1.Does federal law allow the exclusion of federal benefits by a state to individuals legally in this country?

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) introduced a number of restrictions on the availability of federal assistance such as food stamps (SNAP), nonemergency Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families [TANF, or Family Independence (FI) in South Carolina] for immigrants.

PRWORA and IIRIRA created two categories of immigrants for purposes of benefits eligibility determination: "qualified" and "not qualified." The "qualified" immigrant category includes the following:

-Lawful permanent residents, or LPRs (persons with green cards).
-Refugees, persons granted asylum or withholding of deportation/removal, and conditional entrants.
-Persons granted parole by the Department of Homeland Security (DHS) for a period of at least one year.
-Cuban and Haitian entrants.
-Certain abused immigrants, their children, and/or their parents.
-Certain victims of trafficking.

All other immigrants, including undocumented immigrants as well as some persons lawfully present in the U.S., were considered "not qualified."

Thus, the individual's immigration status will determine whether federal benefits may be denied. Refugees, as "qualified" immigrants , are entitled to the following federal benefits and assistance, among other benefits. (See attached "Overview of Immigrant Eligibility for Federal Programs.pdf"):

-Supplemental Security Income (SSI)
-Supplemental Nutrition Assistance Program (SNAP)
-Temporary Assistance for Needy Families (TANF)
-Emergency Medicaid
-Full-Scope Medicaid
-Children's Health Insurance Program (CHIP)
-Medicare Part A

States administering federal benefit programs would, presumptively, be permitted to exclude from receipt of those benefits, individuals legally in this country only if those persons were otherwise not entitled to the benefits in accordance with federal guidelines, but exclusion based upon a person's belonging to a specific refugee group would likely be treated as violation of Title VI of the Civil Rights Act of 1964 (See 42 U.S.C. §2000d), as discussed below.

2. If a state should choose to exclude federal benefits to individuals legally in this country, would that action result in a loss of federal funds for the agency?

ANALYSIS BY BENEFIT PROGRAM

The Refugee Resettlement Program

The U.S. Department of Health and Human Services' Office of Refugee Resettlement (HHS/ORR), within the Administration for Children and Families (ACF), administers a transitional assistance program for, among others, temporarily dependent refugees. Since its establishment in 1980, the refugee resettlement program has been justified on the grounds that the admission of refugees is a federal decision, entailing some federal responsibility. Unlike immigrants who enter through family or employment ties, refugees are admitted on humanitarian grounds, and there is no requirement that refugees demonstrate economic self-sufficiency.

Persons brought to the U.S. under the auspices of the ORR's refugee resettlement program are categorically classified as "qualified" immigrants for purposes of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and are considered to be "lawfully present" in the U.S. To that extent they are qualified for assistance including cash and medical assistance, medical screenings, and employment services through the refugee resettlement program. The assistance offered through the refugee resettlement program is based solely on federal funding. A matrix of the assistance and benefits available to refugees, updated through 2011, is attached to this email. (See "Overview of Immigrant Eligibility for Federal Programs.pdf")

The Refugee Act of 1980 required states to provide "assistance and services . . . to refugees without regard to race, religion, nationality, sex, or political opinion." [See 8 U.S.C. §1522(a)(5)] Through the state plan process, states and ORR agree on the resettlement activities in each state. Consistent with the Refugee Act, each state's plan must include an assurance that "assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion." [See 45 CFR §400.5(g)] States must certify that their state plan is current and continues in effect each fiscal year in order to continue to receive federal funding for the program. (See 45 CFR §400.4)

The upshot of the above is that if South Carolina were to elect not to provide the services contemplated under the state plan for the refugee resettlement program to any category of refugee, federal funding for the State's operation of the refugee resettlement program would likely be terminated pursuant to 45 CFR §400.4 and 45 CFR §400.12 (b)(1). See, also, for information, the attached recent Dear Colleague letter addressing Syrian refugees. ("Dear Colleague Letter 16-02.pdf")

Supplemental Nutrition Assistance (SNAP)

Refugees are normally deemed "Qualified Immigrants" under 7 CFR §273.4 and are considered eligible for participation in the food stamp and food distribution program located in Part C of 7 CFR. FNS has publicly communicated this on its website also. http://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility[1]

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[1] . **Immigrant Eligibility Requirements**
On their webpage, the FNS indicates refugees are eligible immigrants. It describes the effect of the 2002 Farm Bill in restoring SNAP eligibility to most legal immigrants that:

- Have lived in the country for 5 years; or
- Are receiving disability-related assistance or benefits; or
- Children under 18

FNS has taken the position that "As long as an applicant submits a SNAP application that includes the applicant's name, address, and signature, the state agency must accept and process the application to be in compliance with federal law." (See Attached letter from Jessica Shahin of the Supplemental Nutrition Assistance Program). The *Shahin* letter clearly indicates that refugees are considered "qualified" aliens under section 207 of the Immigration and Nationality Act (INA), and, accordingly, must have their applications accepted by a state. The term "qualified alien" used in the INA and the SNAP regulations is consistent with the term "qualified immigrant" used under PRWORA.

It is difficult to predict whether the exclusion of federal benefits to individuals legally in this country would *actually* result in a loss of federal funds for the agency. However, the failure to accept SNAP applications from refugees would *subject* a state to loss of federal funding for the program. FNS took a nonspecific position with Georgia that withholding benefits may be a violation of civil rights and under 7 CFR §276.4 the federal government *could withhold administrative funding* from states that limit services to refugees.

Pursuant to 7 CFR §276.4 Suspension/disallowance of administrative funds, that section sets out the procedure, involving a warning that suspension or disallowance of funds is being considered. "(d) Warning process. Prior to taking action to suspend or disallow Federal funds, [ ], FNS shall provide State agencies with written advance notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FNS, FNS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in a corrective action plan, FNS may omit the advance notification and immediately issue a formal warning." Id.

In the event that South Carolina was issued a warning, there is normally a 30 day period to cure the deficiency, and it would follow that we could engage in discussions to undertake a corrective action plan. I note that the *Shahin* letter to Nathan Deal in GA deviated from the format somewhat, indicating FNS feels they have some degree of discretion in how they handle suspension/disallowance.

Other Categories of Federal Assistance Administered by DSS

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, prohibits discrimination on the bases of race and national origin in all programs or activities that receive Federal financial assistance. Thus, it is not permissible to deny federally funded benefits, such as Medicaid or TANF, to refugees who otherwise meet eligibility requirements. Refugees are deemed to be qualified aliens or immigrants and eligible to apply for public benefits, including, among others, TANF and Medicaid. Passage of a proposed bill to deny federal benefits to certain persons who belong to a specific refugee group could place South Carolina out of compliance with the requirements, applicable statutes, and assurances required for the federal programs, and therefore we could be subject to enforcement action, including denial of federal funding for the programs.

Certain non-citizens such as those admitted for humanitarian reasons and those admitted for permanent residence may also eligible for the program. See http://www.fns.usda.gov/snap/eligibility#Immigrant Eligibility

From the standpoint of many programs administered by the U.S. Department of Health and Human Services (HHS) through DSS, the HHS regulations, at 45 CFR Part 80 provide that "no person in the United States shall;
on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health and Human Services. " (Cf. § 80.1 Purpose)

The regulations provide, in pertinent part, at § 80.8 (Procedure for effecting compliance), should a state not comply with the assurances it has made in its state plan for the receipt of federal financial assistance pursuant to § 80.4 , as follows:

> (b) Noncompliance with § 80.4. If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.
> (c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

The HHS regulations implement the requirements of Title VI that funding not be made available where a recipient of Federal financial assistance is shown to have discriminated in making HHS funded services based upon race, color, or national origin.

As illustrative of the types of activities the non-discrimination regulations cover, the regulation offers the following:

> § 80.5 Illustrative application.
> The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).
> (a) In **federally assisted programs for the provision of health or welfare services**, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition

> extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e)...
> (emphasis supplied)

The Department of Justice has responsibility for enforcement of Title VI of the Civil Rights Act and if a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved through the federal agency providing the assistance, the agency may either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action.

Any legal action to be taken under Title VI from a litigation standpoint, at least to address "disparate impact," if not intentional, discrimination standpoint, would have to be through DOJ or HHS inasmuch as, in 2001, the U.S. Supreme Court ruled, in *Alexander v. Sandoval*, 532 U.S. 275, that there is no private right of action to enforce Title VI disparate impact regulations; that only the funding agency may do so, and presumptively may do so through litigation initiated by DOJ.