

This is an amendment to 8.102.410 NMAC, Sections 10 and 16 effective 6/1/2025.

**8.102.410.10 CITIZENSHIP AND NON-CITIZEN STATUS:**

**A.** Eligibility for TANF funded cash assistance:

- (1) Participation in the NMW cash assistance program is limited to a U.S. citizen, a naturalized citizen or a non-citizen U.S. national.
- (2) A non-citizen, other than a non-citizen U.S. national, must be both a qualified and eligible non-citizen in order to participate in the NMW cash assistance program.

**B.** Definitions:

- (1) Continuously lived in the U.S.: means that a non-citizen has lived in the U.S. without a single absence of more than 30 days or has lived in the U.S. without a total of aggregated absences of more than 90 days.
- (2) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa, and the commonwealth of the Northern Mariana Islands; supplemental security income (SSI); and the TANF block grant program under title IV of the Social Security Act; medicaid, and SCHIP.
- (3) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified non-citizens who entered the United States on or after August 22, 1996, until they have continuously lived in the U.S for five years. If an non-citizen enters the U.S. on or after August 22, 1996, but does not meet the definition of a qualified non-citizen, the five-year bar begins on the date the non-citizen attains qualified non-citizen status.
- (4) Immigrant: means a non-citizen within the meaning found in title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
- (5) Non-citizen U.S. national: means a person who is not a U.S. citizen but was born in an outlying possession of the United States on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains Island or the Northern Mariana Islands.
- (6) Permanently residing under color of law (PRUCOL): means a person whose presence in the US is known by the department of homeland security (DHS) and the DHS does not intend to deport the person. Persons classified as PRUCOL may or may not also be qualified non-citizens.

**C. Qualified non-citizen:** A qualified non-citizen is any of the following types of non-citizens:

- (1) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (an LPR);
- (2) who is granted asylum under Section 208 of the INA (an asylee);
- (3) who is a refugee admitted to the U.S. under Section 207 of the INA (a refugee);
- (4) who is paroled into the U.S. under Section 212(d)(5) of the INA for at least one year (a parolee);
- (5) whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA;
- (6) who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- (7) who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- (8) who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.
- (9) an individual who lawfully resides in the United States in accordance with the compact of free association (COFA) migrant, who is also referred to as compact citizen.

**D.** Qualified non-citizen due to battery or extreme cruelty: means a non-citizen regardless of status who has been battered or subjected to extreme cruelty, as long as the following elements are met:

- (1) there is a substantial connection between such battery or cruelty and the need for the cash benefits; and
- (2) the abused non-citizen is not currently living with the abuser; and
- (3) the INS or executive office of immigration review (EOIR) has:
  - (a) approved a self-petition seeking permanent residency, or

- (b) approved a petition for a family based immigrant visa; or
- (c) approved an application for cancellation of removal or suspension of deportation; or
- (d) found that a pending petition or application establishes “prima facie” (true and valid) case for approval; and
- (4) the non-citizen has been battered or subjected to extreme cruelty in the US by a spouse or parent, or by a member of the spouse or parent’s family residing in the same household as the abused non-citizen and the spouse or parent of the abused non-citizen consented to, or acquiesced in such battery or cruelty; or
- (5) the non-citizen has a child who has been battered or subjected to extreme cruelty in the US by the non-citizen’s spouse or parent, as long as the non-citizen does not actively participate in the battery or cruelty; or a non-citizen whose child is battered or subjected to extreme cruelty by a member of the non-citizen’s spouse or parent’s family residing in the same household and the non-citizen’s spouse or parent consented or acquiesced to such battery or cruelty; or
- (6) the non-citizen is a child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by the parent’s spouse or by a member of the spouse’s family residing the same household and the non-citizen’s spouse consented or acquiesced to such battery or cruelty.
- (7) U.S. citizen: means, but may not be limited to:
  - (a) a person born in the United States;
  - (b) a person born in Puerto Rico, Guam, U.S. Virgin Islands or Northern Mariana Islands who has not renounced or otherwise lost their citizenship;
  - (c) a person born outside the U.S. to at least one U.S. citizen parent; or
  - (d) a person who is a naturalized citizen.

**E.** Non-citizens who are eligible to participate: A non-citizen who meets the definition of a qualified non-citizen shall be eligible to participate in the NMW cash assistance program if the non-citizen:

- (1) physically entered the U.S. prior to August 22, 1996, and obtained qualified non-citizen status before August 22, 1996;
- (2) physically entered the U.S. prior to August 22, 1996, obtained qualified non-citizen status on or after August 22, 1996, and has continuously lived in the U.S. from the latest date of entry prior to August 22, 1996 until the date the participant or applicant obtained qualified non-citizen status;
- (3) physically entered the U.S. on or after August 22, 1996, meets the definition of a qualified non-citizen and has been in qualified non-citizen status for at least five years (five year bar);
- (4) physically entered the U.S. before August 22, 1996, and did not continuously live in the U.S. from the latest date of entry prior to August 22, 1996, until obtaining qualified non-citizen status, but has been in qualified non-citizen status for at least five years;
- (5) is a lawfully admitted permanent resident non-citizen under the INA, who has worked or can be credited with 40 qualifying quarters; or
- (6) is a veteran of the military with an honorable discharge that is not based on non-citizen status who has fulfilled the minimum active duty requirements; or the non-citizen who is on active duty military service; or the person is the spouse, surviving spouse who has not remarried, or an unmarried dependent child of a veteran or active duty service member;
- (7) an non-citizen is eligible for a period of five years from the date a non-citizen:
  - (a) is granted status as an asylee under Section 208 of the INA;
  - (b) is admitted as a refugee to the U.S. under Section 207 of the INA;
  - (c) has had their deportation withheld under Section 241(b)(3) or 243(h) of the

INA;

- (d) is admitted as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; or
- (e) is admitted as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; and

~~(8) [a qualified non-citizen who entered the United States on or after August 22, 1996, to whom the five year bar applies, may participate in the state funded TANF program without regard to how long the non-citizen has been residing in the United States.]~~ an individual who lawfully resides in the United States in accordance with the compact of free association (COFA) migrant, who is also referred to as compact citizen.

(9) a qualified non-citizen who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the non-citizen has been residing in the United States.

**F.** Victim of severe form of trafficking: A victim of a severe form of trafficking, regardless of immigration status, who has been certified by the U.S. department of health and human services (DHHS), office of refugee resettlement (ORR), is eligible to the same extent as a refugee.

(1) The date of entry for a victim of trafficking is the date of certification by ORR (which appears in the body of the eligibility letter from the ORR).

(2) A victim of a severe form of trafficking:

(a) must have and present a certification of eligibility letter from ORR for adults or letter for children (similar to but not necessarily a certification letter) as proof of status; and

(b) is not required to provide any immigration documents, but may have such documents and may present such documents.

(3) Determining eligibility for a victim of trafficking must include a call to the trafficking verification line at 1-866-401-5510.

(4) The caseworker must inform ORR of the benefits for which the victim of trafficking has applied.

**G.** Quarters of coverage:

(1) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(2) The number of qualifying quarters is determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, and is based on the sum of: quarters the non-citizen worked; quarters credited from the work of a parent of the non-citizen before the non-citizen became 18 (including quarters worked before the non-citizen was born or adopted); and quarters credited from the work of a spouse of the non-citizen during their marriage if they are still married or the spouse is deceased.

(a) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of eligibility.

(b) If eligibility of a non-citizen is based on the quarters of coverage of the spouse, and then the couple divorces, the non-citizen's eligibility continues until the next recertification. At that time, the caseworker shall determine the non-citizen's eligibility without crediting the non-citizen with the former spouse's quarters of coverage.

(3) Disputing quarters: If a participant or applicant disputes the SSA determination of quarters of coverage, the participant may not participate based on having 40 qualifying quarters until a determination is made that the participant or applicant can be credited with 40 qualifying quarters. The participant or applicant may participate as a state-funded benefit group member, if otherwise eligible.

(4) Federal means-tested benefit: After December 31, 1996, a quarter in which a non-citizen received any federal means-tested public benefit, as defined by the agency providing the benefit shall not be credited toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit. If the non-citizen earns the 40th quarter of coverage prior to applying for a federal means- tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

**H.** Verification of citizenship/eligible non-citizen status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) Questionable U.S. citizenship: Any mandatory benefit group member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of their resources and a pro rata share of income considered available to any remaining benefit group members.

(2) Eligible non-citizen status: Verification of eligible non-citizen status is mandatory at initial certification. Only those benefit group members identified as non-citizens with qualified and eligible non-citizen status are eligible to participate in the NMW program.

(3) Ineligible or questionable non-citizen status: Any household member identified as an ineligible non-citizen, or whose non-citizen status is questionable cannot participate in the NMW program.

**I.** Need for documentation:

(1) Benefit group members identified as non-citizens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the non-citizen has been granted legal status.

(2) A caseworker shall allow a non-citizen a reasonable time to submit acceptable documentation of eligible non-citizen status. A reasonable time shall be 10 days after the date the caseworker

requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of a participant's eligible status is not provided by the deadline, the eligibility of the remaining benefit group members shall be determined. Verification of eligible non-citizen status provided at a later date shall be treated as a reported change in benefit group membership.

(4) During the application process, if an individual has been determined to be a qualified non-citizen and either the individual or HSD submits a request to a federal agency for documentation to verify eligible non-citizen status, HSD must certify the individual in the TANF benefit group as a state-funded participant until a determination is made that the individual is eligible for TANF funded cash assistance.

(5) Inability to obtain INS documentation: If a benefit group indicates an inability to provide documentation of non-citizen status for any mandatory member of the benefit group, that member shall be considered an ineligible non-citizen. The caseworker shall not continue efforts to contact INS when the non-citizen does not provide any documentation from INS.

J. Failure to cooperate: If a benefit group or a benefit group member indicates an unwillingness to provide documentation of non-citizen status for any member, that member shall be considered an ineligible non-citizen. The caseworker shall not continue efforts to get documentation.

K. Reporting undocumented (illegal) non-citizens:

(1) HSD shall inform the local DHS office only when an official determination is made that any mandatory member of a benefit group who is applying for and receiving benefits is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

(a) the non-citizens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the U.S. such as a final order of deportation.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

(4) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

L. Income and resources of ineligible non-citizens: All the resources and a prorated share of income of an ineligible non-citizen, or of a non-citizen whose status is unverified, shall be considered in determining eligibility and the cash assistance benefit amount for the remaining eligible benefit group members. [8.102.410.10 NMAC - Rp 8.102.410.10 NMAC, 7/1/2024; A, 6/1/2025]

#### **8.102.410.16 ~~PROGRAM DISQUALIFICATIONS:~~**

~~A. Dual state benefits: An individual who has been convicted of fraud for receiving TANF, food stamps, medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.~~

~~B. Fugitive and probation and parole violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the cash assistance benefit group.] [RESERVED]~~

[8.102.410.16 NMAC - Rp 8.102.410.16 NMAC, 7/1/2024; Repealed 6/1/2025]