to homeless preschool-aged children and requires liaisons to ensure that they have access to and receive services, if eligible, under LEA-administered preschool programs. For special education students, federal law provides the right to access services until age 22. 20 U.S.C. §1412(a)(1)(A).

- have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- who are migratory children who live in one of the above circumstances.[66]

IV. Specific Services/Benefits/Rights Included in the Program

- To go to school, no matter where the child or youth lives or how long they have lived there;
- To go to the school that is in the child's or youth's best interest, including:
  - Staying in the school they were enrolled in before being displaced, with adequate transportation provided to get them back;
  - Going to any school they would be eligible to attend based on their new residence, with comparable transportation to what other regularly housed students receive.
- To be immediately enrolled in school without typically required enrollment records and even if application or enrollment deadlines have been missed during any period of homelessness;
- To participate fully in school activities including extracurricular activities;
- To receive referrals to health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;
- To be automatically enrolled in free school meal programs;
- To receive related school services that they may need, such as tutoring;
- To stay in the same school for the rest of the academic year even if permanently housed;
- To be free from harassment, isolation, and stigmatization;
- If the school does not believe you have the right to attend that school, they have the right to remain enrolled pending any appeals, to receive a written explanation of the reasons, and to receive assistance from the district's homeless liaison to dispute a school's decision about eligibility, school selection, or enrollment.

V. Significant Statutory Provisions

- 42 U.S.C. § 11431 – outlines Congress's policies and requirement for states and school districts to provide equal access to FAPE and to review and revise barriers to the education of homeless children and youth.
- 42 U.S.C. § 11432(e)(3) – prohibits segregation of homeless students
- 42 U.S.C. § 11432(f) – enumerates the responsibilities of the state educational agency through the office of the state coordinator.
- 42 U.S.C. § 11432(g)(3) – enumerates the obligations of school districts in providing educational continuity and stability.

[66] 42 U.S.C. § 11434A(2) et seq.

- 42 U.S.C. § 11432(g)(6) – enumerates the obligations of the school district liaison to ensure homeless children and youth are identified and receive appropriate supports and services they are entitled to.

VI. Key Regulatory & Major Policy Provisions

- U.S. Dep't Educ., Education for Homeless Children and Youths Program Non-Regulatory Guidance (2017).
- U.S. Dep't Educ., Supporting the Success of Homeless Children and Youths: A Fact Sheet & Tips for Teachers, Principals, School Leaders, Counselors, and Other School Staff (July 27, 2016).
- John King, *Key Policy Letters Signed by the Education Secretary or Deputy Secretary*, U.S. Dep't of Educ. (July 27, 2016).
- U.S. Dep't of Educ., McKinney-Vento Education for Homeless Children and Youths Program, 81 Fed. Reg. 14,432 (March 17, 2016).
- U.S. Dep't of Educ., Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions (Feb. 26, 2017).
- U.S. Dep't of Educ., Education for Homeless Children and Youth (EHCY) Program (Nov. 2015).
- 24 C.F.R. § 576.400 - Area-wide systems coordination requirements – this requires Emergency Solutions Grants (ESG) program recipients and subrecipients to integrate ESG-funded activities with other homeless programs, including this program.

VII. Significant Cases

- *Lampkin v. District of Columbia*, 27 F.3d 605 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1016 (1994) (holding that homeless children can enforce the relevant provisions of McKinney-Vento pursuant to Section 1983).
- *Salazar v. Edwards*, 92 CH 5703 (Il. Cir. Ct. Cook Cnty filed June 12, 1992) (initially dismissed but during the appeal, Illinois passed the Education for Homeless Children Act, enacted the 1994 amendments to the McKinney-Vento Act, and overturned the lower court decision in Lampkin).
- *Boisseau v. Picard*, No. 2007-0565 (E.D. La. Feb. 1, 2007) (case settled but the school district recognized that students displaced by natural disasters have rights under McKinney-Vento).
- *N.J. v. New York*, 872 F.Supp.2d 204 (E.D.N.Y. 2011) (homeless students have the right to attend school during the pendency of their appeal).
- *L.R. v. Steelton-Highspire Sch. Dist.*, Civ.A. No. 10-00468 (M.D. Pa., filed Apr. 7, 2010) (there is no time limit to homelessness).
- *Bullock v. Bd. of Educ. of Montgomery Cnty.*, 210 F.R.D. 556 (D. Md. Nov. 4, 2002) (a district court allowed homeless parents to represent a class of homeless children in a class action suit against the county school board).

- *A.E. v. Carlynton Sch. Dist.*, C.A. No. 09-1345 (W.D.P.A. 2009) (lawsuit resulted in the state establishing guidance regarding "highly mobile" students and their right to attend school where they have a "substantial connection" (e.g., daily living activities, day shelter, stay on recurring basis)).
- *Nat'l Law Ctr. on Homelessness & Poverty v. New York*, 224 F.R.D. 314 (E.D.N.Y. 2004) (holding that the statutes under McKinney-Vento (1) imposed a mandatory requirement on the states; (2) provided for specific entitlements; (3) conferred entitlements on homeless children; and (4) did not provide individuals with sufficient administrative means of enforcing the requirement against States that failed to comply).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Nat'l Law Ctr. on Homelessness & Poverty, Homeless Students Count (2017).
- Nat'l Law Ctr. on Homelessness & Poverty, No Barriers: A Legal Advocate's Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act (2d ed. 2016).

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Emergency Solutions Grant

U.S. Department of Housing and Urban Development (HUD, Office of Special Needs Assistance Programs within the Office of Community Planning and Development

I. Establishing Statutory Provision(s)

McKinney-Vento Homeless Assistance Act (McKinney-Vento) 42 U.S.C. §§ 11371-11378

II. General Description of the Program

The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 revised the Emergency Shelter Grants Program to create the Emergency Solutions Grants (ESG) Program. The ESG program prevents families and individuals from experiencing homelessness, including victims of domestic violence, youth, people with mental illness, families with children and veterans, by providing funding to engage homeless individuals and families living on the street, to provide them essential social services, and to get them rapidly re-housed. Funds can also be used to operate and improve the number and quality of emergency shelters.

Through ESG, homeless individuals and families can be connected with emergency shelter, housing, or critical services such as case management, childcare, education services, employment

assistance and job training, outpatient health services, legal services, life skills training, mental health services, substance abuse treatment services, transportation, and services for special populations. Homeless individuals and families may also be connected to other federal, state, local, and private benefits and services for which they may be eligible, including but not limited to, Medicaid, SNAP, WIC, unemployment insurance, SSI/SSDI, services for veterans, and TANF.[67]

III. Eligibility Criteria for the Program

ESG is a formula grant program. Eligible recipients generally consist of metropolitan cities, urban counties, territories, and states.[68] Eligibility criteria for beneficiaries depend on whether funds will be used for street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, or data collection.[69]

In order for a program participant to be eligible for homelessness prevention assistance, the individual or family must have an annual income below 30% of median family income for the area and must HUD's definition of an individual who is at imminent risk of homelessness, who is homeless under other federal statutes, who is fleeing or attempting to flee violence, or at risk of homelessness.[70]

In order for a program participant to be eligible for rapid re-housing, the individual or family must be literally homeless or must be fleeing or attempting to flee violence as defined by HUD.

IV. Specific Services/Benefits/Rights Included in the Program

There are several ways funds may be used to improve the health and wellbeing of children and families. Funds may be used to help connect homeless individuals and families with emergency shelter, housing, and essential services, or to provide them with urgent, non-facility-based care. Essential services may include emergency health and mental health services, transportation, childcare, education services, life skills training, mental health services, and substance abuse treatment.

Funds may also be used to defray the costs of homelessness prevention to the extent that the assistance is necessary to help the program participant regain stability in their current housing or into another permanent housing. Funds may also be used for rental assistance; financial assistance for rental application fees, security and utility deposits, utility payments, last month's rent, and moving costs; and services such as housing search and placement, housing stability case management, landlord-tenant mediation, tenant legal services, and credit repair.[71]

V. Significant Statutory Provisions

[67] 24 CFR 576.401(d)

[68] 24 CFR 576.2.
[69] 24 CFR 576.2; 24 CFR 576.103; 24 CFR 576.104
[70] 24 CFR 576.2.
[71] *See* 24 CFR 576.104

- 42 U.S.C. §§ 11372-11373 – discusses the grants to states and local governments, the amount and allocation of assistance, and distributions to nonprofit organizations, public housing agencies, and local redevelopment authorities.
- 42 U.S.C. § 11374 – delineates the permissible uses of grant funds.

VI. Key Regulatory & Major Policy Provisions

- U.S. Dep't of Housing & Urban Dev., CPD-17-01: Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System (Jan. 2017).
- 24 CFR Parts 91 and 576, Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH): Emergency Solutions Grants (ESG) Program and Consolidated Plan Conforming Amendments (Dec. 2011).
- 24 CFR Parts 91, 582, and 583, Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH): Defining "Homeless" Final Rule (Dec. 2011).
- 24 C.F.R. § 576.400 - Area-wide systems coordination requirements – this requires Emergency Solutions Grants (ESG) program recipients and subrecipients to integrate ESG-funded activities with other homeless programs, including this program.

VII. Significant Cases

County of Westchester v. U.S. Dep't of Housing & Urban Dev., 116 F.Supp.3d 251 (S.D.N.Y. 2015) (HUD did not act arbitrarily or capriciously in withholding the county's CDBG and ESG funds because the county failed to provide an accurate certification that the funds would be administered in conformity with the Fair Housing Act and to affirmatively further fair housing).

VIII. References to Medicaid

24 CFR 576.401(d)(2)(i) (fund recipients and subrecipients must assist program participants, as needed, in obtaining housing stability, including Medicaid).

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Nat'l Alliance to End Homelessness, FY2017 Appropriations: HUD's Homeless Assistance Grants (Oct. 2016).
- Nat'l Alliance to End Homelessness, The Emergency Solutions Grant (ESG) Program (Nov. 2014).
- Nat'l Low Income Housing Coalition, Emergency Shelter Grants (ESG)/Emergency Solutions Grants.
- U.S. Dep't of Housing & Urban Dev., Understanding Program Participant Eligibility for ESG Rapid Re-Housing and Homelessness Prevention Components (April 2013).
- U.S. Dep't of Housing & Urban Dev., Eligible Activities for ESG Homelessness Prevention AND Rapid Re-Housing Components (March 2013).

- U.S. Dep't of Housing & Urban Dev., ESG Law, Regulations, and Notices.
- U.S. Dep't of Housing & Urban Dev., HUD Exchange, Emergency Solutions Grants (ESG) Program.

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Continuum of Care

U.S. Department of Housing and Urban Development (HUD) Office of Special Needs Assistance Programs within the Office of Community Planning and Development

I. Establishing Statutory Provision(s)

Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389

II. General Description of the Program

The Continuum of Care (CoC) Program promotes a coordinated communitywide response to ending and preventing homelessness by providing services and assistance to move homeless unaccompanied youth and families into transitional and permanent housing and to provide long-term stability and minimize the trauma and dislocation caused to homeless individuals, families, and communities by homelessness. The CoC coordinates homeless services and homelessness prevention activities across a specified geographic area through a coordinated entry system. The CoC Program also promotes community-wide planning and strategic use of resources to address homelessness; improves coordination and integration with mainstream resources and other programs targeted to people experiencing homelessness; improves data collection and performance measurement; and allows each community to tailor its programs to the particular strengths and challenges in assisting homeless individuals and families within that community. The CoC Program consolidates three separate McKinney-Vento homeless assistance programs: Supportive Housing program, Shelter Plus Care program, and Section 8 Moderate Rehabilitation SRO program.

III. Eligibility Criteria for the Program

- Nonprofit organizations, State and local governments, and public housing agencies are eligible recipients CoC Program funds through HUD's competitive application process.
- CoCs have operated under guidance published each year in HUD's annual Notice of Funding Availability. The CoC Program interim rule provides formal regulations to guide the establishment and operation of CoCs.
- For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

IV. Specific Services/Benefits/Rights Included in the Program

- There are several programs that could be supported by CoC program funds and that could provide housing stability for homeless unaccompanied youth and families. These programs

include permanent housing, transitional housing, supportive services and homelessness prevention. A CoC must submit a request and be approved by HUD before projects can serve unaccompanied youth and families with children. Each program has its own requirements.

- There are two types of permanent housing for which homeless unaccompanied youth and families may qualify: permanent supportive housing (PSH) and rapid re-housing (RRH). PSH provides indefinite housing assistance and is paired with supportive services to assist homeless persons with a disability or families with an adult or child member with a disability achieve housing stability. RRH provides short- and medium-term rental assistance to move homeless persons and families (with or without a disability) as rapidly as possible into permanent housing.
- Transitional housing (TH) provides homeless individuals and families with the interim stability and support to successfully move to and maintain permanent housing. Transitional housing may be used to cover the costs of up to 24 months of housing with accompanying supportive services.
- The supportive services only (SSO) program component allows recipients and subrecipients to provide services to homeless individuals and families not residing in housing operated by the recipient. SSO recipients and subrecipients may use the funds to conduct outreach to sheltered and unsheltered homeless persons and families, link clients with housing or other necessary services, and provide ongoing support.
- CoC Program funds may also be used for homelessness prevention assistance for individuals and families at risk of homelessness. The services under this component may include housing relocation and stabilization services as well as short- and medium-term rental assistance to prevent an individual or family from becoming homeless. Funds may be used for individuals and families to maintain existing housing or transition to new permanent housing.

V. Significant Statutory Provisions

- 42 U.S.C. § 11382 – discusses notification of funding availability and more broadly, continuum of care applications and grants.
- 42 U.S.C. § 11383 – discusses activities eligible for grant support.
- 42 U.S.C. § 11384 – provides incentives for high-performing communities and broadens eligible activities funded.
- 42 U.S.C. § 11385 – covers supportive services to address the special needs of homeless families with children.
- 42 U.S.C. § 11386 et seq. – discusses CoC program requirements.

VI. Key Regulatory & Major Policy Provisions

- 24 CFR 576, Homeless Emergency Assistance and Rapid Transition to Housing: Emergency Solutions Grants Program and Consolidated Plan Conforming Amendments (Dec. 2011).

- 24 CFR Part 578, Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program (July 2012).
- 24 CFR Parts 91, 582, and 583, Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH): Defining "Homeless" Final Rule (Dec. 2011).
- 24 CFR Part 578, Continuum of Care Program—Increasing Mobility Options for Homeless Individuals and Families With Tenant-Based Rental Assistance (June 2016).
- U.S. Dep't of Housing & Urban Dev., CPD-17-01: Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System (Jan. 2017).

VII. Significant Cases

None.

VIII. References to Medicaid

U.S. Dep't of Housing & Urban Dev., Medicaid 101 for Organizations Receiving Funds Under the HOPWA, ESG, and CoC Programs (Oct. 2013).

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Nat'l Low Income Housing Coalition, Continuum of Care Performance Award Program.
- Nat'l Alliance to End Homelessness, FY2017 Appropriations: HUD's Homeless Assistance Grants (Oct. 2016).
- Nat'l Alliance to End Homelessness, 2017 Continuum of Care NOFA Resources (May 2017).
- U.S. Dep't of Housing & Urban Dev., Introductory Guide to the Continuum of Care (CoC) Program (2012).
- U.S. Dep't of Housing & Urban Dev., HUD Exchange, Continuum of Care.

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Title V Surplus Properties

U.S. Department of Housing and Urban Development (HUD), U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 11411-11412

II. General Description of the Program

Title V requires federal surplus property to be offered to nonprofit organizations for the purpose of assisting people experiencing homelessness. Under Title V, HUD collects information from federal

agencies about their unutilized, underutilized, excess, and surplus properties and determines which are suitable for use to assist homeless persons. Available properties are published in the Federal Register notice. States, local governments, and nonprofit organizations may apply to HHS to obtain the property to assist persons experiencing homelessness. The property must first be made available to non-profit groups, state agencies, and local governments for free before it can be sold. Title V increases the available resources for people experiencing homelessness, including children and families, providing them with greater stability. Studies show that housing stability can lead to positive health outcomes for children and their families.
In 2016, Title V was improved under the Federal Assets Sales and Transfer Act of 2016 (FAST), which reformed how the federal government disposes of its property, increased transparency into its real property holdings, and streamlined the application process. Additionally, FAST clarified that property obtained through Title V may be used for permanent housing with or without supportive services.

III. Eligibility Criteria for the Program

States, local governments, and nonprofit organization may apply to HHS for properties published on the Federal Register as unutilized, underutilized, excess, and surplus. Homeless service organizations may submit a notice of interest to HHS within 30 days of publication. These organizations then have 75 days to complete an initial application, which requires detailed and comprehensive documentation of the organization's plans for the property. Once HHS approves the initial application, applicants have an additional 45 days to complete a final application detailing a reasonable plan to finance the program. If HHS approves the final application, the federal government will execute a deed or lease conveying the property at no cost to the successful applicant.

IV. Specific Services/Benefits/Rights Included in the Program

Title V provides for right of first refusal to states, local governments, and nonprofit organizations to assist persons experiencing homelessness. Property may be used as permanent housing with or without supportive services, emergency shelters, transitional housing, healthcare, childcare, job training, food distribution, mental health services, and substance abuse treatment services.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. § 581 – Use of Federal Real Property to Assist the Homeless
- 45 C.F.R. § 12 – Disposal and Utilization of Surplus Real Property for Public Health Purposes
- 45 C.F.R. Part 12a – Use of Federal Real Property to Assist the Homeless

VII. Significant Cases

- *Nat'l Law Ctr. on Homelessness & Poverty v. United States Veterans Admin.*, 931 F. Supp. 2d 167 (D.D.C. March 21, 2013) (ordering an annual comparison between the properties reported under the Federal Real Property Profile and Title V and ordering "GSA and HUD to develop a plan for additional and improved training programs for landholding agencies that will ensure they are complying with the reporting requirements of the Act and Order").
- *Nat'l Law Ctr. on Homelessness & Poverty v. United States Veterans Admin.*, 819 F. Supp. 69 (D.D.C. April 21, 1993) (holding that modification of comprehensive canvassing of property for alternative quarters would be approved and requiring the government to initiate outreach efforts to educate providers of assistance to homeless persons about the availability of property).
- *Nat'l Coal. for the Homeless v. Veterans Admin.*, 1988 WL 136970 (D.D.C. December 13, 1988) (imposing requirements on the review and reporting of property holdings) (modified by *Nat'l Law Ctr. on Homelessness and Poverty v. United States Veterans Admin.*, 819 F. Supp. 69 (D.D.C. April 21, 1993)).
- *United States v. Village of New Hempstead*, 832 F. Supp. 76 (S.D.N.Y. 1993) (a regulation preempting local zoning laws is a reasonable exercise of the promulgating agencies' authority under McKinney-Vento).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Nat'l Law Ctr. on Homelessness & Poverty, Public Property/Public Need: A Toolkit for Using Vacant Federal Property to End Homelessness (2017).
- U.S. Dep't of Hous. & Urban Dev., Surplus Property for Use to Assist the Homeless (Title V) (last visited July 13, 2017).
- U.S. Dep't of Hous. & Urban Dev., Title V Suitability Determination Listing, HUD Exchange (2017).
- GSA, Resources for the McKinney-Vento Homeless Assistance Program (2013).
- U.S. Dept. of Health & Human Servs., Program Support Center, HHS Title V Surplus Property Program - Homeless Assistance (2014).

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: U.S. Interagency Council on Homelessness

U.S. Interagency Counsil on Homelessness (USICH)

I. Establishing Statutory Provision(s)

42 U.S.C. §§ 11311-11320

II. General Description of the Program

McKinney-Vento established USICH as an independent agency within the executive branch to review the effectiveness of federal activities and programs to assist people experiencing homelessness, promote better coordination among agency programs, and inform state and local governments and public and private sector organizations about the availability of federal homeless assistance.

USICH's mission is to coordinate the Federal response to homelessness and to create a national partnership at every level of government and with the private sector to reduce and end homelessness in the nation while maximizing the effectiveness of the federal government in contributing to the end of homelessness.

III. Eligibility Criteria for the Program

None.

IV. Specific Services/Benefits/Rights Included in the Program

USICH develops a single coordinated federal plan to end and prevent homelessness. The plan recommends federal administrative and legislative initiatives to carry out the plan and effectively assist homeless individuals and families. USICH promotes coordination and cooperation among grantees, local housing and support service providers, school districts, and advocates for homeless individuals and families.

USICH works with multiple stakeholders to end and prevent youth and family homelessness, improving their overall wellbeing, health, education, and future employment opportunities—outcomes that strengthen communities and the nation as a whole.

USICH works with local communities to implement a robust, coordinated response to ensure that youth homelessness is prevented whenever possible, and that unaccompanied youth who do experience homelessness are on a quick path to safe, stable, and permanent housing.

V. Significant Statutory Provisions

42 U.S.C. §§ 11311-11320 establishes the program and the agency's makeup, which includes virtually all federal agencies, and responsibilities

VI. Key Regulatory & Major Policy Provisions

- USICH publishes best practices and guidance to communities on how best to address homelessness. Recent such materials include:
    - Ending Family Homelessness, Improving Outcomes for Children
    - Engaging Legal Services in Community Efforts to Prevent and End Homelessness

- Ending Homelessness for People Living in Encampments: Advancing the Dialogue

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- U.S. Interagency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness (2015).
- U.S. Interagency Council on Homelessness, Criteria and Benchmarks for Achieving the Goal of Ending Youth Homelessness (2017).
- U.S. Interagency Council on Homelessness, Preventing and Ending Youth Homelessness: A Coordinated Community Response.
- U.S. Interagency Council on Homelessness, Criteria and Benchmarks for Achieving the Goal of Ending Family Homelessness (2017).

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Emergency Food and Shelter Program

Federal Emergency Management Agency (FEMA), Department of Homeland Security

I. Establishing Statutory Provision(s)

Title III of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11331-11335

II. General Description of the Program

Unlike FEMA's disaster assistance programs, the implementation of the Emergency Food and Shelter Program (EFSP) is not contingent on a Presidential disaster declaration. Funds are not to be used to provide emergency assistance for circumstances that are the immediate result of a disaster situation. EFSP supplements and expands the ongoing work of local social service organizations, both non-profit and governmental, to provide shelter, food and supportive services to individuals and families who have economic emergencies.

III. Eligibility Criteria for the Program

A national board provides funding to local jurisdictions formula using the most recent national population, unemployment, and poverty statistics. A local board for each jurisdiction receiving funds must be convened, which decides the local social services organizations to receive program funds. Funds are open to all organizations helping hungry and homeless people, as well as organizations that support those at risk of becoming hungry or homeless due to economic hardships.

IV. Specific Services/Benefits/Rights Included in the Program

Funds may be used by program recipients to provide food (in the form of served meals or groceries), lodging in a mass shelter or hotel, assistance with one month's rent or mortgage payment, assistance with one month's utility bill, and/or equipment necessary to feed or shelter people, up to a $300 limit per item.

V. Significant Statutory Provisions

42 U.S.C. § 11331 – Provides the National Board the power to establish its own procedures and policies for the conduct of its affairs in administering the program

VI. Key Regulatory & Major Policy Provisions

24 C.F.R. § 576.400 - Area-wide systems coordination requirements – this requires Emergency Solutions Grants (ESG) program recipients and subrecipients to integrate ESG-funded activities with other homeless programs, including this program.

VII. Significant Cases

Orr v. Konkel, No. 06-C-429-S, 2007 WL 129065 (Jan. 11, 2007) (court dismissed Plaintiff's claim for more FEMA assistance because plaintiff failed to show that she is entitled to additional assistance under federal law and because a reasonable policy for the distribution of funds was in place).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Federal Emergency Management Agency, Emergency Food and Shelter Program (EFSP) Fact Sheet.
- Emergency Food and Shelter National Board Program, How Areas Qualify.

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Projects for Assistance in Transition from Homelessness (PATH)

Substance Abuse and Mental Health Services Administration (SMHSA), Center for Mental Health Services (CMHS), U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

Public Health Service Act, as amended by Title VI of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 254b(h), 290aa-5, 290cc-21-290cc-35

II. General Description of the Program

The Public Health Service Act was amended by Title VI of the McKinney-Vento Act authorizes several programs to provide health care services, including mental health and alcohol and drug abuse treatment services, to homeless persons.

III. Eligibility Criteria for the Program

Individuals who are suffering from serious mental health illness and/or from a substance use disorder and who are homeless or at imminent risk of experiencing homelessness are eligible. Individuals who lack housing, who is a resident in transitional housing, or whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations are considered homeless.[72]

IV. Specific Services/Benefits/Rights Included in the Program

The program provides services including outreach, screening and diagnostic treatment, habilitation and rehabilitation, community mental health, alcohol or drug treatment, case management, and other appropriate services.
The program can fund programs that provide referrals for primary health services, job training, educational services, and relevant housing services.

V. Significant Statutory Provisions

42 U.S.C. § 290cc-21 – outlines the purposes of grants and specifies who to provide services to and the types of services that could be funded.

VI. Key Regulatory & Major Policy Provisions

[72] 42 U.S.C. § 254b(h)(5)(A).

42 C.F.R. Part 54 - Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants and/or Projects for Assistance in Transition from Homelessness Grants
24 C.F.R. § 576.400 - Area-wide systems coordination requirements – this requires Emergency Solutions Grants (ESG) program recipients and subrecipients to integrate ESG-funded activities with other homeless programs, including this program.

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- Substance Abuse and Mental Health Services Administration, Projects for Assistance in Transition from Homelessness (PATH) (2017).
- Substance Abuse and Mental Health Services Administration, Behavioral Health and Homelessness Resources (2017).
- Department of Health and Human Services, Blueprint for Services (2003).

McKinney-Vento Homeless Assistance Programs, McKinney-Vento Homeless Assistance Act: Temporary Emergency Food Assistance Program

Food and Nutrition Service, U.S. Department of Agriculture (USDA)

I. Establishing Statutory Provision(s)

7 U.S.C. §§ 7501-7517

II. General Description of the Program

The Emergency Food Assistance Program (TEFAP) is a Federal program that helps supplement the diets of low-income Americans, including children and elderly people, by providing them with emergency food and nutrition assistance at no cost. It provides food and administrative funds to States to supplement the diets of these groups. Available foods include canned and fresh fruits and vegetables, fresh and dried eggs, meat, poultry, fish, milk and cheese, pasta products, and cereal.

III. Eligibility Criteria for the Program

There is no Federal standard or requirement for determining the eligibility of individuals, including children, to receive prepared meals. Public or private nonprofit organizations that provide nutrition assistance to low-income Americans, either through the distribution of food for home use or the preparation of meals, may receive food as local agencies. These organizations must determine household eligibility by applying income standards set by the State. Income standards may be met through participation in other existing Federal, State, or local food, health, or welfare programs for which eligibility is based on income.[73]

IV. Specific Services/Benefits/Rights Included in the Program

USDA makes available foods to states, which in turn provide the foods to selected local agencies like food banks, which in turn distribute to other local organizations like soup kitchens, food pantries, and community action agencies that serve low-income individuals and families for household consumption or for preparing and serving meals in a congregate setting.

V. Significant Statutory Provisions

7 U.S.C. § 7512 (requires USDA to issue regulations)

VI. Key Regulatory & Major Policy Provisions

- USDA, Distribution of TEFAP Foods to Children (Revised) (June 2017).
- USDA, Requirements for the Distribution and Control of Donated Foods and the Emergency Food Assistance Program (2016).

VII. Significant Cases

Huberman v. Perales, 884 F.2d 62 (2d Cir. 1989) (Court held that food stamp recipient's right to uncapped shelter deduction began on effective date of Food Security Act as declared by Congress, rather than effective date of Secretary's implementing regulations).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

USDA, The Emergency Food Assistance Program Fact Sheet (June 2016).

[73] 7 C.F.R. 251.5(a)(2).

Street Outreach/Sexual Abuse Program: Runaway and Homeless Youth Act

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

Runaway and Homeless Youth Act, 42 U.S.C. §§ 5714-5741; 34 U.S.C. § 11261

II. General Description of the Program

The SOP funds nonprofit organizations to provide street-based outreach, education, treatment, counseling, and referrals for youth subjected to or at risk of sexual abuse.[74] SOPs focus on developing relationships between outreach workers and young people that allow them to rebuild connections with caring adults. The ultimate goal is to prevent the sexual exploitation and abuse of youth on the streets.[75]

III. Eligibility Criteria for the Program

To be eligible for the Street Outreach Program, an organization must use the funds for the purpose of providing street-based services to runaway and homeless youth who have been subjected to or are at risk of sexual abuse, prostitution, sexual exploitation, severe forms of trafficking, or sex trafficking.[76]

The program serves three eligible populations: (1) Homeless youth under 18 for whom it is not possible to live in a safe environment with a relative and who has no other safe alternative living arrangement; [77] (2) Runaway youth who absents himself or herself from home or a place of legal residence without the permission of a parent or legal guardian;[78] and (3) Street youth who are runaway or homeless who spends a significant amount of time on the street or in other areas that increase their risk for sexual abuse, sexual exploitation, prostitution, or drug abuse.[79]

Youth who participate in this program must be 21 years old or younger.[80]

IV. Specific Services/Benefits/Rights Included in the Program

[74] 45 C.F.R. Part 1351.
[75] U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Street Outreach Program (2016).
[76] 42 U.S.C. § 5714-41.
[77] 42 U.S.C. § 5732a(3).
[78] 42 U.S.C. § 5732a(4).
[79] 42 U.S.C. § 5732a(6)(B).
[80] 45 C.F.R. § 1351.

SOP services include street based education and outreach, access to emergency shelter, survival aid, individual assessments, trauma-informed treatment and counseling, crisis intervention, prevention and education activities, information and referrals, and follow-up support.[81]

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

- Dep't of Health and Servs., Administration for Children and Families, Runaway and Homeless Youth, 81 Fed. Reg. 93,030 (December 20, 2016).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Information Memorandum 14-1 (2014).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, U.S. Department of Health and Human Services and U.S. Department of Education's Collaboration in Support of the Education of Homeless Youth (2008).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Family and Youth Servs. Bureau, Information Memorandum 1-2006 (2006).
- U.S. Dep't of Agric., Food & Nutrition Serv., Guidance on Determining Categorical Eligibility for Free Lunches and Breakfasts for Youth Served under the Runaway and Homeless Youth Act (2004).

VII. Significant Cases

None.

VIII. References to Medicaid

RHYA states that grantees should provide the runaway and homeless youth they serve access to health care services. The 2016 HHS final rule on RHYA specifically calls on Basic Center and Transitional Living Program grantees to develop and implement a plan for health care services referrals both during the services and aftercare periods. It states that these plans should include health care services and referrals and counseling on insurance coverage through family health insurance plans, or to agencies that assist youth in enrolling in Medicaid or insurance plans offered under the Affordable Care Act.[82]

IX. Other Relevant Citations and Resources

- National Center for Homeless Education, The Runaway and Homeless Youth Act.

[81] U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Street Outreach Program (2016); Street Outreach Program Fact Sheet (2016).
[82] 45 C.F.R. § 1351

- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Street Outreach Program (2016).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Street Outreach Program Youth Profile (2016).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Street Outreach Program Fact Sheet (2016).
- Nat'l Network for Youth, Human Trafficking and the Runaway and Homeless Youth Population.
- Nat'l Network for Youth, Runaway and Homeless Youth Act (RHYA) Reauthorization 2013 (2013).

Trafficking Victims Protection Act

Office to Monitor and Combat Trafficking in Persons, Department of State

I. Establishing Statutory Provision(s)

Victims of Trafficking and Violence Protection Act, 114 STAT. 1464, Public Law 106–386, 22 U.S.C. §§ 7101-7114

II. General Description of the Program

TVPA provides tools and assistance to combat trafficking in persons both worldwide and domestically. The Act authorized the establishment of the State Department's Office to Monitor and Combat Trafficking in Persons and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts. TVPA establishes minimum standards for the elimination of trafficked victims.

III. Eligibility Criteria for the Program

An alien (including a child) who is a victim of a severe form of trafficking including one who has been subjected to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims above the age of 18 must be is willing to assist in every reasonable way in the

investigation and prosecution of severe forms of trafficking in persons and make a bona fide visa application that has not been denied.[83]

IV. Specific Services/Benefits/Rights Included in the Program

Programs and initiatives providing assistance for victims in other countries include: culturally and linguistically appropriate protective shelters; legal, social, and other services and assistance to trafficked individuals; education and training for trafficked women and girls; safe integration or reintegration of trafficked individuals, including children, into an appropriate community or family; assistance to families of victims in locating, repatriating, and treating their trafficked family members, the voluntary repatriation of these family members, or their integration or resettlement into appropriate communities.[84]

An alien who is a victim of a severe form of trafficking in persons, is eligible for benefits and services under any Federal or State program or activity to the same extent as an alien who is admitted to the United States as a refugee.[85]

V. Significant Statutory Provisions

- 22 U.S.C. § 7103 - establishes an Interagency Task Force to Monitor and Combat Trafficking.
- 22 U.S.C. § 7105 – Provides for programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking
- 22 U.S.C. § 7106 – Establishes the minimum standards for the elimination of trafficking

VI. Key Regulatory & Major Policy Provisions

- 28 CFR 1100.29 - The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA)
- Preventing Sex Trafficking and Strengthening Families Act of 2014.[86]

VII. Significant Cases

- *Ditullio v. Boehm*, 662 F.3d 1091 (9th Cir. 2011) (holding that punitive damages were available under the TVPA but the civil remedy provision did not apply retroactively).
- *Francisco v. Susano,* 525 Fed.Appx. 828 (10th Cir. 2013) (holding that compensatory and punitive damages were available under the TVPA).

[83] U.S. Department of State, Victims of Trafficking and Violence Protection Act of 2000, Sec.103, Sec.107; see also 22 U.S.C. §§ 7102(14), 7102(15), 7105(b)(1)(C).

[84] 22 U.S.C. §§ 7105(a).
[85] 22 U.S.C. §§ 7105(b).
[86] Nat'l Conference of State Legislatures, Preventing Sex Trafficking and Strengthening Families Act of 2014 (2016).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Congressional Research Service, Homelessness: Targeted Federal Programs and Recent Legislation (May 2015).
- U.S. Dep't of State, U.S. Laws on Trafficking in Persons.
- U.S. Dep't of State, Trafficking in Persons Report (2017).
- Nat'l Conference of State Legislatures, Preventing Sex Trafficking and Strengthening Families Act of 2014 (2016).
- National Human Trafficking Hotline, Human Trafficking.
- Dep't of Justice, Human Trafficking Prosecution Unit (2017).

Transitional Living Grant Program and Maternity Group Homes for Pregnant and Parenting Youth Program: Runaway and Homeless Youth Act as amended by the Missing, Exploited, and Runaway Children Protection Act of 1999

U.S. Department of Health and Human Services (DHHS)

I. Establishing Statutory Provision(s)

Runaway and Homeless Youth Act as amended by the Missing, Exploited, and Runaway Children Protection Act of 1999, 42 U.S.C. §§ 5714-1 to 5714-2; 34 U.S.C. §§ 11221 - 11222

II. General Description of the Program

This program provides technical assistance to public and nonprofit private entities to establish and operate transitional shelters for homeless youth between the ages of 16 and 22.[87] Services are provided for up to 540 days, or in exceptional circumstances, up to 635 days.[88] The program also includes Maternity Group Homes for pregnant and parenting youth, as well as supportive services for youth under 18.[89] The MGH Program supports homeless pregnant and/or parenting young people, as well as their dependent children.

III. Eligibility Criteria for the Program

Organizations are eligible to receive funds under the program if they propose to establish, strengthen, or fund a transitional living youth project for homeless youth. These projects must additionally provide life skills counseling; on-site supervision shelter and services not to exceed 540

[87] 42 U.S.C. § 5714-1.
[88] 42 U.S.C. § 5714-2(a)(2).
[89] 45 C.F.R. Part 1351.

days, or up to 635 days in exceptional circumstances; transitional living plans to each youth; referrals to supportive services; submission of reports, plans, and other documentation; and other programming requirements.[90]

The program serves three eligible populations: (1) Homeless youth under 18 for whom it is not possible to live in a safe environment with a relative and who has no other safe alternative living arrangement; [91] (2) Runaway youth who absents himself or herself from home or a place of legal residence without the permission of a parent or legal guardian;[92] and (3) Street youth who are runaway or homeless who spends a significant amount of time on the street or in other areas that increase their risk for sexual abuse, sexual exploitation, prostitution, or drug abuse.[93]

In order to participate in the program, youth must be between the ages of 16 and 22.[94] Services are provided for up to 540 days, or in exceptional circumstances, up to 635 days. Young people who have not yet turned 18 after 635 days may stay in a program until their 18th birthday.[95]

IV. Specific Services/Benefits/Rights Included in the Program

TLP provides shelter such as group homes, maternity group homes, host family homes, and supervised apartments, to homeless youth. Services provided to homeless youth include safe and stable living accommodations; information and counseling services in basic life skills, including money management, budgeting, consumer education, and use of credit, parenting skills (as appropriate), interpersonal skill building; educational advancement and opportunities (including GED preparation, post-secondary training and vocational education), job attainment skills (such as career counseling and job placement); mental health care (including individual and group counseling); and physical health care (such as physicals, health assessments and emergency treatment).[96]

Homeless youth can be referred to social service, law enforcement, educational (including post-secondary education), vocational, training (including services and programs for youth available under the Workforce Innovation and Opportunity Act), welfare (including programs under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), legal service, and health care programs.[97]

Services must incorporate the principles of positive youth development.[98] In addition to standard TLP services, MGH programs offer an array of comprehensive services to teach, including parenting skills, child development, family budgeting, and health and nutrition.[99] MGH projects administer

[90] 42 U.S.C. § 5714-2.
[91] 42 U.S.C. § 5732a(3).
[92] 42 U.S.C. § 5732a(4).
[93] 42 U.S.C. § 5732a(6)(B).
[94] 42 U.S.C. § 5732a(3); 45 C.F.R. Part 1351
[95] 42 U.S.C. § 5732a(3); *see also* U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Transitional Living Program Fact Sheet (2016).
[96] 42 U.S.C. § 5714-2(a)(1).
[97] 42 U.S.C. § 5714-2(a)(7).
[98] 45 CFR 1351.10(b).
[99] U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Maternity Group Homes for Pregnant and Parenting Youth (2015).

services such as: child-safe transitional and independent living accommodations; education in parenting, child discipline and safety; mental, physical, and reproductive health care; resources to help youth identify reliable, affordable child care; money management and use of credit; and educational opportunities, such as GED preparation, post-secondary training and vocational education.[100]

V. Significant Statutory Provisions

34 U.S.C. §§ 11222 – Discusses eligibility for assistance.

VI. Key Regulatory & Major Policy Provisions

- Dep't of Human and Health Servs. Runaway and Homeless Youth, 81 Fed. Reg. 93,030 (December 20, 2016), 45 C.F.R. pt. 1351.
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families. Information memorandum 14-1 (2014).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, U.S. Department of Health and Human Services and U.S. Department of Education's Collaboration in Support of the Education of Homeless Youth (2008).
- U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Family and Youth Servs. Bureau, Information Memorandum 1-2006 (2006).
- U.S. Dep't of Agric., Food & Nutrition Serv., Guidance on Determining Categorical Eligibility for Free Lunches and Breakfasts for Youth Served under the Runaway and Homeless Youth Act (2004).

VII. Significant Cases

None.

VIII. References to Medicaid

RHYA states that grantees should provide the runaway and homeless youth they serve access to health care services. The 2016 HHS final rule on RHYA specifically calls on Basic Center and Transitional Living Program grantees to develop and implement a plan for health care services referrals both during the services and aftercare periods. It states that these plans should include health care services and referrals and counseling on insurance coverage through family health insurance plans, or to agencies that assist youth in enrolling in Medicaid or insurance plans offered under the Affordable Care Act.[101]

IX. Other Relevant Citations and Resources

- National Center for Homeless Education, The Runaway and Homeless Youth Act.

[100] U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Maternity Group Homes for Pregnant and Parenting Youth (2015).
[101] 45 C.F.R. § 1351

- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Maternity Group Homes Program Fact Sheet (2016).
- Nat'l Network for Youth, Human Trafficking and the Runaway and Homeless Youth Population.
- Nat'l Network for Youth, Runaway and Homeless Youth Act (RHYA) Reauthorization 2013 (2013).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Transitional Living Program Youth Profile (2016).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Transitional Living Program Fact Sheet (2016).
- U.S. Dep't of Health and Human Servs., Administration for Children and Families, Family and Youth Services Bureau, Runaway & Homeless Youth Program, Transitional Living Program (2016).

Housing

811 Program/Supportive Housing for People with Disabilities: Cranston-Gonzaelz National Affordable Housing Act

U.S. Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

Section 811 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C.A. § 8013, as amended by the Frank Melville Supportive Housing Investment Act of 2010, Pub. L. No. 111-374, 124 Stat. 4089 (Jan. 4, 2011).

II. General Description of the Program

The Section 811 program provides assistance and housing linked with supportive services to very and extremely low-income disabled households, which may include disabled persons, non-disabled persons important to a disabled person's care or well-being and surviving non-disabled household members. Project Rental Assistance Contracts (PRAC) provide rental assistance for tenants residing in properties receiving Section 202 and 811 capital financing and operate much like project-based Section 8. The purpose of the program is to allow persons with disabilities to live as independently as possible.

Congress passed major reforms to the Section 811 program in 2010, adding Project Rental Assistance (PRA) to the existing capital advance/PRAC option for creating permanent supportive housing. The PRA option provides project-based rental subsidies directly to state housing finance agencies who, to receive the subsidies, must partner with state health and human services or Medicaid agencies to provide access to appropriate support and services for residents. PRA facilitates the creation of integrated supportive housing units in multifamily affordable housing properties, with a requirement that no more than 25% of the total number of dwelling units have an occupancy preference for people with disabilities to receive PRA funding. Funds were allocated in FY2012 for the PRA demonstration program.

III. Eligibility Criteria for the Program

Residents must be very low income (50% of the area median income [AMI]) or extremely low-income (30% AMI) and part of a disabled household, which may include disabled persons, non-disabled persons important to a disabled person's care or well-being and surviving non-disabled household members. Projects can serve one or any combination of three categories of disabilities: physical disabilities, developmental disabilities, or chronic mental illness. The program is targeted at non-elderly disabled people. Applicants with disabilities cannot be excluded on the basis of having another disability in addition to the one served by the particular project. For example, an owner of a project with accessible units cannot exclude an otherwise eligible person with a disability

who needs an accessible unit and who has another disability, such as mental illness. The 811 program does not have restrictions on immigrants.

IV. Specific Services/Benefits/Rights Included in the Program

- Individuals and families pay no more than 30% of their adjusted income in rent.
- Provides a greater level of tenants' rights than most state and local laws including protections for habitability, relocation and eviction.
- This is a supportive housing model so there are a range of health and social services provided with the program. However, these vary significantly depending on the population being served and the design of the state implementing program. That also means that there is a great deal of room for innovation and collaboration in the design of the state programs.

V. Significant Statutory Provisions

Frank Melville Supportive Housing Investment Act of 2010, Pub. L. No. 111-374, 124 Stat. 4089 (Jan. 4, 2011).

VI. Key Regulatory & Major Policy Provisions

- Regulations are at 24 C.F.R. part 891 and;
- 24 C.F.R.:
    - § 245 Tenant Participation
    - § 246 Local Rent Control
    - § 247 Evictions
- Handbooks
    - 4350.1 Multifamily Asset Management and Project Servicing (through REV-2, Aug. 31, 2012), U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.1 (Sept. 1992).
    - 4350.3 Occupancy Requirements for Subsidized Multifamily Housing Programs, REV-1 through CHG- , U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3 (June 2009).
    - 4381.5 Management Agent Handbook, REV-2 (June 8, 2006) , U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4381.5 (Dec. 1994)
    - 4571.1 Section 202 Direct Loan Program for Housing for the Elderly or Handicapped, U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4571 (Mar. 1983).
    - REV-2 (3/31/83 through CHG-3, 4/12/90)

- 4571.2 Supportive Housing for Persons with Disabilities (6/3/91), U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4571.2 (June 1991).
- 4571.4 Supportive Housing for Persons with Disabilities, U.S. DEP'T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4571.4 (June 1994).

VII. Significant Cases

The new 811 program has only been around since 2012 so there is limited case law associated with the program. It is funded with Project Rental Assistance so the case law related to PRA is applicable to the 811 program in regards to evictions, habitability, and other issues.

VIII. References to Medicaid

This program expressly requires the state housing finance agency submit a collaborative proposal with either the state human services or state Medicaid agency in order to be eligible for funding. Many states have designed their programs to serve populations that are high cost users of Medicaid where housing instability is a significant factor in poor health.

IX. Other Relevant Citations and Resources

- *Section 811 Supportive Housing for Persons with Disabilities Program*, U.S. DEP'T OF HOUSING AND URB. DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811ptl (last visited Oct. 23, 2017).
- *Section 811 Project Rental Assistance (PRA) Program*, U.S. DEP'T OF HOUSING AND URB. DEV. EXCHANGE, https://www.hudexchange.info/programs/811-pra/ (last visited Oct. 23, 2017).

Fair Housing Act

Department of Housing and Urban Development (HUD) and the Department of Justice

I. Establishing Statutory Provision(s)

42 U.S.C.A. §§ 3601, et seq. (Title VIII of the Civil Rights Act of 1968).

II. General Description of the Program

The Fair Housing Act (FHA) makes it illegal to discriminate against someone based on their membership (or perceived membership) in a protected class in regarding the sale or rental or housing or the provision of housing related services.

The FHA also mandates that persons with disabilities be granted reasonable accommodations and reasonable modifications if they are necessary to enable a person's use and enjoyment of a dwelling.

III. Eligibility Criteria for the Program

- A person is protected by the FHA from housing discrimination if that person is a member of a protected class or are perceived to be a member of a protected class.
- The protected classes include race, color, religion, national origin, sex, disability, and familial status.

IV. Specific Services/Benefits/Rights Included in the Program

- The FHA protects people from housing discrimination in the sale or rental of housing or the provision of housing related services. The FHA also protects individuals from coercion, intimidation, threats, or interference from exercising rights protected by the FHA, or aiding or encouraging others to do so.
- An aggrieved person can file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO).
- Under certain circumstances, DOJ will enforce the FHA.

V. Significant Statutory Provisions

- 42 U.S.C. § 3604 (prohibiting discrimination based on race, color, religion, sex, familial status, disability, or national origin illegal in the sale or rental of housing).
- 42 U.S.C. § 3605 (prohibiting discrimination on the basis of race, color, religion, sex, familial status, disability, or national origin in real-estate related transactions)
- 42 U.S.C. § 3608(d), (e)(5) (requiring federal agencies to affirmatively further the purposes/policies of the FHA in administering their programs and activities related to housing and urban development)
- 42 U.S.C. § 3617 (prohibiting intimidation, coercion, threats, or interference with fair housing rights)

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. Part 100
- HUD, Final Rule, Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (24 C.F.R. parts 5, 91, 92, 570, 574, 576, and 903) (establishes a planning process whereby certain HUD grantees examine barriers to fair housing choice and establish goals to address them)
- HUD, Final Rule, Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013) (24 C.F.R. Part 100) (HUD discriminatory effects (or "disparate impact") regulation)
- HUD, Final Rule, Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act, 81 Fed. Reg. 63,054 (HUD

harassment regulation that prohibits quid pro quo and hostile environment harassment on the basis of all protected classes under the FHA) (24 C.F.R. Part 100)

- DOJ and HUD, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (May 17, 2004)
- DOJ and HUD, Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications Under the Fair Housing Act (March 5, 2008)

VII. Significant Cases

- *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*, Inc., 576 U.S. ___ (2015) The Supreme Court analyzed whether disparate impact claims are cognizable under the Fair Housing Act.[1] In Justice Anthony Kennedy's majority opinion, the Court held that Congress specifically intended to include disparate impact claims in the Fair Housing Act, but that such claims require a plaintiff to demonstrate at the pleadings stage that the defendant's policies that caused the challenged disparity.
- *Giebeler v. M& B Assoc.*, 343 F.3d 1143, 9th Cir. 2003. Holding that landlord interfered with the use and enjoyment of the disabled-plaintiff's prospective home by refusing to grant a reasonable accommodation to its policy forbidding co-signers on the lease.
- *Roe v. Sugar River Mills Assoc.*, 820 F. Supp. 636 (D.N.H. 1993) Plaintiff, who was a person with a mental health disability, threatened another tenant with physical violence by using obscene and offensive language, which resulted in that tenant vacating his unit and plaintiff receiving a criminal conviction. The court held that the FHAA required a showing that no reasonable accommodation would minimize the risk to others before plaintiff can be lawfully evicted.

VIII. References to Medicaid

None

IX. Other Relevant Citations and Resources

- HUD's Office of Fair Housing and Equal Opportunity Webpage
- DOJ, Civil Rights Division, Housing and Civil Enforcement Section Webpage
- HUD Office of Fair Housing and Equal Opportunity, Guidance for FHEO Staff in Assisting Persons with Disabilities Transitioning From Institutions (Aug. 2011). While not specific to the FHA, HUD's FHEO Office did issue guidance in 2011 about that office's role in advancing the integration mandates for persons with disabilities under both Title II of the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973. The guidance mentions the "Money Follows the Person" Demonstration, including how FHEO can use settlements to require coordination with MFP grantees.
- *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). The Supreme Court held that unjustified isolation/institutionalization of persons experiencing mental health disabilities

constitutes disability discrimination under Title II of the ADA, and that states are required to "provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

Family Unification Program: HUD Appropriations Act

United States Department of Housing and Urban Development

I. Establishing Statutory Provision(s)

Housing and Community Development Act of 1992, Pub. L. No. 102-550 (Oct. 28, 1992) Appropriations Act created a pilot program which was later expanded).

II. General Description of the Program

Housing Vouchers are provided to (1) families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families, and (2) youths from ages 18 to 21 who left foster care after age 16 and lack adequate housing.

III. Eligibility Criteria for the Program

- Must be certified by a public welfare agency as a family whose lack of adequate housing is a main factor in the imminent placement of the family's child or children in out-of home care, or in the delay of discharge of a child or children to the family from out-of home care, and has been determined by the PHA to be eligible for a Housing Choice Voucher.
- A FUP-eligible youth has been certified by a public child welfare agency as a youth who is between the ages 18 and 21, who left foster care at age 16 or older, and who does not have adequate housing, and has been determined by the PHA to be Voucher-eligible.
- The assistance is only provided for up to 18 months.
- Must meet income eligibility requirements for the section 8 housing choice voucher program (24 CFR 982.201)

IV. Specific Services/Benefits/Rights Included in the Program

- Vouchers provided to (1) families who are at risk of separation due to a lack of adequate housing and (2) former foster youth without adequate housing. The participant will pay 30% of their income and the PHA will make up the difference up to a cap.
- Generally, participants pay 30% of their income in rent.

V. Significant Statutory Provisions

- 42 U.S.C. § 1437 (Declaration of policy and public housing agency organization)
- 42 U.S.C. § 1437f(x)(2) (Family Unification)
- 42 U.S.C.. § 1437d(0)

VI. Key Regulatory & Major Policy Provisions

Reporting, Turnover, and Other Requirements for the Family Unification Program, HUD PIH 2011-52 (Sept. 20, 2011).

VII. Significant Cases

None.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- HUD's FUP Fact Sheet available at https://www.hud.gov/sites/documents/FUP_FACT_SHEET.PDF

HOME Investment Partnerships Program: Cranston-Gonzalez National Affordable Housing Act

U.S. Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

Title II, Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12701-12839

II. General Description of the Program

In 1990, Congress created the HOME Investment Partnerships program. Under this program, HUD allocates funds, primarily in accordance with a formula, to state and local governments that choose to participate. These funds must generally be matched by non-federal sources. The state and local governments, in turn, contract with developers to help supply housing for low- and very low-income people.

The HOME program is fairly flexible and can be used for either rental housing or homeownership programs. Rental housing assistance can be for newly constructed or rehabilitated housing or housing that has been acquired without rehabilitation. There isa preference for rehabilitation of substandard housing over new construction. The assistance can also be tenant-based. The locality must certify that tenant-based rental assistance is an essential element of its housing affordability strategy and the assistance contracts can only be for two years. The tenant-based rental assistance program must also have housing quality standards and rent reasonableness requirements. HOME assistance cannot be used for certain kinds of housing. HOME assistance may not be used as operating or capital subsidies for public housing or to provide tenant-based replacement housing assistance.

HOME funded housing must also remain affordable for 20 years for new construction of rental housing and five to 15 years for construction of homeownership housing and housing rehabilitation, depending on the amount of HOME subsidy.

III. Eligibility Criteria for the Program

HOME-assisted rental housing must comply with certain rent limitations. Similar to the method used for the federal Tax Credit program, maximum rents are set at the lesser of the Section 8 Existing Housing Fair Market Rents (FMR) in the area or 30 percent of 65 percent of the area's median income (AMI). At least 20 percent of the HOME development's units must be occupied by very low-income people who pay no more than 30 percent of their income for rent or by very low-income people paying the permitted gross rent for rent-restricted units under the federal tax credit program (based on 50 or 60 percent of AMI, not actual tenant income).

The HOME homeownership program is also relatively flexible. HOME assistance can be used to purchase a home or rehabilitate a home that the assisted family already owns. Purchased homes can be either newly constructed or existing houses, including anything from single-family structures to multifamily condominiums, including mobile homes and mobile home pads. Purchasers must be low-income families at the time of purchase, i.e., their incomes must be below 80 percent of AMI, and they must be first-time home buyers. Prices cannot exceed 95 percent of the median purchase price for the area. Finally, resale restrictions limit the purchasers on resale to low-income, first-time homebuyers and limit the seller's capital gain to a fair return on his or her investment.

IV. Specific Services/Benefits/Rights Included in the Program

The enabling statute also establishes some rights for HOME tenants related to lease terms, good cause for eviction, notice requirements, housing quality standards, tenant selection criteria and other rights of tenants.

V. Significant Statutory Provisions

- 42 U.S.C.A. §§ 12701-12839

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. Part 92
- HUD, HOME 2013 Rule, 78 Fed. Reg. 44,628 (July 24, 2013) (24 C.F.R. Parts 91 and 92)
- HUD, HOME CPD Notices (providing Office of Community Planning and Development regarding the HOME Program):
- HUD, HOME Policy Memos
- HUD, HOMEfires (HOME program's official policy newsletter)

VII. Significant Cases

- *Lambert v. Maloney*, No. SP-04-02013 (Bos. Hous. Ct. Aug. 12, 2004) (ruling a landlord must state "other good cause" in order to proceed with an eviction of an expired lease that provided for automatic indefinite extension)
- *Grant v. City of Roanoke* 2017 WL 3037542 (W.D. Virginia, 2017) (ruling that the HOME Act does not create a private right of action for money damages)
- *Westchester v. HUD*, 116 F.Supp.3d 251 (S.D. New York, 2015) (defines when HUD may decline to provide a jurisdiction HOME funding for failing to meet fair housing and other obligations)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- HUD Exchange Website, "HOME Investment Partnerships Program" (includes links to policy guidance and other resources)
- Congressional Research Service, "An Overview of the HOME Investment Partnerships Program"
- HUD, "HOME Investment Partnerships Program"
- HUD, "The HOME Program: HOME Investment Partnerships"

Housing Opportunities for Persons with AIDS (HOPWA): Aids Housing Opportunity Act, Subtitle D of Title VIII of the Cranston-Gonzalez National Affordable Housing Act

U.S. Department of Housing and Urban Development

I. Establishing Statutory Provision(s)

The AIDS Housing Opportunity Act, Subtitle D of Title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.)

II. General Description of the Program

Congress authorized the Housing Opportunities For Persons With AIDS (HOPWA) 536 program in 1990 to provide federal funds to address the housing needs of low-income people who have Acquired Immunodeficiency Syndrome (AIDS) or are HIV-positive and their families.

About 90 percent of HOPWA funding that becomes available annually is awarded through a formula process to eligible states and metropolitan areas upon submission and approval of a consolidated plan. Ten percent of HOPWA funding is awarded on a competitive basis. Non-profit organizations, as well as states and municipalities, may apply for the competitive block of funding. However, applications by non-profit organizations are permitted only for projects of national significance.

HOPWA funding may be used for housing development, rental assistance and moderate rehabilitation of Single Room Occupancy (SRO) units for eligible persons. HOPWA funds may also be used to provide counseling and referral services, to develop housing resources and to provide a broad range of supportive services for eligible persons, including short-term supportive housing. Community residences may also be funded through HOPWA. Rental assistance under HOPWA may be project-based or tenant-based and operates in essentially the same manner as a Housing Choice Voucher.

III. Eligibility Criteria for the Program

Low income persons (80% of area median income or lower) who have been diagnosed with HIV or AIDS, and their family members.

IV. Specific Services/Benefits/Rights Included in the Program

Generally, a resident's rent, including utilities, is the greatest of 30 percent of adjusted monthly income, 10 percent of monthly gross income or any qualifying welfare housing allowance.

Surviving family members who were living in a HOPWA-assisted unit with the eligible recipient at the time of that person's death have a grace period before having to relocate. The grantee or project sponsor must establish a "reasonable" grace period, not to exceed one year from the death of the family member with AIDS.

Assistance may be terminated if participants violate program requirements or conditions of occupancy. However, HOPWA grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

There are no immigration restrictions in this program and no restrictions around criminal background.

V. Significant Statutory Provisions

- 42 U.S.C.A. §§ 12901 et seq. (West 2012).

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. § 574
- Handbook: [no number] Housing Opportunities for Persons with AIDS (HOPWA) Grantee Oversight Resource Guide (Updated Aug. 2010).

VII. Significant Cases

- *Garden View v. Fletcher*, 916 N.E.2d 554, 559-62 (Ill. App. 2009) (violating conditions of occupancy is good cause for eviction when the housing provider is a HOPWA sponser).
- *Cotton v. Alexian Bros. Bonaventure House*, 2003 WL 22110501 (N.D. Ill. Sept. 9, 2003) (residents terminated without prior written notice or hearing from HOPWA transitional housing program established violation of federal statutory and regulatory rights)

- *Rivers v. Doar*, 638 F. Supp. 2d 333 (E.D.N.Y. 2009) (granting dismissal of case alleging illegal rent increase in HOPWA program where city rescinded rent increase)

VIII. References to Medicaid

Many HOPWA development include an on-site health clinic and many of the services components are paid for with Medicaid.

IX. Other Relevant Citations and Resources

- HUD, Office of Policy Dev. & Research, National Evaluation of the HOPWA Program (2001).
- HOPWA Eligibility Requirements

HUD Project Based Section 8 (Section 8 Rental Assistance Program): Section 8 of the United States Housing Act of 1937

U.S. Housing and Urband Development

I. Establishing Statutory Provision(s)

Section 8 of United States Housing Act of 1937, 42 U.S.C.A. §§1437f and 13661-13664

II. General Description of the Program

Project based rental assistance is a one-year or multi-year contract between HUD and a private landlord where HUD agrees to pay a landlord the difference between the HUD agreed rent level and what the tenants pay. Tenants pay 30% of their income for the units. The subsidy is attached to a particular building. The tenant cannot generally move with a project-based Section 8 subsidy.

Section 8 project-based rental assistance fills the gap between what an extremely low-, low-, or very low-income household can afford and the approved total rent in a multifamily project. Through project-based Section 8 rental assistance, HUD assists more than 1.2 million extremely low-, low- and very low-income families in obtaining decent, safe, and sanitary housing.

III. Eligibility Criteria for the Program

Households must be low income, meaning 80% of the area median income (AMI). Forty percent of the units being rented are restricted to extremely low income households (30% of AMI). Most of the rest must go to very low income (50% of AMI). Undocumented immigrants and some legal immigrants are excluded.

IV. Specific Services/Benefits/Rights Included in the Program

- Individuals and families pay no more than 30% of their adjusted income in rent.
- Provides a greater level of tenants' rights than most state and local laws including protections for habitability, relocation and good cause for eviction.

V. Significant Statutory Provisions

- Section 8 of United States Housing Act of 1937
- 42 U.S.C.A. §§1437f and 13661-13664
- Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f)

VI. Key Regulatory & Major Policy Provisions

- For Section 8 procedures, see Section 8 regulations at 24 CFR parts 5, 402, 880-881, 883-884, and 886
- 24 C.F.R. Part 247 (evictions)
- Each property has a Housing Assistance payments (HAP) contract with HUD that regulates the specifics of the relationship
- HUD Handbook 4350.3 REV-1, CHG-3 (June 2009)
- HUD Model Lease (Handbook 4350.3, App. 4 Form HUD-90105a, Dec. 2007)

VII. Significant Cases

There's really a range in here from tenants' rights issues to attempts to end the contracts, to rent levels, utility allowances and a range of contract disputes. Some more guidance here would be helpful.

- *Aujero v. CDA Todco, Inc.*, 756 F.2d 1374 (9th Cir. 1985) (holding that project meal charges were not rent)
- *Lower East Side I Assocs. LLC v. Estevez*, 6 Misc. 3d 632 (N.Y.C. Civ. Ct. 2004)
- *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 113 S.Ct. 1898 (1993) (holding that building owners did not have a contract right to unalterable formula-based rent adjustments)
- *Sheridan Square Partnership v. United States*, 66 F.3d 1105 (10th Cir. 1995) (HUD may use comparability studies to set rent)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- www.preservationdatabase.org to find existing properties
- NHLP Multifamily Housing Info Packet
- Center for Budget and Policy Priorities - Project Based Section 8 Policy Basics

Low Income Housing Tax Credit (LIHTC): Sec. 42 of the Internal Revenue Code

Internal Revenue Service (IRS)

I. Establishing Statutory Provision(s)

Section 42 of the Internal Revenue Code) 26 U.S.C.A. § 42

II. General Description of the Program

The LIHTC program does not provide housing subsidies. Instead, the program provides tax incentives, written into the Internal Revenue Code, to encourage developers to create affordable housing. The units are rented at a flat rate usually between 50-60% of the area median income (AMI)

III. Eligibility Criteria for the Program

- The family's income must fall into the income category (for the unit when seeking admission. However, tenants are not disqualified from staying in the unit if their income subsequently increases.
- LIHTC properties must accept section 8 vouchers
- There are no immigration restrictions for LIHTC properties.

IV. Specific Services/Benefits/Rights Included in the Program

Affordable housing available to anyone who meets the income eligibility for the unit.

V. Significant Statutory Provisions

26 U.S.C.A. § 42

VI. Key Regulatory & Major Policy Provisions

26 C.F.R. § 1.42 (Treasury Regulations)

VII. Significant Cases

- *Carter v. Maryland Mgmt. Co.*, 2003 WL 22533198, 2003 Md. LEXIS 740 (Md. Ct. App. Nov. 10, 2003) (good cause required for termination of LIHTC/Voucher tenancy).
- *Cimarron Village Townhomes, Ltd. v. Washington*, 1999 WL 538110, 1999 Minn. App. LEXIS 890 (Minn. App. 1999) (good cause eviction protection required under LIHTC statute).
- *Mendoza v. Frenchman Hill Apts.*, No. CS-03-0494-RHW (E.D. Wa. order Jan. 20, 2005) (decision prior to revenue ruling 2004-82 finding § 1983 claim unavailable to challenge HFA's and owner's failure to include required prohibition on no-cause evictions in regulatory agreement).

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

None.

Public Housing: United States Housing Act of 1937

U.S. Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

United States Housing Act of 1937, P.L. 93-383, 88 Stat. 653, 42 U.S.C. §1437 (1937).

II. General Description of the Program

The United States Housing Act of 1937 established the conventional public housing program. The aim of the program was to assist state and local governments in remedying unsafe housing conditions, to increase the amount of safe housing for low-income families, and to promote decent and affordable housing for all. The program produced nearly 1.4 million units nationwide. Currently, approximately 1 million units remain in the public housing program. The Department of Housing and Development (HUD), through its national headquarters, 10 regional offices, and its many local offices, administer the operating funds and capital funds provided by Congress to local public housing agencies (PHAs).

While Congress and HUD establish federal rules for PHAs to follow, PHAs have the discretion to adopt local policies and procedures that do not conflict with federal laws and regulations. PHAs are also required to develop five-year and annual plans in which they set forth their local rules.

III. Eligibility Criteria for the Program

- Public housing is limited to low-income families and individuals. Public housing residents must have incomes below or at the low-income limit for the jurisdiction.
- Must meet the PHA's definitions of "family."
- Have at least one member of the family who is a U.S. citizen or eligible immigrant.
- Must provide social security numbers for all members of the family six and older, or certify they do not have a social security number.
- Applicants are subject to screening for criminal history.

IV. Specific Services/Benefits/Rights Included in the Program

- Rents are generally set at 30 percent of a family's adjusted income, but can be set at a higher percentage if the family has a high deductible.
- Some public housing authorities (PHAs) have established family self-sufficiency (FSS) programs to promote employment and savings for public housing residents.

V. Significant Statutory Provisions

- 42 U.S.C. §§1437 et seq.: Contains the main provisions governing public housing that are included in the United States Housing Act of 1937.
- 42 U.S.C. § 1436a: Restrictions on use of assisted housing by undocumented immigrants.

- 42 U.S.C. §§13661-4: Provisions regarding Safety and Security in Public Assisted Housing.

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R.:
  - § 5 General HUD Program Requirements
  - § 135 Section 3—Economic Opportunity for Low and Very Low-Income Persons
  - § 902 Public Housing Assessment System (PHAS)
  - § 903 PHA Plans
  - § 905 Capital Fund
  - § 941 Development
  - § 943 Agency Consortia and Joint Ventures
  - § 945 Designated Housing for Disabled, Elderly, or Disabled and Elderly Families
  - § 960 Admission and Occupancy
  - § 963 Contracting with Resident-Owned Businesses
  - § 964 Tenant Participation and Tenant Opportunities
  - § 966 Lease and Grievance Procedures
  - § 970 Demolition or Disposition
  - § 971 Assessment of Reasonable Revitalization Potential
  - § 972 Conversion to Tenant-Based Assistance
  - § 984 Family Self-Sufficiency Program
  - § 990 The Public Housing Operating Fund Program

VII. Significant Cases

Thompson v. HUD, 348 F.Supp2d 398 (E.D. Md. 2005) (holding HUD violated the Fair Housing Act by failing focus its efforts to desegregate public housing regionally and failed to adequately act to disestablish the vestiges of Baltimore City's past discriminatory public housing policies).

McCardell v. HUD, 794 F.3d 510 (5th Cir. 2015) (In McCardell the Fifth Circuit held that the safe harbor provision precluded a Fair Housing Act claim based on the housing authority's decision to rebuild demolished housing on the same segregated site.)

Hicks v. Weaver, 302 F.Supp. 619 (E.D. LA 1969) (ordering HUD and the local housing authority to cease construction on a project until the case can proceed on the merits that the housing was being built in a way to perpetuate segregation)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- Public Housing Occupancy Guidebook

Rental Assistance Demonstration Program (Rental Assistance Demonstration (RAD)): Consolidated and Further Continuing Appropriations Act of 2012

U.S. Department of Housing and Urban Development (HUD)

I. Establishing Statutory Provision(s)

Consolidated and Further Continuing Appropriations Act of 2012

II. General Description of the Program

In an effort to respond to the underfunded recapitalization needs public housing, Congress enacted the Rental Assistance Demonstration (RAD) as part of the FY2012 appropriation bill. RAD allows public housing authorities (PHAs) to permanently convert public housing, Rent Supplement, Rental Assistance Payment, and moderate rehabilitation properties into Section 8 housing. RAD is intended to allow PHAs to leverage its revenue streams to secure private funding for recapitalization of existing properties and to preserve quality, affordable housing.

RAD has two components. Component 1 allows for public housing units to be converted into project-based Section 8 vouchers or project-based rental assistance. The number of units that can be converted under Component 1 was capped at 185,000 units nationwide. The units are chosen through a competitive selection process by HUD. Component 2 allows for Rent Supplement, Rental Assistance Payment and Moderate rehabilitation properties to convert into tenant-based vouchers. Component 2 does not have a cap and does not have a competitive selection process. However, conversions to project-based vouchers are subject to the availability of Tenant Protection Vouchers.

III. Eligibility Criteria for the Program

- The unit must have been previously public housing or part of the Rent Supplement program, Rental Assistance payment program or moderate rehabilitation properties program.
- Before submitting an application, the PHA must conduct two meetings to receive residents' comments. All received comments must be answered in a written response.
- After being selected, the PHA must meet with residents, at least once more, before executing the contract with HUD.
- All residents living in a building that will be converted through the RAD program must be notified by the PHA after the contract with HUD has been executed.

IV. Specific Services/Benefits/Rights Included in the Program

- RAD is intended to enable PHAs to leverage its current sources of income to access private funding for recapitalization of public housing.

- The enabling legislation and the HUD guidelines maintain key protections for tenants and housing affordability.
- If the tenant's rent increases due to the differences between the prior and successor programs is greater than $25 or 10 percent of rent, the guidance requires a three-year phase-in, which can be extended to a five-year phase-in at the PHA's option for good cause.
- Residents are provided with the opportunity to comment on conversion proposals to PHAs or owners.
- If a property participates in the RAD, they are subject to provisions to ensure the long-term use of the property for affordable housing, and are subject to a use agreement.
- Owners are still required to adhere to existing resident procedural rights.
- Residents living in buildings converted through the RAD program have the right to remain in the converted unit or to relocate with a Housing Choice Voucher.

V. Significant Statutory Provisions

None.

VI. Key Regulatory & Major Policy Provisions

Congress authorized RAD as part of the Consolidated and Further Continuing Appropriations Act of 2012. Authorization for RAD lies solely in the appropriations bill and has no other statutory basis. After the RAD authorization statute was passed, HUD issued HUD Notice PIH-2012-32 (HA), subsequently updated and revised by HUB Notice PIH-2012-32 (HA) (REV-3) ("RAD Notice"), which governs HUD's implementation of RAD. The RAD Notice provides the only implementation details for both RAD Component 1 and Component 2. The RAD Notice also supplements the requirements described in the HUD RAD Notice on Fair Housing, Civil Rights, and Relocation (HUD Notice 2016-17).

- Notice PIH-2012-32 (HA) (REV-3) ("RAD Notice")
- HUD RAD Fair Housing, Civil Rights, and Relocation Notice

VII. Significant Cases

The program is so new that there are not any cases. That's about to change.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

National Housing Law Program RAD Resources

HUD RAD Resources

Section 515 Rural Rental Housing Program: Housing Act

U.S. Department of Agricuture (USDA) Rural Development (RD) Mission Area

I. Establishing Statutory Provision(s)

Section 515 of the Housing Act of 1949, 42 U.S.C. §1485;

Rental Assistance, 42 U.S.C. § 1490a(a)(2)(A).

II. General Description of the Program

The Section 515 rural rental housing program was authorized by the Senior Citizens Housing Act of 1962. It authorizes (RD) to make loans to private, nonprofit and public entities for the construction, rehabilitation or preservation of affordable rental housing in rural communities for very low-, low-, and moderate-income families.

The housing primarily serves families and elderly households and households with persons with a disability. Developments can be mixed developments or restricted to elderly households. In addition, some developments may be restricted to elderly congregate housing or group housing.

To find Section 515 housing in a community, click here.

Historically, Section 515 loans were made for terms of 40 or 50 years. Currently, new loans are made for a term of 30-years, amortized over 50 years at an effective 1% interest rate. RD has an option of extending the 30-year loan to a 50-year loan at the end of the original 30-year term.

A deep subsidy, called Rental Assistance, is most Section 515 developments. However, not all units in a particular development receive Rental Assistance. Overall, Rental Assistance is available in about 70% of the 515 units. Households receiving Rental Assistance pay 30% of household income for shelter, which includes rent and utilities. Households that do not receive Rental Assistance pay the higher of 30% of income or the development's "basic rent," which is calculated based on the cost of operating the development and amortizing the Section 515 loan at the 1% interest rate.

About 26,000 Section 515 developments have Project Based Section 8 subsidy. Residents in those units pay 30 percent of income for shelter. Over 21,500 households in Section 515 housing are holders of HUD Housing Choice Vouchers. Many Section 515 projects are and were developed or rehabilitated with assistance under the Low Income Housing Tax Credit Program. Rents in these developments will vary depending on the income restrictions placed on the development by the state's tax credit allocation agency and may also vary if RD subsidies are available.

Over 550,000 units of Section 515 rental housing have been constructed since the program's inception. Due to loan prepayments, foreclosure and loan maturations, there are currently about 423,000 units in the program. Approximately 70% of the Section 515 units are occupied by low- and very low-income household that receive Rental Assistance. Many of the remaining households,

over 50,000, are rent "overburdened," which means that they pay more than 30% of household income for shelter.

Approximately 60% of all Section 515 household are headed by tenants who are elderly or have a disability. Nearly 72 percent of the households are headed by women. As of January 2016, the average household income for resident in the program was $10,544.

III. Eligibility Criteria for the Program

The RD regulations state that residents of Section 515 housing must be US citizens or persons permanently admitted to the United States. In fact, the provisions establishing that restrictions were not implemented when the regulations were adopted in 2004. See, footnote to 7 C.F.R. § 3560.152.

Section 515 housing is restricted to very-low, low- and moderate income households. Very low-income is defined as a household with less than 50% of median income for the area; low income is defined as a household with less than 80% of median income for the area, and a moderate income households is defined as a household with income that exceeds the HUD established area low-income limit by not more than $5,500.

Admission to 515 developments is prioritized by income to very-low income, low-income and moderate income applicants. However, landlords may establish some minimum income limitations for households seeking admission to units that do not receive Rental Assistance.

When Rental Assistance subsidy is not available to all households in a development and an assisted development is vacated, the Rental Assistance must be assigned to very low-income households paying the highest proportion of income for shelter. Second priority is given to very low-income applicants on the waiting list while third priority is given to low-income households paying the highest percentage of income for shelter.

Persons who require special design features will be given admission priority to units possessing those features without regard to resident income priorities. However, they will be given income priority among other persons needing such design features.

IV. Specific Services/Benefits/Rights Included in the Program

Residents cannot be evicted from the housing except for good cause. They are also entitled to grieve adverse decisions in all cases except evictions, which must be accomplished through state court proceedings. However, prior to an eviction, the household must be given notice of and a right to cure the violation that may later be the cause for the eviction.

Applicants for the housing are also entitled to grieve decisions with respect to their admission application under the RD grievance procedures. All leases under the program are annual leases renewable for additional one-year terms. Residents can break an annual lease for good cause, such as change in employment.

V. Significant Statutory Provisions

- Section 515 authorization: 42 U.S.C. §1485
- Rental Assistance Subsidy Authorization: 42 U.S.C. § 1490a(a)(2)(A)

VI. Key Regulatory & Major Policy Provisions

- 7 C.F.R. Part 3560; Subparts D, E, F, and N are most significant for residents.
- Handbooks:
    - HB-1-3560 covers loan origination
    - HB-2-3560 addresses asset management
    - HB-3-3560 describes project servicing

VII. Significant Cases

- *CBM Group v. Llamas*, 219 Cal.Rptr.3d 683 (Calif. Sup. Ct. Fresno Co. App. Div. 2017) (Resident of Section 515 development is entitled to notice of lease violation prior to landlord commencing a court eviction).
- *Goldammer v. United States*, 465 F.3d 1031 (9th Cir. 2006) (Residents of Section 515 developments are entitled to review of RD decision approving prepayment of RD loan and owner's effort to avoid RD prepayment restrictions by bringing state quit claim action is preempted by federal law. Case effectively, but not explicitly overturns Kimberly v. United States, 261 F.3d. 864 (9th Cir. 2001)).
- *Charleston Housing Authority v. U.S. Department of Agriculture*, 419 F.3d 729 (8th Cir, 2005).
- *Lifgren v. Yeutter*, 767 F.Supp. 1473 (D. Minn. 1991) (Court sets aside prepayment of Section 515 loan because RD failed to impose use restrictions to protect residents against displacement).
- *Kennedy v. Block*, 606 F.Supp. 1397 (W.D. Vir. 1985) (Residents of Section 515 housing are not entitled to an administrative hearing challenging an eviction prior to landlord commencing an eviction action in state court).

VIII. References to Medicaid

Reasonable expenses in excess of three percent of household income are deductible from income when determining household eligibility and rent subsidy levels. For elderly households, unreimbursed medical expenses in excess of three percent of household income are also deductible.

IX. Other Relevant Citations and Resources

An Advocates Guide to Rural Housing Preservation, National Housing Law Project (forthcoming)

Section 8 Housing Choice Voucher Program: Section 8 of the United States Housing Act

U.S. Department of Housing and Urban Development Department (HUD)

I. Establishing Statutory Provision(s)

42 U.S.C. § 1437

II. General Description of the Program

The Housing Choice Voucher (HCV) Program was enacted in 1974 as Section 8 of the United States Housing Act. On the federal level, the Department of Housing and Urban Development (HUD) administers the program and locally, vouchers are administered by Public Housing Agencies (PHAs). Congress annually appropriates funds for vouchers. PHAs are given a set number of vouchers that they are authorized to use each year.

When an applicant receives a voucher from the local PHA, the applicant must find a unit on the private market. The owner of the unit enters into a Housing Assistance Payment Contract with the PHA and signs a lease with the tenant. A key feature of the HCV program is portability, which permits voucher holders to move to the jurisdiction of another PHA and retain their assistance.

III. Eligibility Criteria for the Program

- Must meet income eligibility To be income-eligible, the applicant must be a family in any of the following categories:
    - (i) A "very low income" family;
    - (ii) A low-income family that is "continuously assisted" under the 1937 Housing Act;
    - (iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;
    - (iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));
    - (v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in § 248.101 of this title;
    - (vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under § 248.173 of this title.
- Must be a citizen or a noncitizen who has eligible immigration status.

IV. Specific Services/Benefits/Rights Included in the Program

Participants are issued a housing choice voucher that allows them to rent any unit (where a landlord will accept a voucher) in the jurisdiction of the housing authority that issues a voucher. The participant will pay 30% of their income and the PHA will make up the difference up to a cap.

V. Significant Statutory Provisions

- 42 U.S.C. § 1437f(o) (the main provisions governing the voucher program)
- § 1437f(o)(13) (PHA project-based assistance)
- § 1437f(o)(15) (Homeownership option)
- 42 U.S.C. § 1437 (Declaration of policy and public housing agency organization)
- 42 U.S.C. § 1436a (Restrictions on use of assisted housing by non-resident aliens)
- 42 U.S.C. §§ 13661-4 (Safety and Security in Public and Assisted Housing)

VI. Key Regulatory & Major Policy Provisions

- 24 C.F.R. Part 982—Section 8 Tenant Based Assistance: Housing Choice Voucher Program
- § 982.625 (Homeownership Option)
- 24 C.F.R. Part 984—Section 8 and Public Housing Family Self-Sufficiency Program
- 24 C.F.R. Part 985—Section 8 Management Assessment Program (SEMAP)
- 24 C.F.R. Part 5—General HUD Requirements; Waivers

VII. Significant Cases

- In *Sabi v. Sterling*, a voucher tenant filed suit alleging that defendants violated California laws prohibiting discrimination based on source of income.
- In *AAGLA v. City of Santa Monica*, a group of realtors and landlords in California sued the City arguing that a local Source of Income ordinance was preempted by state law.
- Advocates successfully fought a challenge to Austin's city ordinance prohibiting discrimination against tenants participating in the voucher program in *Austin Apt. Ass'n v. City of Austin*.

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

HUD, Housing Choice Voucher Program Guidebook (April 2001)

Self-Help Housing Program (Sections 523/502): Housing Act

U.S. Department of Agriculture (USDA), Rural Development Department (RD)

I. Establishing Statutory Provision(s)

Section 502 and Section 523 of the Housing Act of 1949.

II. General Description of the Program

The Self Help Housing program is a sweat equity program where groups of families get together and build each other's houses. Section 523 provides grants for the program and Section 502 provides direct loans (mortgages). There are roughly 3500 families that have participated in the program. The program is operable in rural areas as defined by RD. The loans are for 33 or 38 years and there is no required down payment. Families put in at least 65% of the construction labor on the homes in their self-help cohort.

III. Eligibility Criteria for the Program

Applicants must be low income (80% of area median income [AMI]) or very low income (50% of AMI). They must live in a rural area as defined by the USDA. They must be without adequate housing and be able to afford the mortgage, taxes and insurance.

IV. Specific Services/Benefits/Rights Included in the Program

The Self Help Housing program provides homeownership to low income families, sometimes families with very limited income. It requires a significant time commitment to put in what is often 1500 hours on the family's own house and the houses of the rest of their self-help cohort. At the end they families own houses with subsidized mortgages and often develop a strong relationship with the other families that went through the experience with them.

V. Significant Statutory Provisions

- 42 U.S. Code § 1472
- 42 U.S.C. 1441 et seq.

VI. Key Regulatory & Major Policy Provisions

- 7 CFR Part 3550
- 7 CFR Part 1944
- 7 CFR 1980
- Handbook - HB-1-3550
- USDA Administration Notice AN no. 4840, 4842, 4852, 4827, 4828

VII. Significant Cases

- *Bossert v. Springfield Group, Inc.* 579 F.Supp. 56 (S.D. Ohio, 1984)
- *Sheldon v. Vilsack* 538 Fed.Appx. 644 (6th Cir. 2013)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- http://www.rcac.org/housing/mutual-self-help-housing/

- http://www.rcac.org/housing/mutual-self-help-housing/self-help-housing-resources/

USDA Farm Labor Housing Grants (Sections 514/516): Housing Act

U.S. Department of Agriculture (USDA), Rural Development (RD) Mission Area

I. Establishing Statutory Provision(s)

Section 514 and 516 of Title V of the Housing Act of 1949. 42 U.S.C. §§ 1484 and 1486.

II. General Description of the Program

The RD Farm Labor Housing Program is made up of two components. Section 514 authorizes direct RD ***loans*** for developing on-farm and off-farm farm-labor housing. Such loans may be made to farmers, associations of farmers, family farm corporations, Indian tribes, nonprofit organizations, public agencies, associations of farmworkers, and limited partnerships for buying, building, or preserving farm labor housing. This housing is built on- or off-farms and farmers and farm associations who own such a development can restrict the housing to farmworkers employed by the farmer. Other sponsors cannot restrict the housing to workers on a particular farm or farms. These loans have a 1% interest rate and a 33-year term. Rental Assistance subsidy is not available for labor housing sponsored by farmers or farmer associations.

Section 516, authorizes RD to make ***grants*** for up to 90% of the cost of developing, purchasing or rehabilitating off-farm labor housing. The purposes of the Section 516 program are identical to those of the Section 514 program. However, Section 516 grants may only be made to nonprofit or public agencies, including Indian tribes, and may not be restricted to employees of designated farmers. All grants made in the program's early years were for 90% of the cost of developing the housing. This was done before RD was authorized to extend Rental Assistance subsidies so the program could serve very low income farmworkers. The remaining 10% was typically financed with a section 514 loan. The availability of Rental Assistance has allowed RD to reduce grant amounts and finance larger number of farmworker units since the Rental Assistance subsidy allows owners to pay off the Section 514 loans without having to increase shelter costs paid by the residents. Farm Labor housing is not restricted to rural areas. It can be built in rural or metropolitan areas regardless of the size of the community.

III. Eligibility Criteria for the Program

The Section 514/516 Farm Labor Housing program, is limited to farmworkers and their families. Some developments are restricted to seasonal farmworkers.

To qualify for admission, the tenant or cotenant must be a domestic farmworker. Retired or disabled domestic farmworkers are also eligible for the housing if they were active in the local farmworker community when they retried or became disabled. Persons who retired while active in

other farmworker communities are also eligible for admission, however, they have a lower priority than local households. Surviving household members of a deceased domestic farm laborer are also eligible to continue to live in a farmworker development.

The household must earn a substantial portion of its income from farm-work. RD has established regional minimum farmworker income limits for farmworker eligibility. They are published in RD Handbook 2-3560, Chapt. 6, Att. 6-H (Available at https://www.rd.usda.gov/files/3560-2chapter06.pdf).

All household residents in farm labor housing must be citizens or legally admitted for permanent residence. Persons qualifying as legally admitted permanent residents are defined in Section 214 of the Housing Act of 1980. Legally admitted temporary laborers, such as H-2A workers, are not eligible.

For off-farm housing, the resident must be very low-, low-income or moderate-income. Admission priority is given according to household income with the lowest income households having the highest priority.

On-farm housing is restricted to employees of the farmer. The housing may, in some instances, be provided without rental charges.

Some farmworker housing developments may be seasonably restricted, eliminating their need to meet year-around code requirements.

IV. Specific Services/Benefits/Rights Included in the Program

The housing is decent and typically provides very affordable rents that serve very-low income farmworkers. If Rental Assistance is available at the development, households pay 30% of household income for shelter. Otherwise, the household pays the basic rent for the development which is based on the cost of operating the development and amortizing the loan at the 1% interest rate. Household rent can be adjusted to reflect lower income when Rental Assistance is available.

Residents cannot be evicted from the housing except for good cause. They are also entitled to appeal adverse decisions in all cases except evictions, which must be accomplished through state court proceedings. However, prior to an eviction, the household must be given notice of and a right to cure the violation that may later become the cause for an eviction.

V. Significant Statutory Provisions

- Section 514: 42 U.S.C. 1484.
- Section 516: 42 U.S.C. 1486
- Section 521 Rental Assistance: 42 U.S.C. 1490a(a)(2)(A)

VI. Key Regulatory & Major Policy Provisions

The regulation codified at 7 C.F.R. § 3560 are applicable to all RD rental and farm labor housing. Additional Regulations that are specifically applicable to the farm labor program are codified at 7 C.F.R. 3560-Subpart L for off-farm labor housing and 7 C.F.R. 3560-Subpart M for on-farm labor housing.

Good cause and prior notice requirements are codified at 7 C.F.R. § 3560.159.

The tenant grievance and appeals process is codified at 7 C.F.R. § 3560.

VII. Significant Cases

- *Ponce v. Housing Authority of Tulare County*, 389 F.Supp. 635 (E.D. California, 1975) (Residents of Farm-labor Housing are entitled to notice and comment when owner proposes rent increase).
- *Roman v. Korson*, 307 F.Supp.2d 908 (W.D. Mich. 2004), 89 F.Supp. 899 (W.D. Mich. 2000) (Farm-labor residents are entitled to live in rent-free housing when owner entered into agreement with Rural Development to provide the housing on that basis).
- *Eliserio v. Floydada Housing Authority*, 455 F.Supp.2d 648 (S.D. Texas, 2006) (Housing authority's motion to dismiss is denied in an action brought by farmworkers and farmworker association contending that the authority maladministration of an RD farm-labor housing facility violated the Agricultural Workers Protection Act and state law).
- *CBM Group v. Llamas*, 219 Cal.Rptr.3d 683 (Calif. Sup. Ct. Fresno Co. App. Div. 2017) (Resident of Section 515 development is entitled to notice of lease violation prior to landlord commencing a court eviction).

VIII. References to Medicaid

Reasonable expenses in excess of three percent of household income are deductible from income when determining household eligibility and rent subsidy levels. For elderly households, unreimbursed medical expenses in excess of three percent of household income are also deductible.

IX. Other Relevant Citations and Resources

- https://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants
- http://ruralhousingcoalition.org/farm-labor-housing

Veterans Affairs Supportive Housing (VASH) Voucher Program: Consolidated Appropriations Act

U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Veteran's Affairs

I. Establishing Statutory Provision(s)

Pub.L. 110–161 (2007) (HR 2764 Consolidated Appropriations Act)

II. General Description of the Program

This program allows public housing authorities (PHAs) to provided tenant-based vouchers for special needs veterans receiving treatment and services from the Department of Veterans Affairs. The program combines HUD Housing Choice Voucher (HCV) rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA) at its medical centers and in the community. The participants are chosen by Veterans Affairs Medical Centers. Under certain conditions, PHAs can project-base their VASH vouchers.

III. Eligibility Criteria for the Program

- Generally, the VASH program is administered in accordance with the Housing Choice Voucher requirements but because VASH is a "housing first" program, there is less rigorous screening of participants.
- Must be a homeless veteran
- Must meet income eligibility requirements for the section 8 housing choice voucher program (24 CFR 982.201)

IV. Specific Services/Benefits/Rights Included in the Program

- Homeless veterans are given a housing voucher that they can use to rent a unit. The participant will generally pay 30% of their income in rent.
- Participants must comply with program rules and must access services through the local VA.

V. Significant Statutory Provisions

VI. 42 U.S.C. § 1437 (Declaration of policy and public housing agency organization)

VII. Key Regulatory & Major Policy Provisions

- 24 C.F.R. § 982 (Housing Choice Voucher Regulations)
- VHA HANDBOOK 1162.05, HUD DEPT. OF VETERAN AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM § 17

VIII. Significant Cases

Smart v. Dep't of Veteran Affairs, 759 F. Supp. 2d 867 (W.D. Tex. 2010) (pro per plaintiff did not meet the definition of homeless)

IX. References to Medicaid

None.

X. Other Relevant Citations and Resources

77 Fed. Reg. 17,086 (Mar. 23, 2012) (Establishes the policies and procedures for the administration of VASH vouchers).

Violence Against Women Act (VAWA)

U.S. Department of Housing and Urban Development (HUD), U.S.D.A. Office of Rural Development (RD), and U.S. Treasury's Internal Revenue Service (IRS)

I. Establishing Statutory Provision(s)

Violence Against Women Reauthorization Act of 2013, Pub. L. 103-322, Title IV, § 41411, as added Pub.L. 113-4, Title VI, § 601(a)(4) (Mar. 7, 2013), 127 Stat. 102; amended Pub.L. 114-324, § 6 (Dec. 16, 2016), 130 Stat. 1951, codified at 42 U.S.C. § 12491.

II. General Description of the Program

- VAWA 2013 protects the rights of applicants and tenants in certain federally subsidized housing programs who are survivors of domestic violence, dating violence, sexual assault, or stalking. VAWA 2013's housing provisions prohibit survivors from being evicted or denied housing assistance based on acts of violence committed against them. VAWA applies to survivors regardless of their sex, gender identity, or sexual orientation.

- Congress enacted the housing provisions in response to findings that "[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence."

III. Eligibility Criteria for the Program

- VAWA covers the following federal housing programs:

    - Public housing
    - Section 8 Housing Choice Voucher program
    - Section 8 project-based housing
    - Section 202 housing for the elderly
    - Section 811 housing for people with disabilities
    - Section 236 multifamily rental housing
    - Section 221(d)(3) Below Market Interest Rate (BMIR) housing
    - Housing Trust Fund
    - HOME
    - Housing Opportunities for People with Aids (HOPWA)

- McKinney-Vento Act homeless assistance programs
- Section 515 Rural Rental Housing
- Section 514 and 516 Farm Labor housing
- Section 533 Housing Preservation Grant Program
- Section 538 Multifamily Rental Housing
- Low-Income Housing Tax Credit program (LIHTC)

- VAWA does not cover tenants living in private housing without any type of rental subsidy. If a tenant is not participating in a housing program covered by VAWA, then advocates still should consider whether the tenant may be protected by fair housing laws, as well as other state and local laws that provide protections for survivors in housing. *See* NHLP, State Law Compendium: Housing Rights of Domestic Violence Survivors (Dec. 2016).

- VAWA protects any individual who is or has been a survivor of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and is living in, or seeking admission to, any of the covered housing programs. VAWA 2013 applies to survivors of all gender identities and LGBT individuals. Thus, male survivors and survivors in same-sex relationships can assert VAWA's protections.

- Under VAWA, the definitions of domestic violence, dating violence, sexual assault, and stalking are as follows:

  - "Domestic violence" includes violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child; a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or a person similarly situated to a spouse of the victim under state law. VAWA also covers any person who is protected by a state's family violence laws.
  - "Dating violence" is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is based on factors such as its length, type, and frequency of interaction.
  - "Sexual assault" means any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent.
  - "Stalking" is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

- VAWA also protects a survivor's "affiliated individual," defined as a spouse, parent, brother, sister, or child of that victim; an individual to whom the victim stands in loco parentis; or an individual, tenant, or lawful occupant living in the victim's household.

IV. Specific Services/Benefits/Rights Included in the Program

- HUD encourages VAWA-covered housing providers to consider adopting admission preferences for survivors of VAWA crimes.

- Covered housing providers may not use an individual's status as a survivor of a VAWA crime as a basis for denying admission to any of the covered housing programs.

- With regard to criminal history, VAWA prohibits anyone from being denied assistance, tenancy or occupancy rights to housing solely because of criminal activity, if that activity is directly related to domestic violence, dating violence, sexual assault or stalking in which a household member, guest or any person under the tenant's control engages, if the tenant or affiliated individual of the tenant is the survivor.

- An incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated violation of the lease by the survivor of that abuse and shall not be good cause for terminating the survivor's tenancy or rental assistance.

- Criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking will not be cause for eviction or subsidy termination if the tenant or an affiliated individual of the tenant is the survivor of that violence.

- In the Housing Choice Voucher program, under HUD regulations, if a family break-up occurs because of domestic violence, dating violence, sexual assault, or stalking, then "the PHA *must* ensure that the victim retains assistance".

- A covered housing provider may bifurcate a lease to evict the offender while allowing the survivor to remain in occupancy. Household members, including the survivors, who remain in the unit after a lease bifurcation have special protections.

- VAWA protects the survivor's ability to use a Housing Choice Voucher in another jurisdiction (or port) if the survivor has to break a lease to escape the abuser without the approval of the housing authority.

- Policies restricting the timing or frequency of portability moves do not apply if a family needs to relocate due to domestic violence, dating violence, sexual assault, or stalking.

- Each federal agency in charge of administering the covered housing programs must adopt a model emergency transfer plan to be used by PHAs and owners. HUD has required all covered housing providers to develop and implement VAWA emergency transfer plans by June 14, 2017.

- Information provided for the purposes of documenting an individual's VAWA claim as a survivor must be kept confidential by the housing provider and its agents, unless the survivor requests disclosure in writing; the disclosure is necessary for an eviction or termination proceeding; or if the disclosure is otherwise required by law.

- PHAs and owners must provide the HUD VAWA rights notice, Form HUD 5380, accompanied by the agency-approved, self-certification form to applicants and tenants at three critical junctures: (1) at the time an applicant is denied residency; (2) at the time an individual is admitted; and (3) with any notification of eviction or termination of assistance. Translated versions of this form is available on HUD's website.
- PHAs and HUD-subsidized owners must have VAWA protections in their leases.

V. Significant Statutory Provisions

- Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 12491
- Fair Housing Act, 42 U.S.C. § 3601 *et seq*.
- United States Housing Act of 1937, 42 U.S.C. § 1437.

VI. Key Regulatory & Major Policy Provisions

- HUD's regulations and sub-regulatory authorities implementing VAWA 2013
    - HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80,724 (Nov. 16, 2016)
    - HUD, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs; Correction, 81 Fed. Reg. 87,812 (Dec. 6, 2016)
    - HUD, Notice PIH-2017-08 (HA), Violence Against Women Reauthorization Act of 2013 Guidance (May 19, 2017)
    - HUD, H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents (June 30, 2017)

- RD's updated notice implementing VAWA 2013
    - RD, AN No. 4814 (1944-N), Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act in Rural Development's Multi-Family Housing Programs (Jan. 18, 2017)

VII. Significant Cases

- *Dickinson v. Zanesville*, 975 F.Supp.2d 863 (S.D. Ohio 2013) (noting the housing authority's abandonment of its obligations under the Violence Against Women Act and its continued blaming of the survivor could support an inference that housing authority's action were motivated by gender bias).

- *Alvera v. Creekside Village Apartments* (HUD Reasonable Cause Finding and Charge of Discrimination 2001)

VIII. References to Medicaid

None.

IX. Other Relevant Citations and Resources

- HUD Public Housing Occupancy Guidebook Chapter 19
- NHLP, State Law Compendium: Housing Rights of Domestic Violence Survivors (Dec. 2016).
- HUD, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, (September 16, 2016)
- HUD, Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980, (Dec. 15, 2016)
- HUD Office of Fair Housing & Equal Opportunity, Memorandum on assessing claims of housing discrimination against victims of domestic violence under the Fair Housing Act (Feb. 9, 2011)
- HUD, Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act, 81 Federal Register 63,054 (Sep. 14, 2016)
- Protections Delayed: State Housing Finance Agency Compliance with the Violence Against Women Act (2017)
- Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors (2017)

Infrastructure

Fixing America's Surface Transportation Act

Department of Transportation, Federal Highway Administration

I. Establishing Statutory Provision(s)

Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015) (codified as amended in scattered sections of 12 U.S.C., 16 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 40 U.S.C., 42 U.S.C., and 49 U.S.C.).

II. General Description of the Program

- Authorizes $305 billion over fiscal years 2016-2020 for highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology, and statistics programs. Provides a dedicated source of federal dollars for freight projects for the first time.
- Establishes a National Surface Transportation and Innovative Finance Bureau to provide assistance and communicate best practices to project sponsors.
- Replaces the Transportation Alternatives Program (TAP) with a set-aside of Surface Transportation Block Grant (STBG) program funding. Funds for transportation alternatives through the STBG grow from $850 million per year in 2018-2020.
    - Safe Routes to School, bicycling and walking projects can compete for funding.
        - State and local nonprofit organizations allowed to compete directly for TAP dollars.
- STP Set-asides for transportation alternatives include projects such as pedestrian and bicycle facilities, recreation trails, safe routes to school projects, community improvements and environmental mitigation. Unless state opts out, it must use a specified portion of its TA funds on recreational trails projects.
- Makes a number of changes to the Department's safety programs, including increasing the maximum civil penalty that may be imposed against auto-makers for safety-related motor vehicle defects and increases accountability of states to ensure rail transit safety performance.

III. Eligibility Criteria for the Program

- Surface Transportation Block Grant Program, 23 U.S.C. § 133 (2012).
- Funding for transportation alternatives under the STBG as described in this overview from the Federal Highway Administration: "States and MPOs for urbanized areas with more than 200,000 people will conduct a competitive application process for the use of TA funds; eligible applicants include tribal governments, local governments, transit agencies, school districts, and a new eligibility for nonprofit organizations responsible for local

transportation safety programs. The Act also newly allows each urbanized area of this size to use up to half of its sub-allocated TA funds for any STBG-eligible purpose (but still subject to the TA-wide requirement for competitive selection of projects)." U.S. Dep't of Trasp., Fed. Highway Admin., Fixing America's Surface Transportation Act or "FAST Act": A Summary of Highway Provisions (2016), https://www.fhwa.dot.gov/fastact

- Competitive grants: Nationally Significant Freight and Highway Projects (FASTLANE Grants) (23 USC 117); Surface Transportation System Funding Alternatives; Advanced Transportation and Congestion Management Technologies Deployment

IV. Specific Services/Benefits/Rights Included in the Program

There are a range of programs that address transportation for vulnerable populations which are funded under the FAST Act. Below are just a few example of programs:

- The Grants for Bus and Bus Facilities Program (49 USC 5339): Grants to states for buses and bus facilities. (https://www.transit.dot.gov/funding/grants/bus-and-bus-facilities-fact-sheet-section-5339)
- Formula Grants for Rural Areas (49 USC 5311): Grants to rural communities of under 50,000 people to support public transportation systems.
- Pilot Program for Innovative Coordinated Access and Mobility (Section 3006(b)): Funds innovative projects that improve the coordination of transportation services and nonemergency medical transportation services for the transportation disadvantaged, including deployment of coordination technology, projects that create or increase access to community One-Call/One-Click Centers, and other projects deemed appropriate by the secretary of Transportation.
- Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program (49 USC 5310): Supports public transportation services that meet the special transportation needs of seniors and individuals with disabilities.
- Public Transportation Emergency Relief Program (49 USC 5324): Funds transit service during an emergency. An emergency is a natural disaster affecting a wide area such as floods, hurricanes, earthquakes, tidal waves, or other catastrophes resulting from external causes. Both capital and operating expenses are eligible but operating expenditures must relate to evacuation services; rescue operations; temporary public transportation service; or reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency.

The American Public Transportation Association's primer on the FAST Act provides a comprehensive overview of the programs and the appropriations.

V. Significant Statutory Provisions

- Title III of FAST Act pertains to public transportation
- Section 1109 (codified at 23 U.S.C. § 133): Transportation alternatives
    - Set-asides for TA projects

VI. Key Regulatory & Major Policy Provisions

- Guidance and Regulations: https://www.fhwa.dot.gov/fastact/guidance.cfm

VII. Significant Cases

None

VIII. References to Medicaid

None

IX. Other Relevant Citations and Resources

- Dept of Transportation's Fast Act website
- Dept of Transportation
- Safe Route to School National Partnership

Safe Drinking Water Act

Environmental Protection Agency

I. Establishing Statutory Provision(s)

- 42 USC 300f et. seq (1974), Pub. L. 93-523, 93rd Cong., 88 Stat.1660 (see also https://www.law.cornell.edu/uscode/text/42/chapter-6A/subchapter-XII)
    - Amended by WIIN Act, P.L. 114-322.

II. General Description of the Program

- The Safe Drinking Water Act was passed in 1974 to establish uniform quality standards for the approximately 240,000 public water systems in the United States to reduce contamination in drinking water. Public drinking water suppliers in the United States are under a duty to provide their customers with drinking water that meets federal quality standards established under the provisions of the Act. (*Citizens' Suits Under the Safe Drinking Water Act* Robert W. Vinal, J.D.American Jurisprudence Proof of Facts 3d)
- Requires EPA to establish National Primary Drinking Water Regulations including maximum contaminant levels and maximum contaminant level goals.
- Regulates contaminants in drinking water supplied by public water systems. Requires the EPA to set national drinking water regulations that incorporate enforceable maximum naturally-occurring and man-made contaminant levels. Under the Safe Drinking Water Act, the EPA, with its partners, implement various technical and financial programs to ensure drinking water and safety.
- Amended in 1986 and 1996.

    - 1996 – enhanced the existing law by recognizing source water protection, operator training, funding for water system improvements, and public information as components of safe drinking water.
        - Requires water suppliers to prepare Source Water Assessments which tell their consumers where their water comes form, what contaminants are in it, and whether the water poses a risk to health.
- States can apply to the EPA for "primacy," the authority to implement the Safe Drinking Water Act within their jurisdiction, if they show that they will adopt standards at least as stringent as the EPA's standards and make sure that water systems meet these standards.
- Set up barriers against pollution, including source water protection, treatment, distribution, system integrity, and public information.

III. Eligibility Criteria for the Program

- Does not regulate private wells which serve fewer than 25 individuals. Does not cover bottled water.
- Public water systems: have at least 15 service connections or serve at least 25 people per day for 60 days of the year.
- Drinking water standards apply to water systems differently based on their type and size.

IV. Specific Services/Benefits/Rights Included in the Program

- Includes whistleblower protection provision: 42 USC 300j-9(i)
- States can bring civil actions before a State Court. EPA can bring enforcement action.
- Right-to-know and Consumer Confidence Reports – public involvement.
    - Consumer Confidence reports section 1414 (WIIN)
- Citizens' Civil Actions: "In addition to providing the EPA with the power to bring administrative and civil actions against violators, the SDWA also authorizes citizens' civil actions where the government has failed to pursue an action against a violator. The SDWA's citizens' suits provision states that "any person may commence a civil action on his own behalf against (1) any other person, including the United States and any other government instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution, who is alleged to be in violation of any requirement prescribed by or under the Safe Drinking Water Act; or (2) against the EPA Administrator for alleged failure to perform any nondiscretionary act or duty under the SDWA." Thus, the citizens' civil actions provisions of the SDWA permit an individual to act as a "private attorney general" by directly filing a civil suit in federal district court against an SDWA violator if the citizen plaintiff can meet certain subject matter jurisdiction and standing requirements and if, prior to filing the action, the citizen plaintiff has timely performed certain pre-suit notice procedures…" (*Citizens' Suits Under the Safe Drinking Water Act*, Robert W. Vinal, J.D.American Jurisprudence Proof of Facts 3d).

V. Significant Statutory Provisions

- Includes a provision that prohibits employers from retaliating against employees for engaging in protected activities pertaining to alleged violations of the SDWA, such as providing information about an alleged violation to the EPA or participating in a proceeding under the SDWA: 42 USC 300j-9(i).
- See page 20-22

VI. Key Regulatory & Major Policy Provisions

- Drinking Water Contaminants – Standards and Regulations
  - National Primary Drinking Water Regulations
    - Microorganisms
    - Disinfectants
    - Disinfection byproducts
    - Inorganic chemicals
    - Organic chemicals
    - Radionuclides
  - Drinking Water requirements for States and Public Water Systems

VII. Significant Cases

- *Vernon Village, Inc. v. Gottier*, 755 F. Supp. 1142 (D. Conn. 1990) (concluding, among other things, that a trailer park resident had a viable claim under the SDWA based on an alleged presence of excessive contaminants to drinking water, and that drinking water fell within the "consumer product" exception to CERCLA's definition of "facility").
- *Concerned Pastors for Social Action v. Khouri*, 844 F.3d 546 (6th Cir. 2016) (denying motion for stay of a preliminary injunction requiring city, state, and local officials to provide city residents with safe drinking water at point of use; plaintiffs' underlying claims were based on alleged mishandling of city's water treatment and distribution system resulting in lead leaching into drinking water).

VIII. References to Medicaid

None

IX. Other Relevant Citations and Resources

- Understanding the Safe Drinking Water Act, EPA
- Safe Drinking Water Act: A summary of the Act and its Major Requirements (March 1, 2017). Congressional Research Service.
- Small Systems Guide to Safe Drinking Water Act Regulations