

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 30-755.113

Specific Purpose:

This section is amended to specify that those individuals who meet the noncitizen status as defined in Manual of Policies and Procedures (MPP) Section 30-770.51 shall be eligible for the In-Home Supportive Services (IHSS) program if all other eligibility criteria are met.

Factual Basis:

This amendment is necessary to allow noncitizens, who would otherwise be ineligible for IHSS, to be granted the benefits and services through the new state-only program as mandated by Welfare and Institutions Code Section 18945.

Final Modification:

In order to provide clarification for eligibility requirements for noncitizens, MPP Section 30-755.113 is amended to include immigration criteria, as an eligibility criterion and subsection (a) further specifies that the person meets either the immigration criteria in 20 CFR Part 416, subpart P, or must meet the state program noncitizen requirement for victim of human trafficking, domestic violence or other serious crimes as defined under the State Trafficking and Crime Victims Assistance Program (TCVAP).

Sections 30-770.5 and .51

Specific Purpose:

These sections are adopted to provide eligibility to those noncitizen victims of human trafficking, domestic violence, or other serious crimes for IHSS. A cross reference is necessary to MPP Chapter 70-100, which implements the new state-only program, the Trafficking and Crime Victims Assistance Program (TCVAP).

Factual Basis:

This adoption is necessary to comply with the provisions of Welfare and Institutions Code Section 18945 that would allow noncitizens eligibility for services in the IHSS program.

Final Modification:

In response to public testimony received, MPP Section 30-770.51 is amended to add language that defines the eligibility requirements and documentation required under the TCVAP for clarification purposes.

Section 40-037

Specific Purpose/Factual Basis:

This section is adopted to provide implementation instructions for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, Eligibility Section, on the provisions of SB 1569 (Chapter 672, Statutes of 2006) which extends eligibility for certain public social services, including state-funded CalWORKs, to certain noncitizen victims of trafficking, domestic violence or other serious crimes, as defined, who can demonstrate their eligibility for these programs, and who are taking steps to meet eligibility conditions for federal benefits.

Final Modification:

As a result of testimony received, a change was made to MPP Section 40-037.1. The amendment of this section indicates that noncitizen victims of trafficking, domestic violence and other serious crimes are subject to the CalWORKs 60-month program limitation.

Section 40-105.21

Specific Purpose:

This section is amended to eliminate an obsolete reference to the former Aid to Families with Dependent Children (AFDC).

Factual Basis:

The amendment of this section is necessary to eliminate an obsolete reference to the AFDC program. AB 1542 (Chapter 270, Statutes of 1997) renamed the AFDC program to the CalWORKs Program effective January 1, 1998.

Section 40-105.26

Specific Purpose:

This section is adopted to provide an exception to the CalWORKs Social Security Number (SSN) application requirement in those situations where the noncitizen identified as a victim of trafficking, domestic violence or other serious crimes does not have permission to work in the United States.

Factual Basis:

SSN enumeration, established for program integrity through the use of the Income Eligibility Verification System (IEVS), is a federal requirement necessary to receive Temporary Assistance for Needy Families (TANF) funding. Under SB 1569 these individuals are state-funded cases and not governed by this federal requirement.

This section is necessary to comply with Sections 13283, 14005.2 and 18945 of the Welfare and Institutions Code added by SB 1569, to ensure that noncitizens who do not have permission to work in the United States and whose application for a SSN would otherwise be rejected by the Social Security Administration (SSA) are not denied assistance by the county when all other eligibility requirements are met.

In accordance with SB 1569, these individuals shall be eligible for these services to the same extent as individuals who are admitted to the United States as a refugee under Section 1157 of Title 8 of the United States Code. An SSN is not required in this instance.

Sections 42-430 and 42-431.2

Specific Purpose:

The amendment of these sections is necessary to eliminate an obsolete reference to the AFDC program and to update other terminology.

Factual Basis:

AB 1542 renamed the AFDC program to the California Work Opportunity and Responsibility to Kids (CalWORKs) program effective January 1, 1998.

Changes in the federal Food Stamp Program began updating the terminology "alien" to "noncitizen." The CalWORKs Program seeks to be consistent by incorporating in regulations on a flow basis, the terminology "noncitizen," when appropriate.

Sections 42-431.23 et seq., .3 and .31

Specific Purpose:

These sections are adopted to clarify that a noncitizen who is a victim of human trafficking, domestic violence, or other serious crimes may receive CalWORKs cash assistance when all eligibility and program requirements are met. Additionally, a cross reference to the SSN exception requirement is provided and an explanation to the actions the county must take when the individual is not otherwise eligible for CalWORKs. The handbook sections define severe forms of human trafficking and victims of other serious crimes.

Factual Basis:

These sections are necessary to comply with Sections 13283, 14005.2 and 18945(a) of the Welfare and Institutions Code added by SB 1569, which establishes a new state-funded

claiming under the CalWORKs program by extending eligibility for certain public social services to noncitizen victims of trafficking, domestic violence or other serious crimes, who can demonstrate their eligibility for these programs and who are taking steps to meet the eligibility conditions for certain federal benefits.

Final Modification:

As a result of testimony received, a correction in punctuation was made to MPP Section 42-431.231(b)(1). This is to clarify the definition of Noncitizen Victims of Other Serious Crimes.

The Department is also amending MPP Section 42-431.23 to replace TCVAP with Welfare and Institutions Code Section 18945 as a proper reference. Further, MPP Section 42-431.3 was amended to include "domestic violence" and "other" serious crime victims in order to be consistent with the language in Welfare and Institutions Code Section 18945.

Sections 42-431.32 et seq. and .33 et seq. (Renumbered after hearing to 42-431.41 et seq. and .42 et seq., respectively)

Specific Purpose:

These sections are adopted to specify the procedures for determining eligibility as a victim of human trafficking and providing a description of documentation that is sufficient for determining trafficking status. Additionally, a process for determining credibility is provided in order to assist the CWD in making this determination in the absence of sufficient documentation.

Factual Basis:

These sections are necessary to comply with Sections 13283, 14005.2 and 18945 of the Welfare and Institutions Code added by SB 1569, to prescribe certain documentation that may be provided to the County Welfare Department (CWD) when determining eligibility as a victim of human trafficking. Also, a section is adopted to clarify that, in the absence of additional evidence, the sworn statement of an applicant attesting to his/her trafficking status will be sufficient if the CWD makes a determination and documents in the case file that the applicant is credible.

Final Modification:

As a result of testimony received, a new MPP Section 42-431.4 is adopted to indicate the beginning of a new regulation section which specifies acceptable evidence counties may consider for the purpose of determining eligibility for noncitizen victims of human trafficking. This new section is being inserted after MPP Section 42-431.31 and before the previously numbered MPP Section 42-431.32; consequently, this change requires all the subsequent sections to be renumbered.

The Department is also amending renumbered MPP Section 42-431.42 to include "of human trafficking" in order to indicate that only noncitizen victims of human trafficking may provide a sworn statement if he/she cannot provide additional evidence and the county makes a determination that he/she appears to be credible and to be consistent with the language in Welfare and Institutions Code Section 18945.

Further, a change was made to MPP renumbered Section 42-431.422 so that the standard for credibility determinations for applicants applying for assistance under Welfare and Institutions Code Section 18945 would be consistent with the standard for credibility determinations for domestic violence cases.

Sections 42-431.4 through Handbook Section 42-431.43 (Renumbered after hearing to 42-431.5 through .53, respectively)

Specific Purpose:

These sections are adopted to specify the additional requirements an applicant must satisfy for continued eligibility once the CWD determines that the individual meets the definition of a victim of human trafficking. Additionally, the handbook sections provide acceptable documentation that may be used to verify that an applicant has filed or is preparing to file for a T Visa, the steps to be taken when no documentation is available, and the definition of "continued presence."

Sections 42-431.44 et seq. (Renumbered after hearing to 42-431.54 et seq.)

Specific Purpose:

These sections are adopted to ensure that the CWD knows the specific circumstances in which action is to be taken to terminate victims of human trafficking from state-funded eligibility to CalWORKs. Also, a definition of "final administrative denial" is provided.

Factual Basis for Sections 42-431.4 through .44 et seq.: (Renumbered after hearing to 42-431.5 through .54, respectively)

These sections are necessary to comply with Sections 13283, 14005.2 and 18945(c) of the Welfare and Institutions Code added by SB 1569, to specify that benefits issued under these provisions be available for up to one year and shall continue after that date only if an application for continued presence, or an application for a visa is filed within the one-year period. Also, Section 18945(a) of the Welfare and Institutions Code specifies the conditions under which benefits issued under these state-funded provisions must be terminated.

Final Modification:

As a result of testimony received, a change was made to renumbered MPP Section 42-431.514 by striking out the phrase "the U.S. Attorney General." Investigation or prosecution of human traffickers is not restricted to the U.S. Attorney General in the request by federal law enforcement for continued presence. The department is further amending this section for clarity to include that continued presence can only be

requested by federal law enforcement pursuant to 28 CFR Section 1100.35. Further, the phrase "investigation or" was also added since continued presence in the U.S. can be requested by law enforcement in either the investigation or the prosecution of human traffickers.

Section 42-431.45 (Renumbered after hearing to 42-431.55)

Specific Purpose:

This section is adopted to ensure that the CWD knows that upon receipt of a T Visa, the case must be assessed for Temporary Assistance to Needy Families (TANF) eligibility and the SSN exception in MPP 40-105.26 no longer applies.

Factual Basis:

This section is necessary to comply with Section 18945(a) of the Welfare and Institutions Code added by SB 1569, which specifies the conditions under which benefits issued under these state-funded provisions be terminated.

Sections 42-431.5 through Handbook Section 42-431.524 (Renumbered after hearing to 42-431.6 through .624, respectively)

Specific Purpose:

These sections are adopted to specify the requirements and documentation for an applicant applying as a victim of domestic violence or other serious crimes. Additionally, handbook sections provide examples of acceptable documentation that may be used to verify that an applicant has filed or is preparing to file for a U Visa.

Factual Basis:

These sections are necessary to comply with Sections 13283, 14005.2 and 18945(c) of the Welfare and Institutions Code added by SB 1569, and to provide counties with information regarding acceptable documentation that may be used to verify that an applicant has filed or is preparing to file for a U Visa.

Final Modification:

As a result of testimony received, the department is amending renumbered MPP Sections 42-431.61 and .611. These sections were changed to add that documentation will be included to show that a petitioner has filed a request for U Visa interim relief before October 17, 2007. Individuals who have filed a request for U Visa interim relief before October 17, 2007 may still qualify for SB 1569 benefits. U Visa interim relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations (8 C.F.R. § 214.14(a)(13)). U Visa interim relief was granted by USCIS to

individuals who requested U Visa interim relief before October 17, 2007. The USCIS is no longer issuing interim relief after this date.

As a result of testimony received, additional language was added to MPP renumbered Section 42-431.62 et seq. to include an employment authorization document issued under Category "A19" or "A20" for an approved U Visa petitioner. Categories "A19" or "A20" are the classes of nonimmigrant statuses authorized to accept employment under 8 C.F.R. § 274a.12 and would be sufficient as documentation to establish that an individual has filed an application for a U Visa. Further, the language was changed to add that documentation will be included to show that a petitioner has filed a request for U Visa interim relief before October 17, 2007.

Section 42-431.53 (Renumbered after hearing to 42-431.63)

Specific Purpose:

This section is adopted to ensure that the CWD knows the specific circumstances under which state-funded aid will continue to be paid.

Factual Basis:

This section is necessary to comply with Section 18945(a) of the Welfare and Institutions Code added by SB 1569, to specify that benefits issued under these provisions shall continue until the recipient has a final administrative denial of a U Visa application.

Section 42-433

Specific Purpose:

These sections are amended to update the terminology "alien" to "noncitizen," to reflect the name change of the Immigration and Naturalization Service (INS) to the United States Citizenship and Immigration Services (USCIS), and to correct an obsolete form number.

Factual Basis:

These amendments are necessary to reflect the change in program name from AFDC to CalWORKs, resulting from AB 1542, effective January 1, 1998. The federal Food Stamp Program changed the term "alien" to "noncitizen." The CalWORKs Program seeks to be consistent by incorporating in regulations on a flow basis, the terminology "noncitizen," when appropriate. The name of INS was officially changed to USCIS. The CA 6 form was renamed to CW 6 at the time CalWORKs was implemented.

Final Modification:

As a result of testimony received, a modification was made to MPP Sections 42-433.412, .42, and .5 which eliminates the use of form CW 6. The USCIS no longer recognizes form CA 6/CW 6 as acceptable alien status verification documentation. Applicants/recipients are responsible for obtaining acceptable verification

documentation using the Document Verification Request form (G-845S) as required by USCIS.

Post-Hearing Modification

Section 42-433.315

Specific Purpose:

This section is adopted to include noncitizen victims of trafficking, domestic violence or other serious crimes and to cross-reference the specific documentation requirements for that population to prove eligibility.

Factual Basis:

This amendment is necessary as noncitizen victims of trafficking, domestic violence or other serious crimes are eligible to apply for assistance under Welfare and Institutions Code Section 18945. MPP Sections 42-431.4 through .6 were included to indicate which applicable documentation noncitizen victims of trafficking, domestic violence or other serious crimes may provide in order to establish eligibility.

Post-Hearing Modification

Section 42-433.34

Specific Purpose:

This section is adopted to include MPP Sections 42-431.512 through .514 as a cross reference to indicate noncitizen victims of human trafficking preparing to file an application for a T Visa, taking steps to meet eligibility conditions for federal benefits, or is a person for whom "continued presence" in the U.S. has been requested by federal law enforcement are exempted from providing form G-845S.

Factual Basis:

This adoption is necessary as noncitizen victims of trafficking identified in MPP Sections 42-431.512 through .514 would not necessarily have documentation that could be verified by USCIS. These noncitizen victims of trafficking may be eligible for benefits if they can show that they are preparing to file an application for a T Visa, taking steps to meet eligibility conditions for federal benefits, or are persons for whom "continued presence" in the U.S. has been requested by federal law enforcement. USCIS may not yet be involved at the point where a noncitizen victim of trafficking is preparing to file an application for a T Visa, taking steps to meet eligibility conditions for federal benefits, or where federal law enforcement is initially requesting continued presence. Therefore, requiring these noncitizen victims of human trafficking to provide a form G-845S would not be appropriate.

Section 42-711.531(d)

Specific Purpose:

This section is adopted to clarify that CalWORKs welfare-to-work participants that do not have employment authorization from USCIS shall not be required to participate in job search.

Factual Basis:

This adoption is necessary to make Sections 13283 and 18945(a) of the Welfare and Institutions Code adopted by SB 1569, consistent with CalWORKs work requirements. Although 13283 and 18945(a) make noncitizen victims eligible for employment services and require that they comply with work requirements, many noncitizen victims will not have authorization to work in the United States. Therefore, it would not be appropriate to have these individuals participate in job search. This subsection is also developed under the provisions of Welfare and Institutions Code Section 10553, which provides the Director of CDSS with the authority to adopt regulations that are necessary for the administration of the CalWORKs program.

Sections 42-711.551(b) and (c)

Specific Purpose/Factual Basis:

These sections are amended and are necessary to make grammatical changes necessary for the adoption of Section 42-711.551(d).

Sections 42-711.551(d) and (d)(1)

Specific Purpose:

These sections are adopted to specify that if the CWD determines that participation in job search is not required because the recipient does not have employment authorization from USCIS, the recipient will be referred to assessment.

Factual Basis:

These amendments are necessary to make Sections 13283 and 18945(a) of the Welfare and Institutions Code adopted by SB 1569, consistent with CalWORKs work requirements. Although 13283 and 18945(a) make noncitizen victims eligible for employment services and require that they comply with work requirements, many noncitizen victims will not have authorization to work in the United States. Therefore, it would not be appropriate to have these individuals participate in job search. However, it may be appropriate for noncitizen victims to participate in welfare-to-work activities that will assist them to prepare for future employment, which may include, but is not limited to, adult basic education (English language training), vocational education and training, domestic violence, mental health, substance abuse services. These subsections are also developed under the provisions of Welfare and Institutions Code Section 10553, which provides the Director of CDSS with

the authority to adopt regulations that are necessary for the administration of the CalWORKs program.

Sections 49-020.11 and .111

Specific Purpose/Factual Basis:

These sections are amended for technical and grammatical reasons to accommodate the addition of new Section 49-020.112

Sections 49-020.112

Specific Purpose:

This section is adopted to reflect that victims of human trafficking, domestic violence or other serious crimes meet the immigration status criteria for the Cash Assistance Program for Immigrants (CAPI) as authorized in Welfare and Institutions Code Section 18937, in the same way as do those who are admitted to the United States as refugees.

Factual Basis:

This section is necessary to add the new category of noncitizen who is eligible for CAPI as mandated by Welfare and Institutions Code Section 18945, which requires victims of human trafficking, domestic violence or other serious crimes to be eligible for public social services.

Section 49-020.13

Specific Purpose:

This section is adopted to specify that an individual seeking CAPI eligibility as a victim of trafficking must meet the same eligibility criteria used in TCVAP as described in MPP Sections 70-102 and 70-103.1 through .4.

Factual Basis:

The TCVAP provisions as described in MPP Sections 70-102 and 70-103.1 through .4 reflect the provisions and requirements of Welfare and Institutions Code Section 18945 for trafficking victims. The TCVAP eligibility criteria for trafficking victims are referred to here to ensure consistency across all programs.

Section 49-020.14

Specific Purpose:

This section is adopted to specify that an individual seeking CAPI eligibility as a victim of domestic violence or other serious crimes must meet the same eligibility criteria used in the TCVAP as described in MPP Section 70-104.1.

Factual Basis:

This amendment is necessary to specify the TCVAP provisions as described in MPP Section 70-104.1 that reflect the provisions and requirements of Welfare and Institutions Code Section 18945 for victims of domestic violence or other serious crimes. The TCVAP eligibility criteria for trafficking victims are referenced here to ensure consistency across all programs.

Final Modification:

As a result of the testimony received, additional language was added to MPP Section 49-020.14. The language includes "found in MPP Sections 70-104.1 through .125." This is to provide additional references where the eligibility and documentation requirements for victims of human trafficking, domestic violence or other serious crimes can be located.

Section 49-020.22

Specific Purpose:

This section is amended to specify that a person who is not a Qualified Alien as defined in MPP Section 49-005(q)(1), who entered the United States prior to August 22, 1996 may also be eligible for Basic CAPI if he or she meets the victim of human trafficking, domestic violence or other serious crimes criteria as specified in MPP Section 49-020.1, even if he or she does not fall into one of the Permanently Residing Under Color of Law (PRUCOL) categories, as defined in MPP Section 49-005(p)(3).

Factual Basis:

This amendment is necessary because Section 49-020.1 added the victim of human trafficking, domestic violence or other serious crimes, as a qualifying immigration status for all CAPI programs.

Section 49-020.32

Specific Purpose:

This section is amended to specify that a person who is a Qualified Alien or PRUCOL as defined in MPP Sections 49-005(q)(1) and (p)(3) respectively, who entered the United States on or after August 22, 1996 may also be eligible for Extended CAPI if he or she

meets the victim of human trafficking, domestic violence or other serious crimes criteria as specified in MPP Section 49-020.1.

Factual Basis:

This amendment is necessary because Section 49-020.1 added the victim of human trafficking, domestic violence or other serious crimes as a qualifying immigration status for all CAPI programs.

Section 49-030.113

Specific Purpose:

This section is amended to indicate that trafficking victims or others who have been granted formal status in the form of a T visa or other documentation that allows them to have the same rights as a refugee for other federal benefits are not exempt from referral to file for SSI/SSP benefits even though they do not technically meet the definition of Qualified Alien, as defined in MPP Section 49-005(q)(1). People granted formal status by a T visa or other documentation are considered to be a qualified alien (refugee) for the purposes of federal benefits, even though they do not meet the definition, and must be directed to file for SSI/SSP.

Factual Basis:

This amendment is necessary to clarify MPP Section 49-030.1, which states that to be eligible for CAPI, a person must be ineligible for SSI/SSP solely due to his or her immigration status. A victim of human trafficking, domestic violence or other serious crimes who has been issued a T visa is eligible for federal benefits (including SSI/SSP) to the same extent as a refugee, and therefore must be required to file for SSI/SSP.

Section 49-060.1(k) et seq.

Specific Purpose:

These sections are adopted to show that an additional reason for CAPI benefits being suspended is when the recipient's immigration status no longer meets the criteria specified in MPP Section 49-020.1. This specifically includes a victim of human trafficking whose application for a T Visa has been finally administratively denied, or who has not applied for a T Visa within one year of the CAPI application date, or on whose behalf a request for continued presence has not been made within one year of the CAPI application date, or who has been issued a T Visa; or a victim of domestic violence or other serious crimes whose application for a U visa has been finally administratively denied. This allows the individual to submit such evidence as may be necessary during those 12 consecutive months after the effective date of suspension to regain eligibility and have benefits reinstated through the redetermination process rather than having to file a new application. Suspending benefits instead of terminating them would save the state of having to process a new disability evaluation and would save the counties the time from having to obtain the disability information.

Factual Basis:

This adoption is necessary in order to conform to the CAPI eligibility provisions specified in MPP Section 49-020.1.

Section 63-403.1

Specific Purpose/Factual Basis:

This section is amended to reflect the name change of the Immigration and Naturalization Service (INS) to United States Citizenship and Immigration Services (USCIS).

Section 63-403.11

Specific Purpose:

This section is adopted to establish eligibility for noncitizen victims of trafficking, domestic violence, or other serious crimes.

Factual Basis:

This adoption is necessary to comply with Section 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services, including food stamps, to noncitizen victims of specified human trafficking, domestic violence, or other serious crimes.

Final Modification:

As a result of testimony received, a change was made to MPP Section 63-403.11 by adding additional language. This is to provide additional clarity on eligibility and documentation requirements for victims of human trafficking, domestic violence or other serious crimes.

Section 63-403.2

Specific Purpose/Factual Basis:

This section is amended to capitalize "213A Affidavit of Support" for grammatical correctness and is necessary for consistency.

Sections 63-403.21 and .211

Specific Purpose:

These sections are adopted to establish food stamp regulations for victims of trafficking, domestic violence, or other serious crimes. They also added an exception to the eligibility

requirement for the need of the social security number. The social security number is not required for this group of noncitizens.

Factual Basis:

These sections are necessary to comply with Section 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services, including food stamps, to noncitizen victims of specified human trafficking, domestic violence, or other serious crimes. The addition of language specifying the exception to the social security number eligibility requirement is necessary since individuals made eligible under these statutory provisions would not be granted a social security number and would not have permission to work in the United States due to their noncitizen undocumented status.

Section 63-403.31

Specific Purpose:

This section is adopted to specify that noncitizen victims of trafficking, domestic violence, or other serious crimes shall not be subject to food stamp work requirements.

Factual Basis:

This adoption is necessary to comply with Section 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services, including food stamps, to non-citizen victims of specified human trafficking, domestic violence, or other serious crimes. This adoption is necessary to specify that food stamp work registration and work requirements, including those applicable to CFAP recipients, do not apply to noncitizen victims of specified human trafficking, domestic violence, or other serious crimes.

Section 69-201.3

Specific Purpose:

This section is amended to provide a cross-reference to a new chapter of the CDSS MPP implementing a new state-only program mandated by SB 1569, the Trafficking and Crime Victims Assistance Program (TCVAP).

Factual Basis:

This amendment is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. Eligible noncitizen victims of a severe form of human trafficking who are not eligible under MPP Section 69-202.15 and .16 and noncitizen victims of domestic violence or other serious crimes comprise the TCVAP population, and they are eligible for benefits and services to the same extent as federally-eligible refugees, but with some different criteria and exceptions. MPP Chapter 70-100 implements TCVAP, but many components

of MPP 69-202 et seq. are applicable when determining eligibility for TCVAP applicants and the cross-reference avoids duplication of regulatory material. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Sections 69-202.15 and .16

Specific Purpose:

These sections are amended to provide cross-references to TCVAP.

Factual Basis:

These amendments are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. These cross-references are necessary to avoid confusion that may arise due to the similarities between the program populations, to clarify that these sections do not apply to noncitizen victims of a severe form of human trafficking who are not certified by the Office of Refugee Resettlement (ORR) or to noncitizen victims of domestic violence or other serious crimes, and to specify which MPP section applies to TCVAP applicants. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-202.23

Specific Purpose:

This section is adopted to provide TCVAP recipients state-funded services equivalent to the federally-funded services provided to refugees and to provide a cross-reference.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. TCVAP recipients are not considered "refugees" and therefore not eligible for federal cash aid or social services under the Refugee Resettlement Program (RRP). This amendment is necessary to clarify this distinction, and to provide a cross-reference to the appropriate MPP program section for determining eligibility. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-202.41

Specific Purpose:

This section is amended to specify that time eligibility does not apply to TCVAP applicants, and to provide a cross-reference to TCVAP and to clarify that lifetime limits for months of aid do apply.

Factual Basis:

This amendment is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This amendment is necessary to avoid confusion that may arise due to the similarities between the program populations, to clarify that this section does not apply to noncitizen victims of a severe form of human trafficking who are not eligible under Sections 69-202.15 and .16 or to noncitizen victims of domestic violence or other serious crimes (TCVAP), and to specify which MPP section does apply to TCVAP applicants. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Final Modification:

The Department is amending MPP Section 69-202.41 to clarify that although time eligibility does not apply to TCVAP applicants, lifetime limits on months on aid do apply.

Section 69-205.212

Specific Purpose:

This section is adopted to provide the definition of beginning date of aid when a TCVAP recipient is determined eligible for the federal Refugee Cash Assistance (RCA) Program.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. There are differences in beginning date of aid rules for RCA when a TCVAP recipient becomes federally eligible, and to avoid break in service to the recipient. This adoption is necessary to assist the CWD in making the proper determination by specifying the appropriate method for determining beginning date of aid, and ensuring no break in service. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-205.212(a)

Specific Purpose:

This section is adopted to specify that when a TCVAP recipient obtains ORR certification and is determined eligible for RCA and the original application for aid is still current, the beginning date of aid for RCA shall be the date of the ORR certification.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This amendment specifies the appropriate method for determining beginning date of aid for a TCVAP recipient being converted to federally-funded RCA, which is different than an initial RCA determination. This will ensure that CWDs make correct determinations in these cases. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-205.212(b)

Specific Purpose:

This section is adopted to specify that when a TCVAP recipient obtains ORR certification and is determined eligible for RCA, and the original application for aid is no longer current, federally-funded RCA beginning date of aid rules apply.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This amendment clarifies that although the rules for determining beginning date of aid for TCVAP cases being converted to federal RCA differ when the original application for aid is still current, the regular beginning date of aid for RCA applies as set forth in MPP Section 69-205.211, if the original application is no longer current. This is necessary to avoid confusion between the two determinations. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-205.212(c)

Specific Purpose:

This section is adopted to specify that there must be no break in service to the recipient whose case is being converted from state TCVAP to federal RCA.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This amendment specifies that CWDs must ensure that continuous service be provided to recipients being converted from state TCVAP to federal RCA, and proper notice issued. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-205.213

Specific Purpose:

This section is adopted to specify that fiscal claiming for a case must be converted from state to federal when a state TCVAP recipient becomes eligible for federal RCA.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This adoption is necessary because the law specifically stipulates that these cases shall be paid from state funds only to the extent that federal funding is unavailable. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 69-205.241

Specific Purpose:

This section is amended to specify that TCVAP recipients are not subject to time eligibility provisions, and to provide a cross-reference to TCVAP.

Factual Basis:

This amendment is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This clarification is necessary to avoid confusion that may arise due to the similarities between the program populations and ensure that time eligibility limitations are not applied to noncitizen victims of human trafficking who are not eligible under MPP Sections 69-202.15 and .16 or to noncitizen victims of domestic violence or other serious crimes (TCVAP). This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Division 70

Specific Purpose/Factual Basis:

This division is adopted to include within it Special Programs administered by CDSS.

Chapter 70-100

Specific Purpose/Factual Basis:

This chapter is adopted to provide a place in the Special Programs Division for the Trafficking and Crime Victims Assistance Program (TCVAP) regulations.

Section 70-101.1

Specific Purpose:

This section is adopted to introduce TCVAP.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This section defines and explains the new state-funded program established by SB 1569. Prior to this legislation, the program did not exist and is not included in the CDSS MPP. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-101.2

Specific Purpose:

This section is adopted to assign organizational responsibility for administering and supervising TCVAP.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. For clarity, it is necessary to specify the governmental entities responsible for determining the eligibility of TCVAP applicants for financial, social services and medical services, and the governmental entities responsible for supervising these activities. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Sections 70-101.21 and .22

Specific Purpose:

These sections are adopted to specify the MPP sections that pertain to determining the status and eligibility of trafficking victims and crime victims, respectively.

Factual Basis:

These adoptions are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. The determination of the status and eligibility of a trafficking victim differs from the determination of a crime victim. These sections differentiate between the two by specifying which MPP section applies, and directs the reader to the appropriate section, which will avoid confusion and ensure appropriate determinations for each. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-102.1

Specific Purpose:

This section is adopted to specify that the CWD is responsible for determining the trafficking status of an applicant.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This section is necessary to clarify that the TCVAP population, while similar to refugees, whose status is determined by United State Citizenship and Immigration Services (USCIS), will not have a USCIS determination and the CWD must conduct it. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Handbook Section 70-102.11

Specific Purpose:

This handbook section is added to define the term "severe form of human trafficking," for CWDs to utilize when making a determination of an applicant's trafficking status.

Factual Basis:

This handbook section is necessary to provide the definition of trafficking at Section 1102 (8) of Title 22 of the United States Code, as specified in SB 1569. CWDs need a specific definition to rely upon when making the determination of an applicant's trafficking status.

Sections 70-102.2 et seq.

Specific Purpose:

These sections are adopted to specify what documentation is sufficient for determining trafficking status.

Factual Basis:

These sections are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. These sections specify the procedure, including a description of acceptable documents provided in SB 1569, for verifying trafficking status, to ensure CWDs appropriately make this determination. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-102.3

Specific Purpose:

This section is adopted to clarify that, in the absence of additional evidence, the sworn statement of an applicant attesting to his/her trafficking status will be sufficient if the CWD makes a determination documented in the case file that the applicant is credible.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. For consistency and accuracy, it is necessary to specify the procedure for determining trafficking status that CWDs must follow if additional evidence is absent. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Handbook Section 70-102.31

Specific Purpose:

This handbook section is added to describe the type of document a CWD may utilize to obtain the sworn statement of an applicant.

Factual Basis:

This handbook section is necessary to clarify for the CWD that a particular type of document likely already available in the CWD may be utilized for obtaining the sworn statement from an applicant.

Sections 70-103.1 through .14

Specific Purpose:

These sections are adopted to specify the conditions an applicant must satisfy in order meet the definition of a victim of human trafficking for purposes of TCVAP eligibility.

Factual Basis:

These adoptions are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. After the CWD verifies that an applicant meets the definition of a victim of a severe form of trafficking, these sections provide specific criteria that must be applied in determining eligibility for TCVAP, in order to ensure accurate and appropriate determinations. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Final Modification:

As a result of testimony received, a change was made to MPP Section 70-103.14 by striking out the phrase "the U.S. Attorney General." Investigation or prosecution of human traffickers is not restricted to the U.S. Attorney General in the request by federal law enforcement for continued presence. The department is further amending this section for clarity to include that continued presence can only be requested by federal law enforcement. Further, the phrase "investigation or" was also added since continued presence in the U.S. can be requested by law enforcement in either the investigation or the prosecution of human traffickers.

Handbook Sections 70-103.2 through .4

Specific Purpose/Factual Basis:

These handbook sections are added to provide examples of documentation a CWD may utilize when determining the eligibility of an applicant for TCVAP benefits and services, and provide a definition of "continued presence."

Sections 70-103.5 through .54

Specific Purpose:

These sections are adopted to specify reasons to terminate eligibility for TCVAP, and include a definition of "final administrative denial."

Factual Basis:

These sections are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. These sections are necessary to ensure CWDs know the specific criteria which would result in termination of a TCVAP case. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-104.1

Specific Purpose:

This section is adopted to specify what the CWD must verify in order to determine the eligibility of victims of serious crimes for TCVAP.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This adoption specifies the basic requirement for TCVAP eligibility for a victim of serious crime. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Final Modification:

As a result of public testimony MPP Section 70-104.1 added language to include individuals who may file for a U Visa under Section 1101(a)(15)(U)(ii) of Title 8 of the U.S. Code. This is consistent with Welfare and Institutions Code Section 18945 defining individuals who have filed a formal application with the appropriate federal agency for status under Section 1101 (a)(15)(U) (i) or (ii) of Title 8 of the United States Code. This language was also amended to include individuals who requested U Visa Interim Relief prior to October 17, 2007.

Handbook Sections 70-104.11 through .113

Specific Purpose/Factual Basis:

These handbook sections are added to provide the definition of alien victims of serious crimes for purposes of the TCVAP.

Handbook Sections 70-104.12 through .124

Specific Purpose/Factual Basis:

These handbook sections are added to identify specific documents and/or documentation that the CWD can use to verify that a crime victim has applied for a U Visa.

Final Modification:

As a result of testimony received, the department is amending MPP Handbook Sections 70-104.12 and 70-104.122. This language was changed to add that documentation will be included to show that a petitioner who has filed a request for U Visa interim relief before October 17, 2007, may still qualify for SB 1569 benefits. U Visa interim relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations (8 C.F.R. § 214.14(a)(13)). U Visa interim relief was granted by USCIS to individuals who applied before October 17, 2007. The USCIS is no longer issuing interim relief after this date.

As a result of testimony received, additional language was added to MPP Section 70-104.12 et seq. to include an employment authorization document issued under Category "A19" or "A20" for an approved U Visa petitioner. Categories "A19" or "A20" are the classes of nonimmigrant statuses authorized to accept employment under 8 C.F.R. § 274a.12 and would be sufficient as documentation to establish that an individual has filed an application for a U Visa.

Section 70-104.2

Specific Purpose:

This section is adopted to specify when the CWD must terminate aid to a TVCAP crime victim case.

Factual Basis:

These sections are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. These sections are necessary to clarify for CWDs the eligibility rules for discontinuing the case of a crime victim receiving TCVAP. These sections are also

developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.1

Specific Purpose:

This section is adopted to specify that TCVAP recipients are entitled to the same benefits and services as refugees (cross-references provided), but with the exceptions that follow.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. Although TCVAP recipients are entitled to the same benefits and services, and subject to the same requirements and exemptions (as authorized by law) as refugees, it is necessary to establish that there are certain exceptions. Cross-references are provided to direct the reader to the correct MPP sections to avoid confusion and duplication of regulatory material. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.11

Specific Purpose/Factual Basis:

This section is adopted to provide a title for eligibility requirements for other programs that are referenced in Section 70-105.1 as exceptions.

Section 70-105.111

Specific Purpose:

This section is adopted to establish that TCVAP applicants shall not be required to apply for SSI/SSP.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. Undocumented individuals are not eligible for SSI/SSP, and it is not appropriate to require an individual to apply for a program for which it is known s/he is not eligible. This section clarifies this exception for the CWDs when determining eligibility for TCVAP applicants. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.112

Specific Purpose:

This section is adopted to establish that TCVAP applicants shall be aided under the state Cash Assistance Program for Immigrants (CAPI) if eligible.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This section specifies that CWDs must assess trafficking and crime victims' eligibility for CAPI and grant CAPI benefits if eligible pursuant to MPP Sections 49-020.13 and .14.

Section 70-105.113

Specific Purpose:

This section is adopted to establish that TCVAP applicants shall be aided under the state California Work Opportunity for Kids (CalWORKs) Program if eligible.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This section specifies that CWDs must assess trafficking and crime victims' eligibility for the CalWORKs Program before having their eligibility assessed for TCVAP, consistent with eligibility determinations for refugees at MPP 69-204.2. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.12

Specific Purpose/Factual Basis:

This section is adopted to provide a title for eligibility requirements for TCVAP Cash Aid that is referenced in Section 70-105.1 as exception.

Section 70-105.121

Specific Purpose:

This section is adopted to specify that time-eligibility and refugee criteria are not to be applied to TCVAP applicants/recipients.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. To avoid confusion and ensure appropriate application of the rules, this section clarifies that, while TCVAP recipients are entitled to benefits and services to the same extent as refugees, certain criteria and provisions regarding time eligibility and refugee status do not apply to TCVAP recipients. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.122

Specific Purpose:

This section is adopted to establish the number of months for which a TCVAP recipient is eligible to receive cash aid and clarify the point at which eligibility begins.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. A TCVAP recipient is eligible for the same number of months of cash aid as a federally-eligible refugee, but, unlike a refugee, the number of months for cash aid begins to be counted from the date of application. This adoption will avoid confusion and ensure appropriate application of the rules. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.123 through .124(a)

Specific Purpose:

These sections are adopted to specify eligibility determination periods for trafficking victims and crime victims, which differ in some ways, and expand upon and clarify cash aid and service rules, time frames, and outcomes of requirements that must be met for each victim group. These sections clarify the rules for TCVAP trafficking and crime recipients with regard to their eligibility periods for aid, and delineate specific actions that must occur depending on the circumstances of each case.

Factual Basis:

These sections are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. Although TCVAP recipients are entitled to the same benefits and services, and

subject to the same requirements and exemptions (as authorized by law) as refugees, there are differences between the refugee rules and the rules for trafficking and crime victims that may cause confusion. These sections are necessary to clarify the process so that CWDs will make consistent and accurate determinations. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.13

Specific Purpose:

This section is adopted to specify that a TCVAP recipient who obtains ORR certification must have his/her eligibility for RCA determined and, if eligible, be discontinued from state TCVAP and may receive federal RCA cash aid for up to the maximum allowable under the RCA provisions.

Factual Basis:

This section is necessary to provide CWDs with the requirements for handling a case when a TCVAP recipient obtains ORR certification. The TCVAP case must be discontinued and the eligible recipient may receive RCA for up to the maximum number of months allowed regardless of whether s/he previously received TCVAP cash aid. Prior to Senate Bill 1569, the only refugee cash aid was RCA, and the maximum limit is well-established in that program. This section is necessary to clarify this issue and avoid confusion. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.14

Specific Purpose/Factual Basis:

This section is adopted to provide a title for eligibility requirements for Employment/ Training Requirements and Exemptions that are referenced in Section 70-105.1 as exception.

Section 70-105.141

Specific Purpose:

This section is adopted to establish that TCVAP recipients shall not be required to participate in certain employment-directed activities for which they are not authorized by law, i.e., if they do not possess work authorization from USCIS.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious

crimes. This adoption is necessary to specify the stipulation in the law that TCVAP recipients shall only be required to participate in employment-directed requirements and/or activities if they are legally authorized to do so. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.141(a)

Specific Purpose:

This section is adopted to explain that certain work-related activities may not be appropriate for an individual who is not legally authorized to work, and to provide examples of appropriate employment and training activities for such recipients.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. TCVAP recipients who are not authorized to work and not able to legally participate in certain work-directed activities must not be required to do so for purposes of program eligibility. This section specifies that certain activities shall not be required and suggests other activities that would be appropriate for individuals not authorized to work. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Section 70-105.142

Specific Purpose:

This section is adopted to provide a specific exemption from work registration and training requirements if physical or psychological trauma resulting from an individual's victimization impedes his/her ability to comply. A cross-reference to other exemptions that may apply is provided for CWD use.

Factual Basis:

This adoption is necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. This will ensure that CWDs are aware of and apply this exemption, provided for in law, when appropriate. Additional exemptions which may apply are cross-referenced to avoid confusion and duplication of regulatory material. This section is also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

Sections 70-105.15 through .154

Specific Purpose:

These sections are adopted to establish case documentation requirements and provide cross-references.

Factual Basis:

These sections are necessary to comply with Sections 13283 and 18945 of the Welfare and Institutions Code added by SB 1569, which extends eligibility for social services and benefits to noncitizen victims of human trafficking, domestic violence, or other serious crimes. These amendments specifying documentation required for TCVAP recipients that differs from refugees will ensure that proper documentation be kept. Cross-references are provided to avoid confusion and duplication of regulatory material. These sections are also developed under the provisions of Welfare and Institutions Code 10553, which provides the Director of CDSS with the authority to adopt regulations.

b) Identification of Documents Upon Which Department Is Relying

Senate Bill 1569 (Chapter 672, Statutes of 2006)

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not school districts. If the Commission on State mandates determines that this act contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on August 13, 2008 in Sacramento, California. Written testimony was received from Los Angeles County Department of Public Social Services, Legal Aid Foundation of Los Angeles (on behalf of the National Immigration Law Center and the Legal Aid Foundation of Los Angeles), and

the Neighborhood Legal Services of Los Angeles County during the 45-day comment period from June 27 to 5:00 p.m. August 13, 2008. The comments received and the Department's responses to those comments follow.

Bill Taylor, Director, Intergovernmental Relations, Los Angeles County of Public Social Services submitted the following comments:

Section 42-433

1. Comment:

In proposed regulation Section 42-433.3.33 under PROOF OF CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS, there is a reference to forms CA 6 and CW 6. Reference to these forms is repeated throughout the document.

Our comment is that we were unable to find or access the noted documents CA 6 and CW 6 on the CDSS website or elsewhere for comment.

Response:

The Department is amending the regulations. USCIS does not recognize form CW 6 as acceptable verification documentation. As a result, MPP Section 42-433.33 has eliminated reference to form CW 6 as acceptable verification documentation. When the county welfare department believes the documentation submitted by the noncitizen to be of doubtful authenticity, the noncitizen applicants/recipients are responsible for obtaining acceptable verification documentation using the Document Verification Request (G-845S) as required by USCIS.

Section 42-431.32

2. Comment:

Section 42-431.32 provides types of documentation that can be accepted to establish an individual's claim that he/she is a noncitizen victim of human trafficking. As written, the human trafficking victim would be required to provide a sworn statement in addition to other evidence that establishes him/her as a victim of human trafficking. If an individual has a receipt from USCIS confirming an application for a T Visa, should not this evidence alone suffice to establish his/her claim as a victim of human trafficking? Since these individuals most likely have suffered severe physical, mental, and emotional abuse, asking that they recount the details of this experience (that have already been documented with USCIS) on a sworn statement may further traumatize the applicant.

Response:

The Department is not amending the regulations. The statute specifies the sworn statement of the noncitizen victim of human trafficking is required documentation, pursuant to Welfare and Institutions Code Section 18945(e)(1).

Section 42-433.3

3. Comment:

Section 42-433.3 lists documentation noncitizens must provide to establish eligible status. Although the regulations have been updated to include noncitizens applying for assistance under SB 1569, these noncitizens are not mentioned in this section.

Response:

The Department is amending the regulations. The regulations will be modified to include noncitizens applying for assistance under Welfare and Institutions Code Section 18945. The Department is adding MPP Section 42-433.315 to include noncitizen victims of trafficking, domestic violence or other serious crimes and to cross-reference the specific requirements for that population to prove eligibility.

4. Comment:

In LA County, more than 70% of the SB 1569 caseload is comprised of noncitizens who filed for the U Visa status due to domestic violence. Due to the large number of U Visa statuses due to domestic violence, we recommend this summary provide more verbiage on this category of survivors.

Response:

The Department is not amending the regulations. This comment does not specify the way in which the regulations are deficient.

Tanya Broder, National Immigration Law Center and Sheila Neville, Legal Aid Foundation of Los Angeles submitted the following comments:

Section 42-431.332

5. Comment:

Where other evidence is not available, a sworn statement shall be sufficient.

Page 8, 42-431.332: The sentence "The sworn statement is acceptable as long as there is an independent basis for finding the applicant credible" should be deleted, because it is not authorized by the statute and does not reflect the standards in the referenced MPP section on determining credibility in domestic violence cases. Welf. & Inst. Code 18945(e)(2), added by SB 1569, makes clear that a sworn statement "shall be sufficient if the county or state agency makes a determination documented in the case file that the applicant is credible." Similarly, MPP Sec. 42-715.12 provides that, "[s]worn statements by a victim of past or present abuse shall be sufficient to establish abuse unless the county documents in writing an independent and reasonable basis to find the applicant or recipient not credible." Where other evidence is not available, and

a sworn statement is therefore required, the statute does not require the agency to have an additional independent basis for finding the applicant credible. This requirement, which is not authorized by the statute, should be dropped from the regulations.

Response:

The Department is amending the regulations. The stated intent of the proposed regulation is to apply the same standard used when determining credibility in domestic violence cases. The amended language will accept the domestic violence credibility standard as defined in MPP Section 42-715.12.

Section 42-431.414

6. Comment:

Continued presence can be obtained if a victim assists a broad range of law enforcement officials, in investigating or in prosecuting human traffickers.

Page 8, 42-431.414: The provision, "Is a person for whom 'continued presence' in the US has been requested by law enforcement because he/she is assisting or will to assist the US Attorney General in the prosecution of human traffickers" should be revised to read, "because he/she is assisting or willing to assist in the investigation or prosecution of human traffickers." Prosecution of trafficking crimes can be conducted by local, state or federal authorities (including the US Department of Justice in Washington D.C.), and is not limited to the US Attorney. Assistance with an investigation can be enough to get continued presence, even if there is a decision by local, state or federal authorities not to prosecute.

Response:

The Department is amending the regulations. The investigation or prosecution of human traffickers is not restricted to the U.S. Attorney General in the request by federal law enforcement for continued presence. This is consistent with the federal guidelines which explains that state and local law enforcement can also assist federal law enforcement in the investigation or prosecution of human traffickers (66 Fed.Reg. 38514 (July 24, 2001)).

The Department is further amending the regulations to clarify that continued presence can only be requested by federal law enforcement pursuant to 28 C.F.R. § 1100.35.

The Department is also amending the regulations to clarify that law enforcement can also assist in the "investigation" or prosecution of human traffickers. This is consistent with 22 U.S.C. § 7105(c)(3).

Section 42-431.52

7. Comment:

Acceptable documentation

Page 9 42-431.52. The documents listed to establish that an individual has filed an application under 8 USC 1101(a)(15)(U)(i) or (ii) should also include the following:

"An Employment Authorization Document (EAD) issued under Category " A19" or" A20" for an approved U Visa petitioner."

Also missing from the list are documents held by individuals who applied under 8 USC 1101(a)(15)(U) and obtained Interim Relief. USCIS granted U visa interim relief to individuals who applied before October 17, 2007. These individuals are not required to file their formal U visa applications until the expiration of their grant of U visa interim relief, which for some won't occur until 2009. After they have filed this application, USCIS will continue to renew the U visa interim relief status for these individuals while their formal U visa applications are pending. Individuals with interim relief have all filed for relief under the statute listed in SB 1569, 8 USC 1101(a)(15)(U)(i) or (ii). That is, they have either applied for a U visa or are not yet required to file for that document. Recognizing this, ACL No. 8-15 lists the following document as acceptable proof that the immigrant meets SB 1569's requirements:

Response:

The Department is amending the regulations. The list of documents to establish that an individual has filed an application under 8 U.S.C. § 1101(a)(15)(U)(i) or (ii) will include an employment authorization document issued under Category "A19" or "A20" for an approved U Visa petitioner. Category A19 includes a noncitizen in U-1 nonimmigrant status and A20 includes a noncitizen in U-2, U-3, U-4, or U-5 nonimmigrant status. Categories "A19" or "A20" are the classes of nonimmigrant statuses authorized to accept employment under 8 C.F.R. § 274a.12 and would be sufficient as documentation to establish that an individual has filed an application for a U Visa.

The Department is further amending the regulations to include evidence that a petitioner has filed a request for U Visa interim relief before October 17, 2007 as acceptable documentation for determining eligibility for benefits. Individuals who have filed a request for U Visa interim relief before October 17, 2007 may still qualify for SB 1569 benefits. U Visa Interim Relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations (8 C.F.R. § 214.14(a)(13)). U Visa interim relief was granted by USCIS to individuals who applied before October 17, 2007. The USCIS is no longer issuing interim relief after this date.

Section 42-431.2

8. Comment:

Documentation for Non-citizens seeking CalWORKs.

Page 11. MPP Section 42-431.2 correctly describes the eligibility categories for immigrants seeking CalWORKs, as provided by the statute: lawful permanent

residents and individuals who are permanently residing in the U.S. under color of law, including the examples listed in this section. However, both this section and MPP Section 42-433.3's list of acceptable documents should be updated to clarify that all "qualified" immigrants, trafficking victims, and SB 1569 beneficiaries are eligible, by listing them among or in addition to the other categories of immigrants permanently residing in the U.S. under color of law. Missing from the list of eligible immigrants are: non-citizens granted withholding of removal/deportation, Cuban and Haitian entrants, and certain battered immigrants (described as eligible for CalWORKs in ACL 00-07, as clarified in ACIN 89-00). The list of acceptable documents is also unnecessarily limited. Given the changing nature of immigration documents, the regulations should make clear that these are examples rather than a comprehensive list. The handbook may also wish to reference the U.S. Attorney General's Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Immigrant Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (62 Fed Reg. 61344, Nov. 17, 1997) which includes some examples of documents that are acceptable evidence of "qualified" immigrant status. Another helpful reference is the Washington State Department of Social and Health Services' benefits manual. It cites the list of typical documents adopted from NILC's Guide to Immigrant Eligibility for Federal Programs: http://www.dshs.wa.gov/manuals/eaz/sections/CitizenAppendix_II.shtml

Response:

The Department is not amending the regulations. These changes go beyond the scope of these emergency regulations.

Section 70-104

9. Comment:

Eligibility for TCVAP

Page 31 MPP Section 70-104.1 should include individuals who have filed for a U visa under 1101(a)(15)(U)(ii) of the U.S. Code.

The list of documents under 70-104.12 establishing that an application for a visa under 8 USC 1101(a)(15)(U)(i) or (ii) has been made should be expanded to include the documents listed above (see comments on MPP Section 42-431.52).

Response:

The Department is amending the regulations. Individuals who have filed for a U visa under § 1101(a)(15)(U)(ii) of the U.S. Code should also be included. This is consistent with Welfare and Institutions Code Section 18945 defining individuals who have filed a formal application with the appropriate federal agency for status under Section 1101 (a)(15)(U)(i) or (ii) of Title 8 of the United States Code.

The Department is further amending the regulations. The list of documents to establish that an individual has filed an application under 8 U.S.C. § 1101(a)(15)(U)(i) or (ii)

will include an employment authorization document issued under Category "A19" or "A20" for an approved U Visa petitioner. A19 includes a non-citizen in U-1 nonimmigrant status and A20 includes a non-citizen in U-2, U-3, U-4, or U-5 nonimmigrant status. Categories "A19" or "A20" are the classes of nonimmigrant statuses authorized to accept employment under 8 C.F.R. § 274a.12 and would be sufficient documentation to establish that an individual has filed an application for a U Visa.

The Department is also amending the regulations to include U Visa interim relief. Individuals who have filed a request for U Visa interim relief before October 17, 2007 may still qualify for SB 1569 benefits. U Visa interim relief was granted by USCIS to individuals who applied before October 17, 2007.

Michael Chung, Staff Attorney, Neighborhood Legal Services of Los Angeles County submitted the following comments:

10. Comment:

While the Proposed Regulations are a good draft. NLS has several concerns based on our extensive experience in this area of law. We have suggested changes and additions to the Proposed Regulations that will make them consistent with federal and state law and which deal with potential problems.

In particular, we have four main concerns: ... First, the credibility determinations in the current regulations do not correctly state the standard for determining when an applicant is credible. While the Proposed Regulations cite the domestic violence standard, the standard used is incorrect and imposes a burden of proof that many victims will not be able to meet. Consequently, we have suggested new language to conform the new rules to the current domestic violence waiver standard.

Response:

Please see response to comment #5.

11. Comment:

Second, requiring U and T Visa applicants to provide documentation above and beyond the requirements elucidated under §§ 42-431.3, 42-431.4 and 42-431.5 may preclude many from receiving benefits. As explained more thoroughly below, many U and T Visa applicants simply may not have such documentation. Requiring documentation beyond that intended under SB 1569 may prevent eligible immigrants from receiving the benefits they need.

Response:

The Department is not amending the regulations. To the extent that there is any confusion regarding what documentation is required for these applicants, please see the

response to comment #3. The Department is adding MPP Section 42-433.315 to include noncitizen victims of trafficking, domestic violence or other serious crimes and to cross-reference the specific requirements for that population to prove eligibility.

12. Comment:

Third, we think that it is important for the Department of Social Services (DSS) to issue an All County Letter (ACL) reminding counties that victims of trafficking, domestic violence and other serious crimes are eligible for General Relief and General Assistance.

Response:

General Relief and General Assistance are strictly county funded programs pursuant to Welfare and Institutions Code Section 17000 et seq. The Department does not have authority to regulate the eligibility criteria for these programs and it would be inappropriate for the Department to issue an ACL.

13. Comment:

Fourth, there should be a section for IHSS, CAPI, CFAP and CalWORKs stating that the time limits for receipt of benefits under these programs is the same for noncitizen victims of trafficking, domestic violence and other serious crimes as it is for citizens. There has been a problem in Los Angeles County where noncitizen victims of trafficking, domestic abuse and other serious crimes were terminated after only 8 months because the Department of Public Social Services applied the 8 month time limit for Refugee Cash Assistance (RCA) benefits. We also endorse the comments made by the Legal Assistance Foundation of Los Angeles (LAFLA) and the National Immigration Law Center (NILC).

Response:

For CalWORKs, the Department is amending the regulations. MPP Section 40-037.1 is being revised to clarify the time limits applicable to those eligible as SB 1569 recipients. MPP Section 42-431.23 was added as a cross reference to include noncitizens applying for assistance under Welfare and Institutions Code Section 18945.

For CAPI, the Department is not amending the regulations. The proposed addition is unnecessary. No time limits exist for this program and any mention of a time limit to benefits may appear misleading. Existing regulations do not authorize termination after 8 months or 60 months. Moreover, the Department knows of no instances where benefits for these programs were terminated prematurely. Any case that might be prematurely terminated in the future could be remedied under existing regulations. MPP Section 49-060 shows reasons for benefit terminations and suspensions, which do not restrict time limitations for benefits.

For IHSS, the Department is not amending the regulations. The proposed addition is unnecessary. No time limits exist for this program and any mention of a time limit to

benefits may appear misleading. Existing regulations do not authorize termination after 8 months or 60 months. Moreover, the Department knows of no instances where benefits for these programs were terminated prematurely. Any case that might be prematurely terminated in the future could be remedied under existing regulations. Benefits are not restricted to a time limitation.

For CFAP, the Department is not amending the regulations. The receipt of state funded benefits is based on MPP Section 42-431.5, which discusses when the state program will be terminated. Therefore, food stamp regulations will not be amended since MPP Section 42-431.5 clearly sets forth the conditions under which benefits will be terminated, including when the recipient has not applied for a T Visa within one year of the date of the application. Otherwise, once CFAP is determined, it will continue until any one of the conditions at MPP Section 42-431.5 is determined.

Section 40-105.26

14. Comment:

Proposed Regulation § 40-105.26 - SSN Requirement

This section should be amended to clarify that noncitizen victims of trafficking and other serious crimes do not have to comply with the SSN requirement:

.26 Individuals identified in Section 42-431.23, including those applicants for U and T Visas and who are state-funded, are not required to meet this requirement.

Response:

The Department is not amending the regulations. MPP Section 42-431.23 sufficiently encompasses applicants for T and U Visas.

Section 42-430

15. Comment:

Proposed Regulation § 42-430 - Documentation

As explained more thoroughly in the discussion concerning Proposed Regulation § 42-433, applicants who are victims of trafficking or other serious crimes should not be required to provide documentation above and beyond the requirements elucidated under §§ 42-431.3 and 42-431.4 Proposed Regulation § 42-430 should be revised as follows:

Only citizens of the United States and certain categories of ~~aliens~~ noncitizens are eligible for ~~AFDC~~ CalWORKs. Citizens must prove their citizenship and ~~aliens~~ noncitizens must prove their eligible ~~alien~~ noncitizen status. Aid shall not be authorized until ~~alien~~ noncitizen status is verified. Notwithstanding these requirements, noncitizen victims of human trafficking, domestic violence or other

serious crimes applying for benefits under SB 1569, shall not be required to provide documentation other than that required under §§ 42-431.3 42-431.4 and 42-431.5.

Response:

The Department is not amending the regulation. To the extent that there is any confusion regarding what documentation is required for these applicants, please see the response to comment #3. The Department is adding MPP Section 42-433.315 to include noncitizen victims of trafficking, domestic violence or other serious crimes and to cross-reference the specific requirements for that population to prove eligibility.

Section 42-431.231(b)(1)

16. Comment:

Proposed Regulation § 42-431.231(b)(1) - Definition of Noncitizen Victim of Serious Crimes

The regulations should make clear that victims of attempts, conspiracies, or solicitations to commit the enumerated crimes required to be eligible as a noncitizen victim of serious crimes, are eligible for state-funded benefits. Under Proposed Regulation §42-431.231 (b), only those having suffered physical or mental abuse as a result of "perjury or attempt; conspiracy or solicitation to commit any of the above mentioned crimes" may be eligible as noncitizen victims of serious crimes. By including attempt with perjury, the language as written, would exclude victims of attempts of any of the other enumerated crimes from receiving state-funded assistance.

The federal statute makes it clear that attempts, conspiracies or solicitations to commit *any* of the crimes can make someone eligible for the U Visa. Under 8 U.S.C. § 1101(a)(15)(U)(i) the definition of serious crimes includes an "attempt, conspiracy, or solicitation to commit any of the above mentioned crimes."

By inserting a semi-colon after "perjury" and changing the semi-colon after "attempt" and replacing it with a coma, these changes will make it clear that the inchoate crimes of attempts, conspiracies or solicitations of any of the crimes enumerated are included with the definition of serious crimes along with the actual completed crimes. These changes are also consistent with the statutory language found in the federal law. Proposed Regulation § 42-431.231(b) should be amended as follows:

- (1) Have suffered substantial physical or mental abuse as a result of having been victims of criminal activity involving, or similar to, the following violations: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt; conspiracy or solicitation to commit any of the above mentioned crimes ... (Continued)

Response:

The Department is amending the regulations. There were punctuation errors in the definition of Noncitizen Victims of Serious Crimes. The punctuation will be changed to be consistent with 8 U.S.C. § 1101(a)(15)(U)(iii), which makes clear that the crimes of attempts, conspiracies or solicitations to commit any of the above mentioned crimes in the definition are included with the actual completed crimes.

Section 42-431.2

17. Comment:

Proposed Regulation § 42-431.2- Eligibility Requirements

NLS endorses LAFLA and NILC's comments concerning this section.

Response:

Please see response to comment #8 regarding documentation.

Sections 42-431.3 through .5 et seq.

18. Comment:

Proposed Regulation § 42-431.3-431.5 - The Entire Completed U or T Visa Application Should Not Be Required

The documentation sections of the U and T Visa proposed regulations list a copy of the petition or application as proof. DSS should not require the *entire* application or petition. A completed U or T Visa application contains highly sensitive and confidential information including details of the crime, the identity of the applicant's trafficker, abuser or assailant, and the manner in which the applicant is assisting law enforcement. A completed U or T Visa application may contain a personal declaration of the applicant, subpoenas to testify against the assailant/trafficker, domestic violence restraining orders, criminal protective orders, letters from therapists and/or domestic violence shelters and letters of recruitment or employment contracts.¹ Importantly, the completed U and T Visa application will include the current location of the applicant. Revealing any of this confidential information places the applicant in danger. Should the information be released to the trafficker/assailant, the applicant or applicant's loved ones could face threats, renewed violence or reprisals of another kind. This fear is well grounded, since there have been instances in Los Angeles County in which DPSS' employees released confidential information in a file to an abuser. Furthermore, the completed application is not necessary--the mere fact that it was filed is sufficient proof. And the submission of a signature page (and perhaps the first page) should be sufficient proof.

We recommend that DSS only require the signature page of the application (I-918 for a U Visa and the I-914 for a T Visa) which contains the applicant and preparer's

signatures as well as the identification number of the particular form (bottom right corner). This is ample evidence that a visa application was filed. We recognize that the Welfare and Institutions Code (hereafter "W & I") does allow the use of a completed visa application to show that an applicant has filed for a visa (See W & I § 18945(e)(1)(F)). But balancing the very real risk of serious harm (or even death) against the verification needs of the Department, suggests that the better practice is to only require the signature page of a completed U or T Visa application.

Therefore, Proposed Regulation § 42-431.326 should be amended as follows:

.326 A copy of the signature page of a completed visa application (I-918 for a U Visa and I-914 for a T Visa);

¹ We have attached a redacted, completed U and T Visa applications and the supplements showing the type of information that can be revealed as Exhibits 1 and 2 respectively. (Copies of these documents are in the rulemaking file under Exhibit D - Written Testimony Submitted During 45-Day Comment Period)

Response:

The Department is not amending the regulations. When an individual relies on providing a copy of the application as proof of eligibility, the entire T and U Visa application must be included. Pursuant to Welfare and Institutions Code Section 18945(e)(1)(F), a copy of a "completed visa application" must be provided for T Visas. A list of other verification options for T Visa applications is listed in Welfare and Institutions Code Section 18945(e)(1). A copy of a completed visa application is one of several verification options available for county consideration. Pursuant to Welfare and Institutions Code Sections 10553 and 10554, the Department has the authority to adopt regulations to interpret the law enforced by the Department. The requirement of a completed U Visa application is appropriate because it is consistent with the requirement for a completed T Visa application.

Section 42-431.332

19. Comment:

Proposed Regulation § 42-431.332 - Determining Applicant Credibility

The stated intent of the proposed regulation is to adopt the DV standard for credibility determinations. We think that it is commendable that the Proposed Regulations adopt the DV standard because these applicants may not always have the documentation necessary to show that they have been victims. Many have fled their abusers without any evidence, or out of fear have not reported the violence to the police. Often, abusers steal documents or destroy evidence as a way to control the victim. Requiring victims to provide documentation that they were trafficked will also be overly burdensome. This is why the current DV standard regarding credibility is so useful--it

reflects the reality of victims' lives. We commend DSS for adopting it in this regulatory context.

Unfortunately, the proposed language seriously misstates the credibility standard to prove domestic violence. The DV credibility standard, MPP § 42-715.12 states that "[s]worn statements by a victim of past or present abuse *shall be sufficient to establish abuse unless the county documents in writing an independent and reasonable basis* to find the applicant or recipient not credible." (emphasis added) This normally means that the applicant's statements *must be accepted*. Only when there is an independent and reasonable basis to find the applicant not credible and such basis is documented in writing, is a sworn statement not sufficient. The language in Proposed Regulation § 42-431.332 turns this standard on its head--requiring third party verification as the norm rather than the exception. It imposes a high burden on applicants to show that they are credible. This is inconsistent with the language found in MPP § 42-715.2. Consequently, Proposed Regulation § 42-431.332 should be amended as follows:

.332 The credibility of an applicant for purposes of accepting his/her sworn statement of trafficking status may be determined by applying the same standard used when determining credibility in domestic violence cases as defined in Section 42-715.12. The sworn statement is acceptable ~~as long as~~ unless there is an independent and reasonable basis, documented in writing, for finding the applicant not credible. In such a case, third party verification may be requested.

These changes accurately state the credibility standard found in the DV regulation in MPP § 42-715.12.

Response:

Please see response to comment #5.

Section 42-431.414

20. Comment:

Proposed Regulation § 42-431.414 - Continued Presence

We are in accord with the comments submitted by the National Immigration Law Center (NILC) and the Legal Aid Foundation of Los Angeles (LAFLA) that this section should be amended to include applicants who are assisting other federal, state and local law enforcement officials and not just the us Attorney.

Accordingly, Proposed Regulation § 42-431.414 should be amended as follows:

.414 Is a person for whom "continued presence" in the U.S. has been requested by any federal, state or local law enforcement because s/he is assisting or willing to assist ~~the U.S. Attorney General~~ in the prosecution of human traffickers.

Response:

Please see response to comment #6.

Section 42-431.422

21. Comment:

Proposed Regulation § 42-431.422 - The Entire Completed T Visa Applications Should Not Be Required

As explained above (at page 4), in the discussion of Proposed Regulation § 42-431.3-42-431.5, completed T Visa applications should not be used to determine if a T Visa was filed. This is due to the risk of harm that can arise when the confidential information contained in a completed T Visa application is revealed and because that level of detail is not necessary to show an application was filed.

Consequently, Proposed Regulation § 42-431.422 should be amended as follows:

.422 A copy of the signature page of the application for a T Visa (I-914);

Response:

Please see response to comment #18.

Section 42-431.51

22. Comment:

Proposed Regulation § 42-431.51 - Inclusion of U Visa Interim Relief Applicants

Proposed Regulation § 42-431.51 should be amended to include applicants who were granted U Visa Interim Relief prior to the formalization of the regulations for U Visas.

Accordingly, Proposed Regulation § 42-431.51 should be amended as follows:

.51 State-funded services for noncitizen victims of domestic violence or other serious crimes are available only when a request with USCIS for a U Visa or U Visa Interim Relief has been filed, if otherwise eligible. To be eligible under this section, the CWD must verify that these applicants:

.511 Have filed a formal application for U Visa (Form I-918 and required supplements) or U Visa Interim Relief with USCIS for status under Section 1101(a)(15)(U)(i) or (ii) of the Title 8 of U.S. Code.

These changes would allow for the inclusion of those who have received U Visa Interim Relief prior to the release of federal regulations governing U Visas, which were released October 17, 2007.²

² 72 Fed. Reg. 53014-53042 (Sept. 17, 2007).

Response:

The Department is amending the regulations. This modification will include language adding U Visa Interim Relief requested prior to Oct. 17, 2007 to allow for the inclusion of those who have received U Visa interim relief. U Visa Interim Relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations (8 C.F.R. § 214.14(a)(13)).

Section 42-431.52

23. Comment:

Proposed Regulation § 42-431.52 - DSS Should Modify the Regulation to Include U Visa Interim Relief Applicants

Proposed Regulation § 42-431.52 should be amended as follows, to include applications for U Visa Interim Relief:

- .52 Acceptable documentation for verifying that an application for a U Visa or U Visa Interim Relief has been filed includes, but is not limited to:
 - .521 A confirmation receipt or letter from USCIS verifying that a request has been filed; or
 - .522 The Notice of Action (form I-797) approving a U Visa or U Visa Interim Relief; or
 - .523 A form I-797 which serves as a fee receipt or approval notice for an employment authorization request based on a U Visa or U Visa Interim Relief application or a copy of an applicant's Employment Authorization Document (EAD) received in connection with his/her application for Interim relief; or
 - .524 A copy of the Petition for U Nonimmigrant status (form I-918); or

In addition, we suggest adding the following section to allow U Visa Interim Relief applicants to receive benefits even though they may not have the documents listed above. Limiting eligibility to only those persons with the documents above will preclude applicants who still applied for U Visa Interim Relief under state and federal

law but do not have the formal documents above because the formal documents did not exist at the time they applied.

.525 Any other documentation that an application for U Visa Interim Relief was filed.

Response:

The Department is amending the regulations under renumbered MPP Sections 42-431.62 and 42-431.622. This modification will include language citing U Visa Interim Relief filed prior to Oct. 17, 2007. U Visa Interim Relief refers to the interim benefits that were provided by USCIS to petitioners for U nonimmigrant status, who requested such benefits and who were deemed prima facie eligible for U nonimmigrant status prior to the publication of the implementing regulations (8 C.F.R. § 214.14(a)(13)).

The Department is further amending the regulations. The list of documents to establish that an individual has filed an application under 8 U.S.C. § 1101(a)(15)(U)(i) or (ii) will include an employment authorization document issued under Category "A19" or "A20" for an approved U Visa petitioner. A19 includes a non-citizen in U-1 nonimmigrant status and A20 includes a non-citizen in U-2, U-3, U-4, or U-5 nonimmigrant status. Categories "A19" or "A20" are the classes of nonimmigrant statuses authorized to accept employment under 8 C.F.R. § 274a.12 and would be sufficient documentation to establish that an individual has filed an application for a U Visa.

The Department is not amending the regulations to add proposed MPP Section 42-431.525. The additional language is unnecessary as the listing of acceptable documentation is not exclusive to the items listed but only a partial acceptable list. Furthermore, regulations at renumbered MPP Section 42-431.62 state that this is not an exhaustive list, and "is not limited to" the documents listed below.

Section 42-431.524

24. Comment:

Proposed Regulation § 42-431.524 - The Entire Completed Copy of the Visa Petition Should Not Be Required to Prove Eligibility

As explained above (at page 4) because of the risk involved, and the fact that this level of detail is not needed to satisfy documentation needs, a complete copy of the Petition should not be required. Consequently, Proposed Regulation § 42-431.524 should be amended as follows:

.422 A copy of the signature page of a Petition for U Nonimmigrant status (form I-918)

Response:

Please see response to comment # 18.

Section 42-433

25. Comment:

Proposed Regulation § 42-433.3 - Documentation of Non Citizenship

Proposed regulation 42-433 should not apply to U and T Visa applicants. This section should be amended to clarify that the only documentation requirements for non-citizen victims of trafficking, domestic violence or other serious crimes are those elucidated in the eligibility requirements of the Trafficking and Crime Victims Assistance Program (TCVAP), SB 1569, and § 42-431.3-42-431.5. Many U and T Visa applicants will not be able to present a document from USCIS showing their entry and/or presence until their U or T Visa application has been fully adjudicated. A large percentage of U and T Visa applicants entered the United States without Inspection or Parole. Accordingly, USCIS will not have an I-94 documenting their entry and/or presence. Since TCVAP intends to provide benefits to eligible victims of trafficking, domestic violence, and other serious crime while their U or T Visa applications are pending with USCIS, and since many U or T Visa applicants will not have documentation from USCIS until their applications are fully adjudicated, Section 42-433 should be amended as follows:

A citizen must prove his/her citizenship to be eligible, as provided in Section 42-433.2. ~~An alien~~ noncitizen must prove that he/she is in one of the eligible categories described in Section 42-431.2 above, by presenting the appropriate documentation described in Section 42-433.31 below. Notwithstanding these requirements, noncitizen victims of trafficking, domestic violence or other serious crimes, applying for benefits under SB 1569, need not submit evidence other than that required under §§ 42-431.3-42-431.5. These applicants are also not subject to the other provisions of MPP §§ 42-433 (Social Security number). Victims of trafficking, domestic violence, or other serious crimes must only present documentation to meet the eligibility requirements of SB 1569 as detailed in §§ 42-431.3-42-431.5. Noncitizen victims of trafficking, domestic violence or other serious crimes, applying for benefits under SB 1569, MPP § 42-431.3-42-431.5 shall not be required to provide documentation of presence or status for any other state-funded programs, including but not limited to CalWORKs, CAPI, IHSS, General Assistance or General Relief/Assistance or Indigent Medical Care (Welfare and Institutions Code Section 17000 et. Seq) or Refugee Cash Assistance (MPP 70-100) other than that required under §§ 42-431.3-42-431.55.

A section should also be added after § 42-433.5 to ensure that victims of trafficking and other serious crimes are not subject to the requirements of §§ 42-433.1, 42-433.3, 42-433.4 and 42.433.5.:

.6 Notwithstanding §§ 42-433.1, 42-433.3, 42-433.4 and 42-433.5, victims of trafficking, domestic violence and other serious crimes shall not be subject to the requirements of §§ 42-433.1, 42-433.3, 42-433.4 and 42-433.5 and shall not be penalized in any way for not complying with the requirements therein.

Response:

Please see response to comment #3 and #11. The department appreciates this comment requesting the addition of MPP Section 42-433.6, but will not be adding this language. SB 1569 does not provide CDSS with the authority to fully waive the cooperation and documentation requirements.

Section 30-770.51

26. Comment:

Proposed Regulation § 30-770 - Eligibility For IHSS

As explained more thoroughly above in the discussion of Proposed Regulation § 42-433, most noncitizen victims of trafficking and serious crimes will not have documentation of their entry and/or presence. Consequently, this section should be revised to state that noncitizen victims of trafficking and serious crimes must only meet the documentation requirements elucidated in the eligibility requirements of SB 1569, as set out in § 42-431.3-431.5. We have revised the list of documents to conform to state and federal law and to reflect the actual documents a person might have. Proposed Regulation § 30-770.51 should be revised as follows:

.51 A noncitizen victim of human trafficking, domestic violence or other serious crimes as defined under the Trafficking and Crime Victims Assistance Program (TCVAP), MPP Chapter 70-100, shall be eligible for IHSS if all other eligibility criteria are met. Welfare and Institutions Code Section 18945 established eligibility for this group of noncitizens. Eligibility rules are outlined in Sections 42-431.23., .3., 4, and .5. Noncitizen victims of human trafficking, domestic violence or other serious crimes applying for benefits under SB 1569, shall not be required to provide documentation other than that required under §§ 42-431.3, 42-431.4 and 42-431.5.

In addition, we suggest that DSS follow NILC and LAFLA's suggestions regarding this area.

Response:

The Department is amending the regulations. This is to clarify that the only documentation requirements for non-citizen victims of trafficking, domestic violence or other serious crimes are those described in the eligibility requirements of the Trafficking and Crime Victims Assistance Program (TCVAP), SB 1569, and MPP Sections 42-431.3 through .6. MPP Section 30-775.51 has been amended to provide a reference to the eligibility rules for TCVAP provided under MPP Sections 70-102, 70-103.1 through .4 and 70-104.1 and MPP Sections 70-104.1 through .124. These reference sections are essentially the same language as provided in Division 42 references.

Section 49-020.112

27. Comment:

Proposed Regulation § 49-020 - Documenting Immigration Status For CAPI

As explained above in the discussion of Proposed Regulation § 42-433, Proposed Regulation § 49-020.112 should be amended as follows:

.112 A victim of human trafficking, domestic violence or other serious crimes as defined in Welfare and Institutions Code Section 18945. Applicants qualified under these provisions will be eligible for benefits and services to the same extent as individuals who are admitted to the United States as refugees. Welfare and Institutions Code Section 18945 established eligibility for this group of noncitizens. Eligibility rules are outlined in Sections 42-431.23, .3, .4, and .5. Noncitizen victims of human trafficking, domestic violence or other serious crimes applying for benefits under SB 1569, shall not be required to provide documentation other than that required under §§ 42-431.3, 42-431.4 and 42-431.5.

Response:

The Department is not amending the regulations, as suggested under MPP Section 49-020.112. The suggested changes are unnecessary. Specific eligibility rules (MPP Sections 70-102, 70-103.1 through .4 and 70-104.1) are referred to in proposed Sections 49-020.13 and .14. These referenced sections contain essentially the same language as the Division 42 references mentioned in the commenter's proposed new language.

The Department is amending MPP Section 49-020.14 to add additional references where the eligibility and documentation requirements for victims of human trafficking, domestic violence or other serious crimes can be located. This is for clarity and consistency.

Section 63-403.11

28. Comment:

Proposed Regulation § 63-403 - Documenting Immigration Status For CFAP Eligibility

As explained above in the discussion of Proposed Regulation § 42-433, Proposed Regulation § 63-403.11 should be amended as follows:

.11 Victims of trafficking, domestic violence, or other serious crimes.

Welfare and Institutions Code Section 18945 established eligibility for this group of noncitizens. Eligibility rules are outlined in Sections 42-431.23, .3, .4, and .5. Noncitizen victims of human trafficking, domestic violence or other serious

crimes applying for benefits under SB 1569, shall not be required to provide documentation other than that required under §§ 42- 431.3, 42-431.4 and 42-431.5.

Response:

The Department is amending the regulations to read: Welfare and Institutions Code Section 18945 established eligibility for this group of noncitizens. Eligibility rules are outlined in MPP Sections 42-431.23, .3, .4, .5, and .6. Examples of documentation to be considered in determining an applicant's experience with human trafficking, domestic violence, or other serious crimes can be found in MPP Sections 42-431.4, .5 and .6.

Section 70-102.26

29. Comment:

Proposed Regulation § 70-102.26 - Completed Visa Applications Should Not Be Required to Verify Eligibility As a Victim of Trafficking

Balancing the serious risk of harm and the documentation needs of the department, as explained in the discussion of §§ 42-431.3-42-431.5 (at page 4), Proposed Regulation § 70-102.26 should be amended to require only the signature page (and perhaps the cover page) of the application, as follows:

.26 A copy of the signature page of the completed visa application (I-914 for a T Visa);

Response:

Please see response to comment #18.

Section 70-103.22

30. Comment:

Proposed Regulation § 70-103.22

As stated previously in the discussion of Proposed Regulation § 42-431.3-42-431.5, page 4) requiring a completed petition or application is not sound policy. Proposed Regulation § 70-103.22 should be amended as follows:

.22 A copy of the signature page of an application for a T Visa (form I-914).

Response:

Please see response to comment #18.

Section 70-104.111

31. Comment:

Proposed Regulation § 70-104.111 - Crimes to Be Included For the U Visa

As stated above in the discussion of Proposed Regulation § 42-431.231(b)(1) (at page 3), to allow victims of attempts, conspiracies or solicitations for the enumerated crimes to also receive state funded benefits, Proposed Regulation § 70-104.111 should be amended as follows:

- .111 Have suffered substantial physical or mental abuse as a result of having been victims of criminal activity involving, or similar to, the following violations: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt~~s~~, conspiracy or solicitation to commit any of the above mentioned crimes (Continued)

Response:

Please see response to comment #16.

Section 70-104.12

32. Comment:

Proposed Regulation § 70-104.12 - Inclusion of U Visa Interim Relief Applicants

Proposed Regulation § 70-104.12 should be revised to include U Visa Interim Relief and to only require the signature page of the Petition for a U Nonimmigrant status:

- .12 Acceptable documentation for verifying that an application for a U Visa or U Visa Interim Relief has been filed includes, but is not limited to:
- .121 A confirmation receipt or letter from USCIS verifying that a request has been filed; or
- .122 The Notice of Action (form I-797) approving a U Visa or U Visa Interim Relief; or
- .123 A form I-797 which serves as a fee receipt or approval notice for an employment authorization request based on a U Visa or U Visa Interim Relief application or a copy of the applicant's Employment Authorization Document (EAD) received in connection with an application for Interim Relief; or

.124 A copy of the signature page of the Petition for U Nonimmigrant status (Form I-918); or

.125 Any other documentation that an application for U Visa Interim Relief was filed.

Response:

The Department is amending the regulations under MPP Sections 70-104.12 and 70-104.122. Please see response to comment #23.

The Department is not amending the regulations under MPP Section 70-104.123, or add Section 70-104.125. Please see response to comment #23.

The Department is not amending the regulations under MPP Section 70-104.124 to only require the signature page of the Petition for a U Nonimmigrant status. Please see response to comment #18.

33. Comment:

The Regulations Should Clarify the Time Limits, If Any, on Receipt of Benefits Since Some Counties Have Assumed Benefits For All Programs Are Limited to Eight Months

The regulations should be clear that the RCA time limits do not apply to those receiving benefits under SB 1569 in the CAPI, IHSS and CFAP programs and that the only time limit for CalWORKs is 60 months. We have had an issue in Los Angeles County Department of Public Social Services (DPSS) where an 8 month time limit was imposed on SB 1569 recipients. After some administrative advocacy with the State, DPSS agreed to rescind cases that were terminated because they reached the 8 month time limit for RCA benefits. We think that without clarification, counties may try and terminate benefits prematurely. Therefore, we suggest the following language be added to the CAPI, IHSS, and CFAP sections dealing with noncitizen victims of human trafficking, domestic violence or other serious crimes:

The time limit on receipt of benefits shall be the same for noncitizen victims of trafficking, domestic violence and other serious crimes as it is for those who are citizens.

For CalWORKs, please add the following language:

The time limit on the receipt of benefits shall be the same for noncitizen victims of trafficking, domestic violence and other serious crimes as it is for those who are citizens (60 months).

Response:

Please see response to comment #13.

34. Comment:

The Regulations Should Clearly State That General Relief and General Assistance Funds Are Available to Eligible Noncitizen Victims or Trafficking or Serious Crimes and DSS Must Ensure that GR/GA Programs are Meeting the Requirements of SB1569.

Welfare and Institutions Code § 18945(a) states that "[n]oncitizen victims of trafficking; domestic violence, and other serious crimes as defined in subdivision (b), shall be eligible for public social services *under this division*." (emphasis added) The County General Relief and General Assistance statutes are found in Welfare and Institutions Codes §§ 17000 to 17030.1. Both Sections of the Welfare and Institutions Code are found in Division 9. Consequently, noncitizen victims of trafficking, domestic violence and other serious crimes are eligible for county funded General Relief and General Assistance programs since they are under the same statutory division.

It is important for the Proposed Regulations to explicitly state that eligibility is extended to County funded programs, such as General Relief and General Assistance, in addition to the state-funded programs. As such we think that Proposed Regulation § 40-037 should be amended as follows:

- .1 These regulations extend eligibility for certain public social services, including state-funded CalWORKs and County funded programs, such as General Relief and General Assistance, to certain noncitizen victims of trafficking, domestic violence or other serious crimes, as defined, who can demonstrate their eligibility for these programs, and to trafficking victims who are taking steps to meet eligibility conditions for federal benefits.

Likewise, Proposed Regulation § 42-433.3 [the intended reference is to 42-431.3, not 42-433.3] should be amended as follows:

- .3 Eligible noncitizen trafficking or serious crimes victims who meet all other eligibility criteria for cash assistance shall be aided under the CalWORKs or General Relief and General Assistance programs.

We suggest that an All County Letter (ACL) be issued reminding counties that General Relief and General Assistance is available to noncitizen victims of trafficking and other serious crimes to ensure that CWDs have implemented the program in their counties.

Response:

The Department is not amending the regulations. General Relief and General Assistance are strictly county funded programs pursuant to Welfare and Institutions Code section 17000 et seq. The Department does not have the authority to regulate these programs and it would be inappropriate for the Department to include this language and to issue an ACL.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the proposed regulations following the public hearing were made available to the public from November 21 through December 8, 2008. No further testimony was received and therefore no additional amendments were made to the regulations.