Dear [Name of State Official]:

We are writing to ask for your help in responding to a problem affecting the health and well-being of immigrants and their family members. Widespread reports indicate that immigrants are afraid to apply for or are asking to be removed from critical programs for which they or their family members are eligible. Immigrant families are concerned that personal information provided to public benefit agencies could be used to enforce federal immigration laws. This fear deprives immigrants and U.S. citizen children of vital health, nutrition, income support, and child care benefits.

Federal civil rights and privacy laws and the laws and regulations governing specific benefit programs limit inquiries about and collection of sensitive personal information, the information that may be verified, and whether information about benefit applicants or recipients may be used or disclosed for purposes other than determining eligibility or administering the program. Programs that protect information about applicants and recipients include Medicaid, the Children’s Health Insurance Program (CHIP), the health insurance marketplace, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the National School Lunch Program, Temporary Assistance for Needy Families (TANF), the Child Care and Development Fund (CCDF), Head Start, and Early Head Start. *Information about the laws, regulations and rules governing each program is provided in the Appendix attached to this letter.* Additional protections may be available under state laws.

With very limited exceptions, information about benefit recipients may be used only to administer the public benefit program and may not be disclosed to federal agencies or officials for other purposes, such as the enforcement of immigration laws. Federal agencies have confirmed that these protections apply to benefit recipients even after the passage of the federal welfare and immigration laws.[[1]](#footnote-1) Although 8 U.S.C. sections 1373 and 1644 generally prohibit government agencies from restricting communications with federal immigration officials “regarding an individual’s citizenship or immigration status,” these restrictions do not apply to any other information about individuals, such as their receipt of public benefits.[[2]](#footnote-2) State agencies generally may not disclose information about public benefits recipients, if the purpose of the request is unrelated to administering public benefit programs.

The federal laws protecting information about benefit recipients remain intact, and cannot be altered by an executive order.[[3]](#footnote-3) Absent any change in federal statute, state agencies should decline any request for disclosure of information regarding a benefit recipient unless the request is consistent with these laws, the state plan approved for the program, and other federal regulations or guidance that flows from these federal statutes.

We continue to hear that there is a great deal of confusion about these rules and that immigrant families are afraid to seek or to continue receiving important benefits. We therefore urge you to ensure that these rules are understood and followed by your agency. We urge you to:

* Share this information with your staff and any local counterparts, such as county eligibility workers, school administrators, enrollment partners and contractors, direct service providers, and other partners.
* Review your applications and enrollment systems, reporting systems, and guidance for eligibility and enrollment workers, to ensure that they comply with these laws and rules.
* Provide easy-to-understand information in multiple languages that can be used to notify community members about existing confidentiality protections.
* Be flexible about how household members may prove their income, including through a letter from an employer, self-attestation, or another means if needed.

Call upon on us to help train your agency staff and any state or local counterparts about these important privacy protections.

New York City and the city and county of San Francisco recently authored and shared materials — available in multiple languages — that educate immigrant families about the privacy protections in multiple programs and urge them not to be afraid to continue seeking health care and other benefits and services.[[4]](#footnote-4)

We appreciate your dedication to *all* individuals and families applying for and enrolling in health, nutrition, income support, and child care programs. Please feel free to contact me if you would like to discuss.

Sincerely,

[Your name
Your contact information]

1. The U.S. Department of Health and Human Services (HHS) clarified that existing restrictions on exchanging information about a person’s Medicaid or Aid to Families with Dependent Children status continue in effect without change, despite 8 U.S.C. § 1373. See Letter from Sally K. Richardson, Center for Medicaid and State Operations, to State Medicaid Directors (Dec. 17, 1997); Letter from Lavinia Limón, Director of the Office of Family Assistance, to State TANF Directors (Dec. 17, 1997) (on file with the National Immigration Law Center). [↑](#footnote-ref-1)
2. Washington State’s attorney general recently issued guidance that reminded state agencies about the limitations of 8 U.S.C. § 1373. He emphasizes that federal law does not require agencies to share information, does not require them to collect information about immigration status, and applies only to information regarding citizenship or immigration status. Similarly, it does not prohibit state and local agencies from adopting privacy policies protecting other information, such as a person’s address, place of birth, household members, or the types of benefits or services received. *Guidance Concerning Immigration Enforcement* (Washington State Office of the Attorney General, Apr. 2017), <http://www.atg.wa.gov/immigrationguidance>. The guidance also notes that states and localities may have authority under their police powers to offer broader confidentiality protections, which could cover information about citizenship and immigration status. The application of 8 U.S.C. § 1373 may be further constrained, e.g., if citizenship or immigration status is “essential to the performance” of state or local government functions and the information would “be difficult or impossible” to obtain “if some expectation of confidentiality is not preserved.” *Id.*, citing *City of New York v. United States*, 179 F.3d 29, 36-37 (2d Cir. 1999); *Printz v. United States*, 521 U.S. 898 (1997). [↑](#footnote-ref-2)
3. There are other strong arguments why these federal statutes remain fully intact, protecting all information about recipients of public benefits, despite 8 U.S.C. § 1373. Implicit repeals of federal statutes are disfavored under federal law. Thus, a U.S. Department of Justice memo concluded that 8 U.S.C. § 1373 did not repeal federal statutory prohibitions on disclosure to immigration officials of information collected for the U.S. Census. Memorandum from Dept. of Justice, Office of Legal Counsel, to General Counsel, Dept. of Commerce, “Relationship Between Illegal Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information” (May 18, 1999). Subsequent laws, such as the Affordable Care Act (ACA), which protect specific information, similarly remain in force. And, where possible, laws must be construed to avoid conflicts with constitutional provisions, such as a state’s rights under the Tenth Amendment. [↑](#footnote-ref-3)
4. See “Human Services Agency: Post-Election Frequently Asked Questions” (Human Services Agency, City and County of San Francisco, Mar. 2017), available from [www.sfhsa.org/about/reports-publications/public-benefits-immigrants](https://www.sfhsa.org/about/reports-publications/public-benefits-immigrants); “Open Letter to Immigrant New Yorkers” (NYC Health + Hospitals and the New York City Mayor’s Office of Immigrant Affairs, Dec. 2016), available from [www.nychealthandhospitals.org/immigrant/](http://www.nychealthandhospitals.org/immigrant/); and “Seek Care Without Fear-Know The Facts” (NYC Health + Hospitals and the New York City Mayor’s Office of Immigrant Affairs), [www.nychealthandhospitals.org/seek-care-without-fear-know-the-facts/](http://www.nychealthandhospitals.org/seek-care-without-fear-know-the-facts/). [↑](#footnote-ref-4)