

Q&A for Implementation of HB 06S-1023
Illegal Aliens, Public Benefits, and Contracts
August 2, 2006 original; last updated September 29, 2006

Consistent with recent guidance issued by the Colorado Attorney General's Office, the State Controller is providing the following guidance on implementation of HB 06S-1023

1. What are the basic differences between HB 1343 and HB 1023?

HB 1343 applies to new contracts, amendments and purchase orders for services entered into after August 7, 2006.

HB 1023 applies to contracts, grants, purchase orders and amendments with sole proprietors only entered on and after August 1, 2006. It also applies to individual natural persons over the age of 18 who apply for a public benefit on and after August 1, 2006 under existing contracts where a vendor administers such applications.

See side-by-side comparison

2. Does H.B. 1023 apply to both people and entities contracting with the State or political subdivision to provide services to that entity?

H.B. 1023 defines a public benefit by reference to 8 U.S.C. 1611 and 1621, which in turn defines a public benefit as including any "contract." H.B. 1023, however, applies only to "natural persons" over the age of eighteen. A natural person is a human being, not a corporation, partnership, or any other entity. Thus, the requirements of H.B. 1023 must be applied to any natural person contracting with the State or a political subdivision.

3. Does HB 1023 apply to benefits provided by state agencies or political subdivisions through third-party intermediaries?

Yes. House Bill 1023 requires "each agency or political subdivision of the state" to verify the lawful presence in the United States of every applicant for public benefits. In some circumstances, public benefits are administered by a non-governmental third-party intermediary or grantee rather than directly by a state agency or political subdivision. In general, the requirements of House Bill 1023 will apply to these benefits. The term "public benefit" is defined to include both benefits "provided by" the federal, state and local government and benefits provided "by appropriated funds" of the federal, state and local government. 8 U.S.C. § 1611(c)(1) and § 1621(c)(1). This makes clear that the definition of "public benefits" includes both programs administered by government agencies

and programs administered by non-governmental organizations with public funds, and is covered by HB 1023 if the benefit flows directly to natural persons.

House Bill 1023 imposes no duty on non-governmental agencies to verify an applicant's lawful presence in the United States. That duty is imposed solely on State agencies and political subdivisions. Each agency and subdivision must determine how it will comply with the requirements of House Bill 1023 for those programs administered by private third-party intermediaries. In general, an agency may comply with the requirements either by requiring the third party (by contract or otherwise) to perform the required verification or by performing the verification itself.

It is important to further note several exceptions to verification requirements involving non-profits. First, House Bill 1023 only applies to "applicants" for public benefits. If a non-governmental organization provides publicly funded benefits to persons without an individualized application process, the persons who receive the benefits are not "applicants" and the requirements of House Bill 1023 do not apply. Second, House Bill 1023 does not apply to benefits that are exempted from verification requirements under either federal law or the terms of HB 1023 itself. Finally, the requirements do not apply to programs or services that are exempt from the definition of "federal public benefit" or "state and local public benefit" under federal law.

4. Does H.B. 1023 apply retroactively to existing benefit recipients, or just new applicants?

House Bill 1023 applies "on or after August 1, 2006" to any natural persons eighteen years of age or older "who applies for" federal, state or local public benefits. Thus, agencies and political subdivisions are required to verify the lawful presence in the United States of any such applicant. If an agency uses a contractor to administer a public benefit, the existing contract would have to be amended if the agency wants the vendor to check an applicant's legal status. Furthermore, when an existing beneficiary reapplies for the continuation of those benefits, which typically occurs on an annual basis, or for new benefits, their lawful presence must be verified and the required affidavit obtained. Verification of existing beneficiaries is not required.

5. How can the State agency implement the requirements for HB 1023 for contracts?

Each agency has the responsibility to implement HB 1023. To assist the agencies with contract situations, the State Controller's Office has adopted an emergency fiscal rule to include additional language for HB 1023 in the new Special Provision . See attached draft of the new Special Provision.

This language may be included in an affected contract by a contract amendment. The requirements of HB 1023 as applicable to sole proprietors applies only for

contracts entered into or renewed after the effective date of HB 1023. If an agency decides to require that a vendor in an existing contract verify the status of an individual applicant for public benefits, the status of applicants must be verified effective August 1, 2006 and the amendment must be included in a contract and signed by the vendor to implement that change into existing contracts.

6. What is an example of an affidavit that will be required for sole proprietors?

See Sample Affidavit for HB 1023