

# **Policy on Verification of Lawful Presence and Authority to Work for Licensure Applicants and Renewals**

## **Purpose**

This policy intended to document the process the Texas Behavioral Health Executive Council has used since the agency’s launch on September 1, 2020, to verify whether applicants for licensure are lawfully present and eligible to work in the United States, as required by federal law. In addition, it is intended to provide agency staff with guidance on navigating the often complex interplay between federal immigration requirements and state occupational licensure.

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## **I. Federal Law: 8 U.S.C. § 1621 (PRWORA § 411)**

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress created federal restrictions on who may receive *state and local public benefits*. These provisions are codified at **8 U.S.C. § 1621**.

Key points relevant to our work:

### **1. Licenses Are Public Benefits**

Occupational and professional licenses issued by state agencies are expressly defined as “public benefits.” Therefore, BHEC may issue and renew a license only in a manner that complies with federal eligibility rules.

### **2. Eligibility Is Restricted to Certain Individuals**

Absent an affirmative state law enacted pursuant to 8 U.S.C. § 1621(d), public benefits may be provided only to:

- U.S. citizens,
- “Qualified aliens,” and
- Certain other non-citizens who are lawfully present under federal immigration law.

### **3. Lawful Presence Alone Is Insufficient When Licensure Permits Employment**

Where an occupational license authorizes the holder to engage in employment or the practice of a profession, federal law requires not only lawful presence in the United States, but independent authorization to work.

Aliens who lack federal employment authorization are ineligible to receive or renew an occupational license from this agency, even if they are otherwise lawfully present.

This also applies to individuals located outside of the United States who seek licensure and cannot demonstrate federal work authorization. Applicants located outside of the

United States who cannot demonstrate federal work authorization are similarly ineligible and will be denied licensure; however, the denial may include a finding that the applicant has met all substantive licensure requirements and would otherwise be eligible for licensure except for the lack of federal work authorization in the United States.

These requirements are mandated by federal law. The Council has no discretion to expand eligibility or recognize work authorization beyond that conferred by federal immigration authorities.

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## **II. BHEC's Verification Process**

To maintain consistent compliance with 8 U.S.C. § 1621, the Council follows the same straightforward verification process for each applicant, promoting clarity and uniformity.

### **1. Determining Who Must Complete a SAVE Verification**

Every applicant is asked a simple question within the licensure application:  
**“Are you a United States citizen?”**

#### **If an applicant indicates they are a U.S. citizen:**

If an applicant attests that they are a United States citizen, the applicant must submit a copy of **one** of the following documents to verify that attestation<sup>1</sup>:

1. A valid, unexpired driver's license or state identification certificate issued by a state or territory of the United States that complies with the REAL ID Act;
2. a birth certificate issued by the appropriate vital statistics agency of a U.S. state, a U.S. territory, or the District of Columbia indicating birth in the United States;
3. a valid, unexpired passport or passport card issued by the United States government;
4. a valid, unexpired license to carry a handgun issued by the Texas Department of Public Safety under Texas Government Code, Chapter 411, Subchapter H;
5. a U.S. Certificate of Naturalization (Form N-550 or N-570); or
6. a U.S. Certificate of Citizenship (Form N-560 or N-561).

The applicant must also submit their Social Security number as part of the application process.

#### **If an applicant indicates they are *not* a U.S. citizen:**

The applicant must complete and submit the Council's SAVE Program Information Form.

To be considered complete, an application file must contain verification, through the DHS–USCIS Systematic Alien Verification for Entitlements (SAVE) Program, of a non-citizen applicant's immigration or citizenship status and any federally granted authorization to work in the United States.

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<sup>1</sup> Agency staff shall implement this requirement by ensuring that all applications for licensure require this supporting documentation in accordance with the authority found at 22 TAC 882.2(a)(8).

This requirement is established in 22 TAC § 882.2(a)(5), which requires verification of immigration and citizenship information and any associated employment authorization necessary for licensure.

### **License Renewals by Non-Citizens**

Non-citizens seeking to renew an existing license are subject to the same federal and state eligibility requirements as initial applicants. At the time of renewal, a non-citizen licensee must demonstrate that they remain lawfully present in the United States and, where applicable, continue to possess federal authorization to work in the United States. Renewal applications submitted by non-citizens must therefore include verification, through the DHS–USCIS Systematic Alien Verification for Entitlements (SAVE) Program, of the licensee’s current immigration status and any federally granted employment authorization. A renewal application that does not include this verification is incomplete and may not be approved.

### **2. SAVE Form Collection**

Non-citizen applicants complete the SAVE form located at: <https://bhec.texas.gov/forms-and-publications/>.

This form collects the specific information required by the U.S. Citizenship and Immigration Services (USCIS) **Systematic Alien Verification for Entitlements (SAVE) Program**.

### **3. Verification Through USCIS SAVE**

Once the SAVE form is received:

1. Staff enter the applicant’s information into the SAVE system;
2. SAVE returns an official federal determination regarding the applicant’s immigration status and work authorization;
3. Staff rely **exclusively** on that determination to assess whether the applicant is lawfully present and authorized to work in the U.S., and therefore eligible for licensure.

The Council does **not** interpret immigration documents or make independent judgments. USCIS determines lawful presence and authorization to work; we follow that determination.

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### **III. Summary for Staff**

- Federal law (8 U.S.C. § 1621) prohibits the Council from issuing or renewing licenses to individuals who are not lawfully present in the U.S. The Immigration and Nationality Act (INA) also prohibits a non-citizen from working in the United States without authorization to work.
- We determine who must undergo verification by asking applicants whether they are U.S. citizens.

- All non-citizens must complete the SAVE form.
- USCIS's SAVE Program provides the official determination of lawful presence and work authorization, and staff must rely solely on that determination.

This policy should serve as a reference for staff and as documentation of the process we follow to ensure full compliance with federal law.