

**VERIFICATION OF LAWFUL PRESENCE  
ANNUAL COMPLIANCE REPORT  
CALENDAR YEAR 2018**

**COLORADO REVISED STATUTES—TITLE 24, ARTICLE 76.5**

**Submitted to the Colorado Senate State, Veterans, and Military Affairs Committee and the House of  
Representatives State, Veterans, and Military Affairs Committee**

**Colorado Department of Labor and Employment**

**Prepared in compliance with Colorado Revised Statutes Title 24, Article 76.5  
by staff of the Colorado Department of Labor and Employment**

**January 15, 2019**

**COLORADO REVISED STATUTES—TITLE 24, ARTICLE 76.5 REPORTING REQUIREMENTS**

Pursuant to Colorado Revised Statutes 24-76.5-101, et seq., the Colorado Department of Labor and Employment is required to provide the status of its compliance with the requirement to verify the lawful presence of individuals 18 years of age and older who apply for local, state, or federal public benefits. No later than January 15, 2019, this report must be submitted to the Senate and House committees on State, Veterans, and Military Affairs.

This report complies with this requirement.

## **PART I. STATUTE AND PROGRAM OVERVIEW**

### **Colorado Revised Statutes—Title 24, Article 76.5**

This statute requires each state agency or political subdivision to verify that each individual 18 years of age or older who applies for “state or local public benefits” provide proof of being lawfully present in the United States (U.S.) prior to the receipt of public benefits. The law defines state or local public benefits by referring to U.S. Code 8, Section 1621.

This statute also requires that an individual applying for benefits sign an affidavit affirming that he or she is a U.S. citizen, a legal permanent resident, or otherwise lawfully present in this country. The law prohibits state agencies or political subdivisions from providing benefits that are in violation of this statute. This statute establishes reporting requirements, and each state agency is required to subscribe to the U.S. Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) Program, a Citizenship and Immigration Services Website.

### **Colorado Department of Labor and Employment**

The Colorado Department of Labor and Employment (CDLE) administers the following programs that provide state public benefits.

**Workforce Innovation and Opportunity Act and Wagner-Peyser Programs.** The Workforce Innovation and Opportunity Act (WIOA) of 2014 requires states to design and manage job training and employment programs at the local level where the needs of businesses and individuals are best understood. Individuals who are eligible for the WIOA Program receive individualized career services including comprehensive assessments, development of individual employment plans and supportive services, and access to expanded training services that incorporate occupational skills training, on-the-job training, and apprenticeships. Through the Wagner-Peyser (WP) Program and the statewide network of workforce centers, individuals receive basic career services such as outreach, initial assessment of skills and needs, and job-search and placement assistance.

**Trade Adjustment Assistance Program.** The Trade Act of 1974, as amended, provides benefits to individuals whose job was lost, whose hours of work and wages were reduced because of increased imports, or whose jobs were exported offshore. Trade Adjustment Assistance benefits include a variety of reemployment services designed to help these individuals prepare for and obtain suitable employment. These individuals may be eligible for job training, job-search allowance, and a relocation allowance. Individuals over 50 years of age may be eligible for Reemployment Trade Adjustment Assistance. Trade Act services are provided by the statewide network of workforce centers.

**Unemployment Insurance Division.** The 1937 legislative declaration by the Colorado General Assembly provides that the purpose of CDLE’s Unemployment Insurance (UI) Division is to provide economic security and stability to the citizens of Colorado by safeguarding the income and purchasing power of the unemployed worker. The UI Division provides temporary and partial wage replacement to individuals who have become unemployed through no fault of the worker and who have met the eligibility requirements of the Colorado Employment Security Act.

## **PART II. VERIFYING LAWFUL PRESENCE TO DETERMINE PROGRAM ELIGIBILITY**

### **Workforce Innovation and Opportunity Act, Wagner-Peyser, and Trade Adjustment Assistance Programs**

To comply with the requirements of Colorado Revised Statutes 24-76.5-101, et seq., the Colorado Department of Labor and Employment (CDLE) first issued a policy letter on August 1, 2006, mandating verification of immigration status through the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) Program. The statewide network of workforce centers, which are the providers of the Wagner Peyser (WP) Program, Workforce Innovation and Opportunity Act (WIOA), and Trade Adjustment Assistance (TAA) services, implemented this policy.

There have been no denials of services for the WP, WIOA, or the TAA Programs based on immigration status since the implementation of Colorado Revised Statutes 24-76.5-101, et seq.

The following processes were implemented as part of determining eligibility for the WIOA and TAA Programs:

- Obtain one of the required forms of identification authorized by the statute.
- Require the WIOA or TAA applicant to complete and sign an Affidavit of Immigration Status, affirming that the applicant understood that lawful presence in this country will be verified through the SAVE Program before workforce program services can be provided, and that the applicant is a U.S. citizen, legal permanent resident, or is otherwise lawfully present in this country.
- Check the type of identification the applicant possesses, and obtain the identification number and expiration date.

Provision of TAA benefits was contingent upon the applicant providing the required documents and signing the Affidavit of Immigration Status plus the successful verification of immigration status through the SAVE Program.

<b>Workforce Innovation and Opportunity Act Program Statistics</b>	<b>01/01/2018—12/31/2018</b>
Number of applicants receiving services	6,995
Number of recipients who are not U.S. citizens	330
Number of inquiries of immigration status through the SAVE Program	330
Number of applicants denied services	0

<b>Trade Adjustment Assistance Program Statistics</b>	<b>01/01/2018—12/31/2018</b>
Number of applicants receiving services	278
Number of recipients who are not U.S. citizens	17
Number of inquiries of immigration status through the SAVE Program	17
Number of applicants denied services based on immigration status	0

Additional information regarding Colorado Revised Statutes 24-76.5-101, et seq., policies and processes related to the administration of the WIOA, and TAA Programs can be found in [Policy Guidance Letter # WIOA/WIA-2014-02, change 3, Guidelines for Affidavit of Immigration Status](#). In addition to the guidance letter, the following attachments are also located on CDLE's Website.

1. [Affidavit of Immigration Status \(English Version\)](#)
2. [Affidavit of Immigration \(Spanish Version\)](#)

## **Unemployment Insurance Division**

Under federal law and Colorado Revised Statutes 24-76.5-101, et seq., only U.S. citizens and persons lawfully present in this country are eligible to receive unemployment benefits. The following processes are followed as part of determining eligibility for the Unemployment Insurance (UI) Division.

### ***Initial Claim***

An unemployed individual (claimant) can file a new unemployment claim via the Internet or with a customer-service representative over the telephone. At the time an initial unemployment claim is filed, the claimant is always asked to attest to lawful presence or that he or she is a U.S. citizen, and acknowledge the penalties for making false statements. The attestation of legal presence or U.S. citizenship is captured on the Internet application when the new claim is filed online or recorded when the new claim is filed over the telephone with a customer-service representative.

If the claimant attests that he or she is a U.S. citizen, the individual must provide the identification number and expiration date of one of the following types of identification:

- Colorado driver's license or identification card
- U.S. Military Card or dependent identification card
- Native American Tribal Document
- U.S. Coast Guard Merchant Mariner Card
- U.S. Passport
- Other state or Canadian driver's license or state identification card

If the claimant provides a Colorado driver's license or identification card number at the time the claim is filed, the identification number is added to the claim record. As part of the initial paperwork, the claimant is sent a form, which must be signed to verify that the information provided is correct. It also contains instructions for providing the information from the other acceptable forms of identification to verify legal presence in the U.S. for the claim record. The UI Division maintains the returned signed affidavit on file to combat fraud and identity theft.

If the claimant attests that he or she is legally present but not a U.S. citizen, the individual is asked for his or her alien-identification number. If the claimant can provide the alien-identification number at the time of filing, it is included in the claim record.

### ***New Claim Correspondence***

The business day following the day a claim is filed, correspondence is created and sent to each claimant (regardless of response to the citizenship question) and all affected employers. This correspondence is as follows:

- Form UIB-1, Verification of Personal Information, is sent to the claimant. The claimant is instructed to verify the information and make any necessary changes or corrections, including the response to the citizenship question and his or her alien-identification number. In addition, the claimant is asked to provide information about the type of verifiable identification that he or she possesses. The form also requires a signature affirming that all information on the form is correct under penalty of perjury and that the individual is a U.S. citizen or otherwise lawfully present in the U.S.
- Form UIB-290, Request for Facts about a Former Employee's Employment, is sent to all interested employers, and Form UIF-290, Notice of Unemployment Insurance Claim, Wages Reported, and Possible Charges, is sent to all interested chargeable employers. Both forms request verification of the information about the claimant shown on the form.

NOTE: If an employer has chosen to provide separation information electronically, the Unemployment Insurance Division sends an email requesting information rather than sending the Request for Facts about a Former Employee's Employment.

### ***Alien Status Verification Through the SAVE Program***

The business day following the day a claim is filed, a report listing the names of claimants who indicated non-U.S. citizenship is generated. Each claimant on this report who provided an alien-identification number, has his or her name; date of birth; and alien status verified through the SAVE Program by UI Division staff. If all the identifying information matches and the system does not indicate further verification is necessary, the documentation is placed in the claimant's file and the claim continues through the process.

If the claimant failed to provide an alien-identification number, the system response to the SAVE verification indicates that any line of data does not match, or it requests further verification, a "hold" is placed on the claim to prevent payment until further information is received from the claimant. In these instances, a Form B-521, Instructions for Claimants Who Are Non-U.S. Citizens, is sent to the claimant. The form instructs the claimant to return the signed form and copies (front and back) of the alien registration card. It may also be appropriate to request a copy of a marriage certificate. The claimant must be able to provide the requested information, and it must be verifiable with SAVE before benefits will be paid.

### ***Legal Presence Verification Through the Division of Motor Vehicles***

The business day following the day a claim is filed, an automated data exchange occurs between the UI Division and the Division of Motor Vehicles (DMV) to verify the Colorado identification card or driver's license number provided by a claimant. All claimants who file a claim are included in the data-exchange process (regardless of the response to the citizenship question). The report returned by the DMV reflects that the Colorado identification card number or driver's license number provided by the claimant is either valid or invalid. The report also notifies the UI Division if the claimant failed to provide an identification number to be verified through the data-exchange process. The UI Division has a secondary process in place to verify legal presence for those claimants who either provided an invalid identification card or driver's license number or did not provide one at all. Those claimants are mailed a Form UIB-647, Verification of Legal Presence, requesting that he or she provide a copy of one of the acceptable forms of identification listed on the form. Each claimant must respond to this request or benefits are disallowed until such time that he or she complies with the request.

<b>Unemployment Insurance Division Statistics</b>	<b>01/01/2018—12/31/2018</b>
Approximate number of initial unemployment claims file.	103,917
Approximate number of unemployment claims paid	64,798

<b>Verification of Legal Presence for U.S. Citizens</b>	<b>01/01/2018—12/31/2018</b>
Number of claimants whose legal presence was verified via Colorado driver's license or identification card	103,917
Number of claimants whose legal presence could not be verified through the initial DMV process and required a secondary inquiry	6,942
Number of claimants who returned the secondary inquiry with the required proof to verify his or her legal presence	6,757
Number of claimants disallowed unemployment benefits due to the failure to provide proof of his or her legal presence	185

Verification of Immigration Status for Non-U.S. Citizens	01/01/2018—12/31/2018
Number of claimants who required at least one inquiry of his or her immigration status through the SAVE Program	4,128
Number of claimants denied unemployment benefits based on immigration status	109

## STATE AUDITOR’S OFFICE RECOMMENDATIONS

In 2011, the State Auditor’s Office completed an audit of the UI Division, including its compliance with Colorado Revised Statutes 24-76.5-101, et seq. Based on audit findings, recommendations were made to the UI Division, which include:

- 1) The Department of Labor and Employment should ensure that individuals filing for unemployment insurance benefits meet the requirements of House Bill 06S-1023 and federal law for attesting to his or her lawful presence in the U.S. by:
  - a. Changing the language in the unemployment insurance application form so that the individual is clearly affirming his or her legal presence in the U.S. through the application.
  - b. Requiring all applicants to affirm legal presence before receiving benefits.
  - c. Eliminating the use of the current paper affidavit form for affirming legal presence.
  
- 2) The Department of Labor and Employment should ensure that individuals filing for unemployment insurance benefits meet the requirements of House Bill 06S-1023 and federal law for affirming his or her lawful presence in the U.S. by:
  - a. Requiring all individuals to provide a valid Colorado driver’s license number or Colorado identification card, or a copy of other documents acceptable under House Bill 06S-1023, before paying benefits. In addition, the Department of Labor and Employment should establish a process to collect acceptable forms of identification other than a Colorado driver’s license or identification card and provide individuals with instructions on the application for submitting this documentation.
  - b. Establishing procedures to verify that the person applying for benefits is the same person depicted by the identification number or document that the person provides on his or her application. These procedures could include verifying all Colorado driver’s license and identification numbers provided by claimants using Department of Revenue records. If necessary, the Department of Labor and Employment should seek legal counsel from the Office of the Attorney General to clarify the procedures that the UI Division must follow to satisfy House Bill 06S-1023 while complying with federal requirements.

In response to the recommendations, the UI Division completed recommendation 1a as described in “Initial Claim.” Recommendation 1b is in place with the changes to the online applications and call-center scripts. Recordings are maintained for claims filed via telephone agents. Storage capacity limitations prevented the telephone-recorded affirmations from being maintained beyond a period of 30 months. Because the UI Division uses the returned affidavit to combat fraud and identity theft, the UI Division has no plans to eliminate the use of the current paper form. The UI Division completed Recommendation 2. As noted above in “Legal Presence Verification Through the Division of Motor Vehicles” the UI Division has an automated data-exchange process in place with the DMV to verify the Colorado identification card or driver’s license number provided by a claimant.