



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 28, 2010</p>	<p>No. I10-008 (R09-041)</p> <p>Re: Public Benefits and A.R.S. §§ 1-501 and -502</p>
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To: David Raber
Director, Arizona Department of Administration

Questions Presented and Summary Answers

1. Does the language "state or local benefit" as used in Arizona Revised Statutes ("A.R.S.") § 1-502 include grants, contracts or loans with the state or local government?

Answer: "State or local public benefit" as used in A.R.S. § 1-502(A) includes grants, contracts and loans.

2. Does the term "person" in A.R.S. §§ 1-501 and -502 apply to individuals only or to fictitious persons such as business entities as well?

Answer: The term "person" in A.R.S. §§ 1-501(A) and -502(A) is limited to individuals.

3. Do A.R.S. §§ 1-501 and -502 apply to all employees, volunteers, contractors, sub-contractors and vendors alike?

Answer: The verification requirements apply to employees of government agencies and to private entities contracting with those agencies to determine eligibility. The reporting requirements and associated criminal penalties in subsections E of A.R.S. §§ 1-501 and -502 apply to government employees of agencies who are administering public benefits.

4. If the State administers a benefit program funded by a private funding source, do the requirements in A.R.S. § 1-502 still apply?

Answer: The requirements of A.R.S. § 1-502 apply to state or local public benefits that are provided by state or local government even if they are funded through private sources.

5. How do A.R.S. §§ 1-501 and -502 affect doing business with companies that are headquartered outside of the United States?

Answer: Because A.R.S. §§ 1-501 and -502 apply only to natural persons, they do not affect companies headquartered outside the United States.

6. Does a permanent resident card qualify as an "employment authorization document" pursuant to sections A.R.S. §§ 1-501(A)(7) and -502(A)(7)?

Answer: Because lawful permanent residents are authorized to work in the United States, presentation of proof of lawful permanent residence would suffice as evidence of work authorization for the purposes of A.R.S. §§ 1-501 and -502.

7. Would including a section regarding compliance with E-verify in grant agreements demonstrate compliance with A.R.S. §§ 1-501 and -502?

Answer: Including a section in a grant requiring E-verify does not satisfy A.R.S. §§ 1-501 and -502 because E-verify is for use by employers in hiring employees; it is not for use when verifying the immigration status of an applicant for a public benefit.

8. The documents listed in A.R.S. §§ 1-501 and -502 do not appear to meet the requirements for providing federal and state public benefits, as defined in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”). Please provide guidance regarding compliance with current state statutes and PRWORA.

Answer: The documents listed in A.R.S. §§ 1-501 and -502 do not all satisfy the citizenship or immigration status requirements that the federal government has established for public benefits other than Medicaid. The lists also fail to include other documents that would suffice for proof of U.S. citizenship or the required immigration status. For federal public benefits, agencies should comply with federal guidance to verify eligibility. For state and local public benefits, agencies should comply with A.R.S. § 1-502 and take additional steps as necessary to ensure that recipients of the benefits satisfy the eligibility requirements in 8 U.S.C § 1621.

9. Must the sworn affidavits required in A.R.S. §§ 1-501 and -502 be notarized statements? If so, some agencies do not have notaries on staff and will be required to use notaries who may charge fees. Is it permissible to charge applicants or contractors the notarization fees?

Answer: Agencies must comply with federal requirements and limitations as to establishing eligibility for federal public benefits. For state or local public benefits, agencies may, but are not required to, obtain notarized statements as to the authenticity of documents presented. If the entity determining eligibility for the state or local public

benefit decides to require a notarized affidavit, it may charge an applicant or contractor a notary fee not to exceed \$2.00.

10. With regard to privacy matters, is it permissible to include the documentation and affidavits in the employee or applicant's file? In other words, please provide guidance regarding storage and retention of the required documentation and affidavits.

Answer: Documentation may be placed in case or other files relating to the application.

Background

In the third special session of the forty-ninth Legislature, the Arizona Legislature enacted two statutory changes regarding public benefits as part of the General Government Budget Reconciliation Bill, House Bill ("H.B.") 2008. *See* 2009 Ariz. Sess. Laws, 3d Spec. Sess., ch. 7, §§ 1, 2. Section 1 of the bill amended A.R.S. § 1-501, which addresses federal public benefits; section 2 created a new statute, A.R.S. § 1-502, which addresses state and local public benefits. *Id.* Both rely on definitions drawn from Title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), which restricted access to welfare and public benefits for certain non-citizens. In the second regular session of the forty-ninth Legislature, the Arizona Legislature enacted H.B. 2162, which included amendments to A.R.S. §§ 1-501 and -502. *See* 2010 Ariz. Sess. Laws, 2d Reg. Sess., ch. 211, §§ 1, 2.

Federal Public Benefits and A.R.S. § 1-501

Section 1-501, as amended by H.B. 2008 and H.B. 2162, states that "to the extent permitted by federal law, any person who applies for a federal public benefit that is administered by this state or a political subdivision . . . and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United

States” must submit one of eleven specified documents “demonstrating lawful presence in the United States[.]” Section 1-501 lists the documents as follows:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
3. A United States certificate of birth abroad.
4. A United States passport.
5. A foreign passport with a United States visa.
6. An I-94 form with a photograph.
7. A United States citizenship and immigration services employment authorization document or refugee travel document.
8. A United States certificate of naturalization.
9. A United States certificate of citizenship.
10. A tribal certificate of Indian blood.
11. A tribal or bureau of Indian affairs affidavit of birth.

Additionally, if federal law permits, state and local governments may accept alternate “documentation as specified in section 6036 of the federal deficit reduction act of 2005”¹ and related guidance as to “the elderly and persons with disabilities or incapacity of the mind or body.” A.R.S. § 1-501(C). Persons applying for federal public benefits are to “sign a sworn affidavit stating that the documents presented pursuant to subsection A are true under penalty of perjury.” A.R.S. § 1-501(D).

“Federal public benefit” is defined in subsection I of A.R.S. § 1-501 to have the same meaning as in 8 U.S.C. § 1611. In 8 U.S.C. § 1611, Congress specified that, with certain exceptions, “an alien who is not a qualified alien . . . is not eligible for any Federal public benefit.” “Federal public benefit” is defined in 8 U.S.C. § 1611(c) to include, with some exceptions:

¹ Pub. L. No. 109-171; 120 Stat. 81. This law amended a Medicaid statute, 42 U.S.C. § 1396b(x), to require “satisfactory documentary evidence of citizenship or nationality.” The law states that certain enumerated documents suffice as evidence of U.S. citizenship or nationality and gives the U.S. Secretary of Health and Human Services authority to specify, by regulation, other documentation permissible to prove identity and citizenship.

- (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of the United States or by appropriated funds of the United States.

Congress exempted certain federal public benefits from this eligibility requirement. *See* 8 U.S.C. § 1611(b)(1). These exceptions are described in Ariz. Att’y Gen. Op. I05-009.

State or Local Public Benefits and A.R.S. § 1-502

Section 1-502 establishes parallel requirements for state and local public benefits. Section 1-502(A) states that “[n]otwithstanding any other state law and to the extent permitted by federal law,” any agency or political subdivision of this state that administers any state or local public benefit shall require each person who applies for such a public benefit to submit at least one of eleven specified “documents to the entity administering the state or local public benefit demonstrating lawful presence in the United States.” Section 1-502 lists the same documents set forth in A.R.S. § 1-501. “State or local public benefit” is defined in subsection I of A.R.S. § 1-502 to have the same meaning as in 8 U.S.C. § 1621, with some exceptions.²

“State or local public benefit” is defined in 8 U.S.C. § 1621(c) as:

- (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of

² Subsection I exempts “commercial or professional licenses, benefits provided by the public retirement systems and plans of this state or services widely available to the general population as a whole” from the requirements of that section.

the a State or local government or by appropriated funds of a State or local government.³

Persons applying for state or local public benefits are to “sign a sworn affidavit stating that the documents presented pursuant to subsection A are true under penalty of perjury.” A.R.S. § 1-502(D).

Under PRWORA, only citizens, qualified aliens, nonimmigrants and aliens paroled into the United States under 8 U.S.C. § 1182(d)(5)(A) for less than one year are eligible for many state or local public benefits. 8 U.S.C. § 1621(a). Similar to 8 U.S.C. § 1611, Congress expressly determined that certain public benefits are available to all non-citizens without regard to immigration status, including emergency medical assistance as defined in Title XIX of the Social Security Act; “short-term, non-cash, in-kind emergency disaster relief;” certain public health assistance “for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;” and

³ Subsection (c)(2) of 8 U.S.C § 1621 exempts the following from the definition:

(A) . . . any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 *et seq.*] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

[p]rograms, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

8 U.S.C. §1621(b). Thus, pursuant to federal law, verification of citizenship or immigration status is not required for these benefits. Congress specifically permitted states to provide state or local public benefits to aliens not lawfully present but "only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d). Arizona has not enacted any such law.

Analysis

I. "State or Local Public Benefit" in A.R.S. § 1-502(A) Includes Grants or Loans from and Contracts with State or Local Government.

You have asked whether the term "state or local benefit" in A.R.S. § 1-502(A) includes grants or loans from or contracts with state or local government. Section 1-502(A) requires:

[A]ny agency of this state or a political subdivision of this state that administers any state or local public benefit shall require each person who applies for the state or local public benefit to submit [certain documentation proving legal presence].

Subsection I provides that "[f]or the purposes of this section, 'state or local public benefit' has the same meaning prescribed in [8 U.S.C. § 1621]." Subsection (C)(1)(A) of

8 U.S.C. § 1621 defines "state or local public benefit" in part as follows:

[A]ny *grant, contract, loan*, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government. . .

(Emphasis added.)

The primary goal of statutory interpretation is to determine legislative intent. *See City of Phoenix v. Superior Court in and for Maricopa County*, 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984). To do so, a court looks first to the statute's language, and will give plain meaning to its terms. *Rineer v. Leonardo*, 194 Ariz. 45, 46, ¶ 7, 977 P.2d 767, 768 (1999). Where the language of a statute is plain and unambiguous, there is no need for additional interpretation. *Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10, 990 P.2d 1055, 1057 (1999).

Subsection I of A.R.S. § 1-502 provides that the definition of "state or local benefit" is found in 8 U.S.C. § 1621. That federal statute's definition includes grants, contracts, and loans from a state or local government. Therefore, the term "state or local benefit" includes grants or loans from and contracts with state or local governments.

II. The Meaning of "Person" in A.R.S. §§ 1-501(A) and -502(A) is Limited to Individuals.

You asked whether the term "person" in A.R.S. §§ 1-501(A) and -502(A) applies to individuals only or to fictitious persons such as business entities as well. In 2010, the Legislature inserted the word "natural" before the word "person" in A.R.S. §§ 1-501(A) and -502(A). *See* 2010 Ariz. Sess. Laws, 2d Reg. Sess., §§ 1, 2. The purpose of this change was, of course, to clarify that these subsections apply to "natural persons" rather than fictitious persons such as business entities. *See* Ariz. H.R., House Summary as Transmitted to the Governor for H.B. 2162, 49th Legis., 2d Reg. Sess. (5/4/10). Therefore, the term "person" is limited to individuals.

III. Verification Requirements Apply to Employees of State and Local Government Agencies Administering Public Benefits and Private Entities Contracting to Determine Eligibility; Reporting Requirements Apply to Government Employees of Agencies Administering Benefits.

Your next question addresses whether the requirements of A.R.S. §§ 1-501 and -502 apply to employees, volunteers, contractors, sub-contractors, and vendors of the state government.

Subsection A of A.R.S. § 1-501 states that those applying for federal public benefits from the state shall submit documents proving legal presence “to the entity that administers the federal public benefit.”⁴ Similarly, A.R.S. § 1-502(A) states that those applying for state or local public benefits from the state shall submit documents proving legal presence “to the entity that administers the state or local public benefit.” Some agencies currently contract with private entities to administer benefits, and the terms of such contracts vary from agency to agency. Such contracts sometimes include terms addressing the private entity’s performance of eligibility verification. The verification requirements of A.R.S. §§ 1-501 and -502 would apply to such private entities where they have agreed to perform eligibility verification.⁵

Sections 1-501 and -502 include penalties for those persons employed by state or local government and engaged in public benefit eligibility work who violate the law. Specifically, A.R.S. § 1-501(E) states:

Failure to report discovered violations of federal immigration law *by an employee of an agency of this state or a political subdivision of this state* that administers any federal public benefit is a class 2 misdemeanor. If that

⁴ As stated elsewhere in this opinion, the entity administering the federal public benefit must meet limitations and requirements set forth in relevant law.

⁵ Federal law makes clear that nonprofit charitable organizations that contract with governmental entities are not required to determine, verify, or otherwise require proof of an applicant’s eligibility for public benefits based on the applicant’s status as a U.S. citizen, U.S. non-citizen national, or qualified alien. 8 U.S.C. § 1642(d); *see also* Dep’t of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA, 62 Fed. Reg. 61,344, 61,345-61,346 (Nov. 17, 1997) [hereinafter “Interim Guidance”].

employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

(Emphasis added.) While A.R.S. § 1-502(E) states:

Failure to report discovered violations of federal immigration law *by an employee of an agency of this state or a political subdivision of this state* that administers any state or local public benefit is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.

(Emphasis added.) This language creates a duty for state and local government employees to report violations. *See* Ariz. Att'y Gen. Op. I10-004. The statutes do not mention volunteers, contractors, sub-contractors, and vendors administering benefits on behalf of the government. In general, courts will not look beyond clear and unambiguous statutory language to derive another meaning for terms. *Calik*, 195 Ariz. at 498, ¶ 10, 990 P.2d at 1057. Here, the statutes clearly state that "an employee" of the government agency that administers public benefits has a duty to report violations of immigration laws. A.R.S. §§ 1-501(E), -502(E). The statute does not extend this duty beyond employees.

IV. The Requirements of A.R.S. § 1-502 Apply to State or Local Public Benefits That Are Funded by Appropriated State or Local Monies.

You have asked if requirements of A.R.S. § 1-502 apply to state or locally administered public benefits that are funded by a private source. In 8 U.S.C. § 1621(c)(1)(A), state or local public benefits involve benefits "provided by an agency of a State or local government or by appropriated funds of a State or local government." Because A.R.S. § 1-502 incorporates the federal definition of state or local public benefits, it includes privately funded benefits that are "provided by" a "State or local government."

V. Sections 1-501 and 1-502 Have No Effect on Companies Headquartered Outside the United States.

You have asked whether A.R.S. §§ 1-501 and 1-502 affect companies headquartered outside of the United States. They do not. Subsections A of A.R.S. §§ 1-501 and 1-502 require those persons applying for public benefits from the State to provide proof of legal presence in the United States. As described previously, the documentation requirements in A.R.S. §§ 1-501 and -502 apply to “natural persons,” not corporations and other business entities.

VI. Presentation of a Permanent Resident Card Complies with the Requirements of A.R.S. §§ 1-501 and -502.

You have asked whether a permanent resident card qualifies as an “employment authorization document” pursuant to sections A.R.S. §§ 1-501(A)(7) and 1-502(A)(7). A permanent resident card means that the holder has “been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” 8 U.S.C. § 1101(a)(20). A permanent resident is a qualified alien for purposes of PRWORA and related laws addressing eligibility for public benefits. 8 U.S.C. § 1641(b)(1). The Interim Guidance issued by the Department of Justice in November of 1997 indicates that acceptable evidence of an alien lawfully admitted for permanent residence includes an “INS Form I-551 (Alien Registration Receipt Card, commonly known as a ‘green card’⁶), or Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.”⁷ Interim Guidance, 62 Fed. Reg. at 61,364.

⁶ The original alien registration receipt card, Form I-151, was introduced in 1946. Many revisions were green in color, causing it to have this name. However, the cards have not been green since 1959. Form I-551 was introduced in 1977, and revised in 1989, 1992, 1997 and 2004. The 2004 version is denominated “Permanent Resident Card” and bears a photograph of the lawful permanent resident, name, signature, an alien registration (“A” number), birth date, country of birth, sex, “resident since” date and an expiration date; the reverse side contains encoded cardholder information. U.S. Immigration and Customs Enforcement, *Guide to*

An explanation of work authorization categories for aliens is beyond the scope of your question. However, all legal permanent residents are immigrants permitted to work in the United States and are often classified for tax purposes as resident aliens. See Ruth Ellen Wasem, *Congressional Research Service, Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation (Report R40889)*, 12-13 (Nov. 2, 2009). Because permanent residents are authorized to work in the country, a permanent resident card satisfies documentation requirements of A.R.S. §§ 1-501 and -502.⁸

VII. E-Verify May Not Be Used to Verify Immigration Status of Applicants for Public Benefits.

You have asked if including a “section regarding compliance with E-verify in grant agreements” would meet the requirements of A.R.S. §§ 1-501 and-502 regarding verification of citizenship or immigrant status.

E-Verify is an Internet-based system overseen by the United States Department of Homeland Security’s (“USDHS”) U.S. Citizenship and Immigration Services (“USCIS”). It allows an employer who has entered into a Memorandum of Understanding with USDHS and the Social Security Administration to use information reported on an employee’s Form I-9 to determine the eligibility of that employee to work in the United States. E-Verify verifies a newly hired employee is authorized to work in the United States. The employee may be a U.S. citizen

Selected U.S. Travel and Identity Documents 8-12 (2008 ed.) [hereinafter *Guide to Selected U.S. Travel and Identity Documents*].

⁷ An I-94 form is a two-part form; one part is completed by an individual arriving in the United States; another portion is to be turned in to federal authorities prior to departing. An I-94 form or an I-94A form containing a photograph and a temporary I-551 stamp is considered a receipt for the permanent resident card (the I-551 form). U.S. Citizenship and Immigration Services, *Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form)* 33 (2009 ed.).

⁸ Certain federal public benefits require the verification through the SAVE system of information contained on the permanent resident card. See *infra* § VII.

or an alien with a status permitting him or her to work in this country. *See* <http://www.uscis.gov> (follow "E-Verify Homepage" hyperlink) (2010).

Government entities administering certain federal public benefits were first required by the Immigration Reform and Control Act of 1986 ("IRCA") to verify citizenship and immigration status. Pub. L. No. 99-603 (codified at 42 U.S.C. §1320b-7 and scattered sections); *see also* Interim Guidance, 62 Fed. Reg. at 61,345. As to federal public benefits such as Medicaid, unemployment compensation, educational assistance under Title IV of the Higher Education Act of 1965, and assisted housing programs administered by the Department of Housing and Urban Development, government entities administering them are required to verify alien status through the USCIS' Systematic Alien Verification for Entitlements System ("SAVE"). *See* Interim Guidance, 62 Fed. Reg. at 61,345. "SAVE is an intergovernmental information-sharing program that is available to benefit-granting agencies that need to determine an alien's immigration status." *Id.* Following the enactment of PRWORA, the U.S. Department of Justice required other federal public benefit programs to ask for a declaration of status under penalty of perjury and verify citizenship or qualified alien immigration status via documentation in a non-discriminatory manner. *See* Interim Guidance, 62 Fed. Reg. at 61,347. Government entities administering public benefits not mandated to use SAVE are to use it when staff are considering concluding that the applicant or beneficiary is not a qualified alien. *See* Interim Guidance, 62 Fed. Reg. at 61,349. "Use of SAVE for the purpose of verifying the information recorded on the Form I-9, Employment Eligibility Verification, by an employer . . . is prohibited." Proposed Rules, 63 Fed. Reg. 41,662-01, 41,672 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104). Thus, E-verify is not used to verify immigration status of applicants for public benefits, and SAVE is not to be used for employment purposes.

VIII. The Documents Listed in A.R.S. §§ 1-501 and -502 Do Not Necessarily Satisfy the Proof of Citizenship or Immigration Status Requirements Established by the Federal Government for Public Benefits other than Medicaid.

You have asked for guidance regarding compliance with documentation requirements under A.R.S. §§ 1-501 and -502 and PRWORA. In general, to receive federal public benefits subject to 8 U.S.C. § 1611, a person must be a citizen or a qualified alien as defined in 8 U.S.C. § 1641. Although the federal government did not issue regulations pursuant to 8 U.S.C. § 1642 for verifying qualified alien status for a federal public benefit, as noted above, the Department of Justice issued Interim Guidance on the subject in 1997. The Interim Guidance addresses verification of U.S. citizenship and U.S. non-citizen national status (Attachment 4 to Interim Guidance) and qualified alien status (Attachment 5 to Interim Guidance). For many federal public benefits there are also program-specific federal statutes and rules governing verification of both citizenship and immigration status. The Interim Guidance continues to supplement program-specific laws and establish requirements for federal public benefit programs that do not have their own verification laws. The Interim Guidance specifically cautions that “[t]hese lists [of acceptable documents] are not exhaustive; you should refer to guidance issued by the agency or department overseeing your program to determine if it accepts documents or other evidence of citizenship not listed below.” 62 Fed. Reg. at 61,363.

In addition, since the issuance of the Interim Guidance in November 1997, Congress has added categories of immigrants to the qualified alien group⁹ and determined that additional documentation is acceptable evidence of U.S. citizenship. Medicaid regulations reflect some of these modifications. See 42 C.F.R. §§ 435.406-.407. Therefore, states must follow federal

⁹ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, and the Balanced Budget Act of 1997, Pub. L. No. 105-33, both amended the definition of qualified alien. See 8 U.S.C. § 1641, Historical and Statutory Notes.

verification requirements when determining eligibility for federal public benefits, unless Congress has given the states discretion to adopt different procedures.

For state and local public benefits, the U.S. citizenship and alien status eligibility requirements are established in federal law, which requires a recipient of state or local public benefits to be a citizen, a qualified alien, a nonimmigrant, or an alien who is paroled into the United States under § 212(d)(5) of the Immigration and Naturalization Act. 8 U.S.C. § 1182(d)(5). The documentation in A.R.S. § 1-502(A) does not necessarily establish that a person satisfies these eligibility requirements.

For example, A.R.S. §§ 1-501(A) and -502(A) specifically authorize agencies to accept an Arizona driver license or nonoperating identification license as acceptable proof of lawful presence. This identification may establish lawful presence, but it does not establish whether a person is a qualified alien, nonimmigrant, or an alien who is paroled into the United States for less than one year, which are the eligibility requirements in 8 U.S.C. § 1621. The I-94 form listed in A.R.S. § 1-502(A) also does not necessarily establish eligibility for state and local public benefits. The I-94 is a paper “arrival/departure record,” the bottom portion of which is stapled to a page in a non-citizen’s passport. This document shows how long the bearer may remain in the United States and the terms of admission. “The I-94, not the non-immigrant visa, serves as evidence of legal status.” *Guide to Selected U.S. Travel and Identity Documents*, at 19. Since USCIS may extend a period of admission or change a nonimmigrant status after an I-94 has been issued (by issuing an I-797A Approval Notice), the I-94 document is not always evidence of lawful presence.¹⁰ *Id.* at 20. Therefore, with regard to state and local benefits, agencies should accept documents in federal guidance documents regarding who is a national of the United States

¹⁰ Additionally, nationals of some countries can enter the United States without a visa under the Visa Waiver Program. These entrants receive an I-94W and may stay up to 90 days. *Guide to Selected U.S. Travel and Identity Documents*, at 19.

or meets appropriate legal status requirements to be in the United States, in addition to those documents specified in A.R.S. § 1-502. Agencies may need additional documentation or information from the applicant to determine whether the person satisfies the eligibility requirements in 8 U.S.C § 1621.

IX. Notarization of Sworn Affidavits Required by A.R.S. §§ 1-501 and -502 Is Permitted But Is Not Required.

You have asked if the sworn affidavits required by A.R.S. §§ 1-501(D) and -502(D) must be notarized statements. These statutes require that applicants “sign a sworn affidavit stating that the documents presented . . . are true under penalty of perjury.” A.R.S. §§ 1-501(D), -502(D). You point out that some agencies do not have notaries on staff and will be required to utilize notaries who may charge fees. You also ask if it is permissible to charge applicants or contractors the notarization fees.

A.R.S. §§ 1-501 and -502 do not define the term “sworn affidavit,” and neither that term nor the word “affidavit” is defined elsewhere in Arizona statute. To determine the intent of the Legislature, the language of the statute must be analyzed. *Tripati v. State*, 199 Ariz. 222, 224, ¶ 3, 16 P.3d 783, 785 (App. 2000). “Affidavit” is used numerous times in Arizona statutes; some of these statutes indicate that notarization is required,¹¹ but other statutes do not. Some forms prescribed by the Legislature use the term “affidavit” and notary information is in the form.¹² In

¹¹ See, e.g., A.R.S. §§ 8-106(F) (“notarized affidavit” signed by the mother listing all potential fathers); 8-203.01(D) (notarized forms to be completed by juvenile probation officers), 19-112(C); 48-265(H) (signature collector of petition is to “swear before a notary public”); 42-18120 (to obtain a duplicate certificate of purchase); 49-1031(D) (owner or operator of an underground storage tank is to “file a notarized affidavit with the director” as to tax liability).

¹² See A.R.S. §§ 19-112(D) (affidavit of circulator of petition seeking signatures), 27-208(A) (affidavit of performance of annual work as to a mining claim), 33-422(F) (affidavit of disclosure as to land division), and 48-265 (signature collector for petition).

others the word “affidavit” is used, but there is no notary information in the mandated form.¹³ In two other statutes—one dealing with police reports of theft of means of transportation and the other with claiming a tax exemption—an individual may attest to the theft or the tax exemption in an affidavit made before a law enforcement officer or a county assessor, respectively, but must sign and get the statement notarized if done before someone other than a law enforcement officer or county assessor. A.R.S. §§ 13-1814(C), 42-11152. Several statutes call for an “affidavit, stating under penalty of perjury” that the affiant will do something. *See, e.g.*, A.R.S. §§ 3-2009, -2086.

The Arizona Supreme Court has defined “affidavit” as “a signed, written statement, made under oath before an officer authorized to administer an oath or affirmation in which the affiant vouches that what is stated is true.” *In the Matter of Manfred Rolland Wetzel*, 143 Ariz. 35, 43, 691 P. 2d 1063, 1071 (1984). The statutes governing notaries define “oath” or “affirmation” as a “notarial act or part of a notarial act in which a person made a vow in the presence of the notary under penalty of perjury, with reference made to a supreme being in the case of an oath.” A.R.S. § 41-311(10).

Although the term “sworn affidavit” in subsections D of A.R.S. §§ 1-501 and -502 suggests that notarization is required, because the Legislature has specifically used the term “notarized affidavit” or words clearly requiring a notary in other statutes and did not do so in these sections, the legislative intent is unclear. Absent a clearer legislative directive regarding notarization, the statutes do not preclude agencies from obtaining either a written statement stating that it is sworn to under penalty of perjury, or a document sworn before a notary public.

¹³ *See, e.g.*, A.R.S. § 16-547 (an affidavit accompanying an early ballot stating that the individual signing it solemnly swears that the name and signature are true); A.R.S. § 36-3224 (physician affidavit within health care power of attorney statute specifically states that the form may be witnessed or notarized).

For federal public benefit eligibility, however, agencies should ensure the eligibility process is consistent with any given federal public benefit's statutes and rules.

You have also asked if state entities administering public benefits may charge applicants or potential contractors a fee for notarizing an affidavit.¹⁴ Section 41-316(A) mandates the promulgation of rules establishing fees that notaries may charge for notarial acts. Pursuant to administrative rule, notaries may charge up to \$2.00 per notarial act.¹⁵ See Arizona Administrative Code ("A.A.C.") R2-12-1102. Notaries may also assess expenses, including mileage and a per diem subsistence established for state employees. See A.R.S. § 41-316(B). Employers of a notary may not limit the notary's services to customers or other persons designated by the employer. See A.R.S. § 41-312(C)(3). Employers may retain any fees collected by an employee notary during hours the notary works for the employer. See A.R.S. § 41-312(C)(2).

A state or local government entity administering state or local public benefits that chooses to require notarized documents may therefore assess up to a \$2.00 fee per notarial act performed by its employees who are notaries if it wishes.


X. Government Entities Have Discretion as to Where to File Documentation Required by A.R.S. §§ 1-501 and -502.

Sections 1-501 and -502 both require submission of documents to prove lawful presence as well as a sworn affidavit stating that the documents presented are true. A requirement to

¹⁴ Under Arizona law, state agencies may not "[c]harge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact." A.R.S. § 41-1008(A)(1). However, the word "fee" is defined in A.R.S. § 41-1001(8) to mean for purposes of that chapter "a charge prescribed by an agency for an inspection or for obtaining a license." Therefore, A.R.S. § 41-1008's limitation is inapplicable here.

¹⁵ In the July 2010 Notary Public Reference Manual ("Notary Manual") issued by the Arizona Secretary of State, notaries are advised that they need not charge any fee, but that if they do it should be done consistently.

obtain documentation of citizenship or requisite alien status is not new to many Arizona state government agencies. In addition to the statutes analyzed in this opinion, A.R.S. §§ 41-1080 and 46-140.01 require presentation and review of documentation. Entities that determine eligibility generally maintain either a paper or electronic case file relating to the application and any later re-determinations of eligibility. Sections 1-501 and -502 do not specify where the affidavit or copies of citizenship or requisite alien status documents are to be retained. Agencies have discretion as to where to retain them and may include them in application files. It should be noted, however, that personally identifiable information in many such case files is confidential. *See, e.g.*, A.R.S. §§ 23-722, -722.01, 36-2903, 41-1959(A); 7 C.F.R. § 272.1. And, some records are exempted from the state's public records law. *See, e.g.*, A.R.S. § 23-722.01(G) (prohibiting disclosure under Arizona public records law of information gathered by department of economic security reflecting hiring and rehiring of employees who reside or work in this state). Existing record retention schedules relevant to case files for the public benefit at issue apply equally to these lawful-presence documents.


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