This is a staff Draft of proposed new 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries.

The Department announces the release of a staff draft of a new proposed rule in 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, to be entitled §1.410 Determination of Alien Status for Program Beneficiaries.

While this rule may have applicability to federal or state programs other than programs operated within the Community Affairs Division, the two programs for which this rule was specifically contemplated are the Low Income Home Energy Assistance Program and the Weatherization Assistance Program. This staff draft can be found under the Community Affairs Division’s main page at https://www.tdhca.state.tx.us/community-affairs/index.htm.

A conference call to discuss this staff draft, and answer questions regarding the draft, will be held at 10:00 a.m., on Monday, October 22, 2018.

Call In Information:
877-226-9790
Access code 9749661

This DRAFT document has been prepared by staff. It has NOT been reviewed with the Board nor had Board member input.

TDHCA welcomes stakeholder input on this staff DRAFT. While this DRAFT creates an opportunity for discussion and stakeholder input, the input we receive will NOT be treated as "public comment" under the rulemaking provisions of the Administrative Procedures Act as it may or may not (depending on input) ultimately be the version of the rule presented to the Board for publication in the Texas Register for official public comment.

When this rule is approved by the Board for publication in the Texas Register, the official public comment period will be initiated.

Note also that this draft rule includes provisions for voluntary measures to address questions of legal status. Inclusion of such voluntary provisions is something that may or not be incorporated in any formally proposed rule depending on additional guidance requested from the US Department of Health and Human Services.

Please direct all input to Brooke Boston at brooke.boston@tdhca.state.tx.us. Any input is requested to be provided by 5:00pm October 26, 2018.
§ 1410 Determination of Alien Status for Program Beneficiaries

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

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

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

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

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

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

(5) Subrecipient--An entity that receives federal or state funds passed through the Department.

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

(c) Applicability for Federal Funds.

(1) Applicability. The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA, even if certain exemptions under PRWORA may exist as further provided in this rule.

(d) Applicability for State Funds.

The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization, to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d) a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a
household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Housing Energy Assistance Program and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient’s Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipient will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. If no such election is made by the deadline, Subrecipient will no longer be eligible to perform as a Subrecipient in this program as further provided for in paragraph (3) of this subsection. Failure by Subrecipient to select an option by the deadline is good cause for nonrenewal of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

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

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

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department’s access to such system.

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

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

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

D) If no election is made by the deadline in paragraph (2) of this subsection, the Subrecipient will be provided notification under Tex. Gov’t Code Chapter 2105 that the Department does not intend to renew the Contract with Subrecipient at the end of the current Contract Term. The Subrecipient may have a right to request a hearing under Tex. Gov’t Code Chapter 2105.

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

(g) The Department may further describe Subrecipient’s responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with Subrecipient.