

## Administrative Rules Committee Requests June 8, 2010

At its March, 2010, meeting, members of the administrative rules committee requested information on programs administered by the Department of Human Services. The requested information is included in this document.

**Request 1:** Senator Fischer asked about the reporting provision that gives a provider 90 days to report, but gives the department a year to respond. The provision about which he asked is found in North Dakota Administrative Code Chapter 75-04-05, Reimbursement for Providers of Services to Individuals with Developmental Disabilities, and is part of section 75-04-05-08, Financial Reporting Requirements:

3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the provider, the department shall provide for audits as necessary.
- a. A ***provider shall submit its cost report ninety days*** from the last day of the provider's fiscal year.
  - b. A ***provider may request, and the department may grant, one thirty-day extension of the due date of the cost report*** for good cause. If an extension is granted, no penalty will apply during the extension period. The grant of a thirty-day extension does not extend the implementation of the penalty as described in subdivision a of subsection 4 if the cost report is not received by the extended due date.
  - c. The ***preliminary audit report shall be submitted to the provider no later than twelve months after the department receives the provider's cost report.***
  - d. The provider shall submit a preliminary response to the preliminary audit report to the department within forty-five days of receipt of the preliminary audit report.
  - e. The final audit report shall be submitted to the provider within ninety days of the department's receipt of the preliminary response.
  - f. Providers must submit requests for information and responses to the department in writing. In computing any period of time prescribed or allowed in this subdivision, the day of the act, event, or default from which the designated period of time begins to run may not be included. The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. In determining whether the deadlines described in subdivision c, d, or e have been met, the department shall not count any day in which sufficient information has not been timely provided by a provider when the provider has shown good cause for its inability to provide the required information within the time periods prescribed in any one of those subdivisions. (***emphasis added***)

**Request 2:** Representative Kasper requested information on services being provided to non-US Citizens. Responses from the individual programs are included below.

**Services Provided to Aliens**

**Program: Aging Services**

**Services Provided to Aliens?:** Yes

**Authority:**

We may have served non-citizens or illegal aliens through Older Americans Act programs, but not a data element that we collect. Eligibility only based on age 60 and above. Have served some Canadians.

**Program: DD Program Management**

**Services Provided to Aliens?:** No

**Authority:**

We require MA eligibility for almost all adult services, so wouldn't be serving illegal aliens unless they have become MA eligible.

We have a policy that indicates that clients must be US citizens and ND residents, so we shouldn't be serving non-citizens. We do not capture this information.

**Program: Mental Health and Substance Abuse Services**

**Services Provided to Aliens?:** No

**Authority:** N/A

**Program: TANF**

**Services Provided to Aliens?:** Yes

**Authority:**

Citizenship or immigration status affects eligibility. US citizens are always eligible if they meet other eligibility criteria. US citizens include any one born in:

- One of the 50 states
- DC
- Guam
- Virgin Islands
- Puerto Rico
- Northern Mariana Islands
- American Samoa
- Swain's Island
- A foreign country who is
  - Under 18 years old.
  - Admitted to the US as a lawful permanent resident.
  - In the legal and physical custody of at least one parent who is a US citizen.
  - A child adopted from a foreign country as long as the three preceding criteria are met.

A non-citizen who was a qualified alien when he or she entered the country on or after August 22, 1996 is not eligible for any federally funded TANF benefit for 5 years unless specifically exempted:

- Alien with a past or current involvement with the US Armed Forces, lawfully admitted to the US under INS status. A spouse or dependent child of an alien with a past or current involvement with the US Armed Forces may also meet eligibility criteria.
- An alien admitted to the US as an Amerasian immigrant.
- A refugee including an Iraqi or Afghani Special Immigrant who is considered a refugee as of December 19, 2009.
- An asylee.
- An alien whose deportation is being withheld.
- A Cuban/Haitian Entrant.
- A victim of a severe form of trafficking.

**Program: Child Care Assistance**

**Services Provided to Aliens?: Yes**

**Authority:** An eligible child must either be a US citizen or have resident alien status.

**Program: Basic Care Assistance**

**Services Provided to Aliens?: Yes**

**Authority:** Follows medicaid policy since an individual must be eligible for medicaid to receive assistance under the program.

**Program: Medicaid and CHIP (Healthy Steps)**

**Services Provided to Aliens?: Yes**

**Authority:**

**General Rule:** Individuals must be a United States citizen or an alien lawfully admitted for permanent residence. Individuals must prove identity. All coverage provided in North Dakota is as required by federal statutes.

**Verification Requirements:** Identity and citizenship, naturalization, or lawful alien status must be documented, except for:

- SSI recipients, individuals receiving SSA disability benefits, and Medicare beneficiaries who claim that they are US Citizens and that claim is not questionable;
- Children receiving Foster Care maintenance payments, subsidized Adoption payments, or Subsidized Guardianship payments.
- Newborn children born to a woman who is receiving Medicaid when the child is born.



**Qualified Aliens:**

- The following qualified aliens who meet all other eligibility criteria may be eligible at any time:
  - o Aliens who lawfully entered the United States for permanent residence before August 22, 1996;
  - o Honorably discharged veterans, aliens on active duty in the United States' armed forces, and the spouse or unmarried dependent child(ren) of such individuals;
  - o Refugees;
  - o Asylees who have been granted asylum (not applicants for asylum);
  - o Cuban and Haitian Entrants;
  - o Victims of a severe form of trafficking;
  - o Aliens whose deportation was withheld under Section 243(h) of the Immigration and Naturalization Act (INA);
  - o Aliens admitted as an Amerasian immigrant;
  - o Iraqi and Afghan aliens and family members who claim special immigrant status, and can provide verification that they have been admitted under section 101(a)(27) of the INA; and
  - o American Indians born in Canada who may freely enter and reside in the United States if at least one-half American Indian blood.
- All other aliens are banned from coverage, except for Medicaid emergency services, for five years from the date they entered the United States. After the five-year ban, aliens who are lawful permanent residents who can be credited with forty qualifying quarters of social security coverage may be eligible. Any quarter in which TANF, SNAP (Supplemental Nutrition Assistance Program), Medicaid, CHIP, or SSI benefits were received (in North Dakota or another state), are not counted as qualifying quarters.

**Permanent Non-Immigrants:** Individuals from the Federated States of Micronesia, the Marshall Islands, or Palau, are permanent non-immigrants. While considered non-qualified aliens, they are here permanently and can be eligible for Medicaid emergency services.

**Ineligible Aliens:** Aliens who are lawfully admitted for a temporary or specified period of time are not eligible because of the temporary nature of their admission status. Ineligible aliens are not eligible for coverage of Medicaid emergency services. Ineligible aliens include:

- Foreign government representatives on official business and their families and servants;
- Visitors for business or pleasure, including exchange visitors;
- Aliens in travel status while traveling directly through the U.S.;
- Foreign students;
- International organization representation and personnel and their families and servants;
- Temporary workers including agricultural contract workers; and
- Members of foreign press, radio, film, or other information media and their families.



**Illegal Aliens:** Aliens not lawfully admitted for permanent residence in the United States are not eligible, except for Medicaid emergency services.

**Medicaid Emergency Services:** Illegal aliens, permanent non-immigrants, and qualified aliens who are not eligible because of the time limitations or forty qualifying quarters of social security coverage requirement, may be eligible to receive Medicaid emergency services that are not related to an organ transplant procedure, if all of the following conditions are met:

- The alien has a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
  - o Placing health in serious jeopardy;
  - o Serious impairment to bodily functions; or
  - o Serious dysfunction of any bodily organ or part; and
- The alien meets all other eligibility requirements except illegal aliens do not have to furnish social security numbers or verification of alien status.

Eligibility for Medicaid ends when the emergency service has been provided, and does not include coverage of follow-up care if the follow-up care is not an emergency service.

Program: **Vocational Rehabilitation**

Services Provided to Aliens?: Yes

Authority:

**North Dakota Administrative Code section 75-08-01-02. General requirements of the vocational rehabilitation program.**

6. There is no residency requirement, durational or other, that may exclude an otherwise eligible individual present in the state from eligibility. For individuals who are not United States citizens, vocational rehabilitation must verify that the individual is not prohibited from working.

An "otherwise eligible individual" means someone who meets all eligibility criteria in North Dakota Administrative Code section 75-08-01-18:

**75-08-01-18. Eligibility criteria and documentation.**

1. Vocational rehabilitation must base eligibility determinations on existing data as the primary source of information to the maximum extent possible and appropriate. The individual requesting services, the family of the individual, or other sources may provide the information. An individual is eligible for vocational rehabilitation if:
  - a. The individual has a mental or physical impairment;
  - b. The impairment constitutes or results in a substantial impediment to employment as determined by a qualified rehabilitation professional;
  - c. The individual can benefit from vocational rehabilitation services in terms of an employment outcome. An individual is presumed to be able to benefit from vocational rehabilitation services in terms of an

employment outcome unless vocational rehabilitation can demonstrate by clear and convincing evidence that the individual cannot benefit due to the severity of the disability. This demonstration that the individual cannot benefit can be determined only after conducting trial work experiences as described in section 75-08-01-20; and

- d. The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.
2. In all cases in which vocational rehabilitation determines an individual eligible for services, the record of service must include documentation of eligibility, dated and signed by a qualified rehabilitation professional, which demonstrates that the individual;
  - a. Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and
  - b. Requires vocational rehabilitation services to prepare for, enter, retain, or regain employment.

Additionally, North Dakota Administrative Code section 75-08-01-19 contains eligibility criteria for supported employment.

**75-08-01-19. Eligibility criteria for supported employment.** An individual is eligible for supported employment services if:

1. The individual is eligible for vocational rehabilitation services;
2. The individual is determined to have a most significant disability; and
3. A comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs identifies supported employment as the appropriate employment outcome for the individual.

**Program: Human Service Centers**

**Services Provided to Aliens?:** Yes

**Authority:** Residents of the state of North Dakota may apply for services from the human service centers. Residents from other states may receive services when there is not an existing waiting list, in an emergency, or pursuant to a court order. Non-US citizens (Canadians) have been served as residents from other states. Services to clients who reside in other states are billed at full cost unless the services are ordered by a North Dakota court. If they are ND court-ordered, the nonresident may be eligible for the sliding fee discount.

**Program: LIHEAP**

**Services Provided to Aliens?:** Yes

**Authority:**

The Immigration Reform and Control Act of 1986 P.L. 99-603 bars some aliens from participation in LIHEAP.

Newly legalized aliens will have unique identification cards issued by the Immigration and Naturalization Service. (INS Form 688) Based on the identification card

and the LIHEAP application, you should be able to determine if the individual is or is not barred from participation in LIHEAP in accordance with the following categories:

1. Aged, blind and/or disabled, and certain Cuban and Haitian entrants (contact State Office for interpretation) that have resided illegally in the United States since January 1, 1982, and have been granted lawful status are eligible to participate in LIHEAP.
2. All other individuals that have resided illegally in the United States since January 1, 1982, and have been granted lawful temporary resident status are barred from participation in LIHEAP for a period of five years. This status became effective for most between May 1987 and May 1988. Therefore, these aliens will reach the end of their disqualification period between May 1992 and May 1993.
3. Certain individuals who performed seasonal agricultural work in the United States during a specified period of time (Special Agricultural Workers - SAWs) that have been granted temporary resident status leading to eventual lawful permanent status are eligible for LIHEAP assistance.
4. After FFY'90, individuals may be admitted to the United States as Replenishment Agricultural Workers (RAWs) as lawful temporary residents to meet a shortage of agricultural workers. These individuals will not be eligible for LIHEAP assistance for a period of five years except for certain Cuban and Haitian entrants or unless the individual is aged, blind, and/or disabled.
5. Iraqi and Afghani aliens and family members who claim special immigrant status must provide verification that they have been admitted under section 101(a) (27) of the INA. Once found eligible for LIHEAP, the household would be eligible for the full season in which they applied.
6. Canadian Indians are eligible for LIHEAP if they provide a blood quantum letter which contains information from the individual's Band, Tribe, and Nation and states that the individual's blood quantum is at least 50% aboriginal blood. The document may use the following verbiage:
  - at least 50% Aboriginal blood
  - at least 50% Indigenous blood
  - at least 50% North American Indian blood
  - at least 50% American Indian bloodAll Indians on reservations must use tribal programs.

Program: **SNAP**

Services Provided to Aliens?: Yes

Authority:

**Alien** Only eligible aliens are entitled to participate in the program. An alien is an individual in the United States who is still a subject or citizen of a foreign country and is not a U.S. citizen.

U.S. citizens include anyone born in:

- The 50 states
- District of Columbia
- Guam



- Virgin Islands
- Puerto Rico
- The Northern Mariana Islands
- American Samoa
- Swain's Island
- A foreign country who are:
  - a. under 18 years of age, and
  - b. admitted to the US as a lawful permanent resident; and
  - c. in the legal and physical custody of at least one parent who is a US citizen.

This also applies to children adopted from a foreign country as long as the three conditions above are met.

**Verification Information System** When an alien has presented an USCIS document containing the individual's admission number or file number, the worker must use the on-line access system for alien status verification provided by the Department of Homeland Security.

**Eligible Alien** To participate in SNAP an alien must have acceptable verification of alien status and in addition may be required to meet military criteria or the 40-quarter requirement.

**Illegal Alien** USCIS makes the determination if an individual is an illegal alien. The worker does not make this determination and must not report an individual to USCIS as an illegal alien unless the following has occurred:

- a. unlawful presence must be a finding of fact or conclusion of law that is made as part of a formal determination that is subject to administrative review on an alien's claim, and
- b. the finding or conclusion of unlawful presence must be supported by a determination by USCIS or the Executive Office of Immigration Review, such as a Final Order of Deportation.

Illegal aliens are excluded household members and are treated the same as an ineligible alien.

**Ineligible Alien** Individuals who do not meet the eligible alien status and those who do not attest to alien status at the time of application are not eligible. Among those excluded are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country. Ineligible aliens are excluded household members.

**Non-Applicants** An individual who chooses not to provide information on citizenship, alien status or social security number, can choose to be a non-applicant and declare that early in the application process instead of pending the application and waiting for the verification before processing the application. If an individual chooses to be considered a "non-applicant" they are ineligible for SNAP and must be coded as an

excluded household member in the system. These individuals must not be reported to USCIS.

**Sponsored Alien** Sponsored aliens may be eligible or ineligible aliens who have been sponsored by an individual. The sponsor has agreed to support them as a condition of the alien's admission to the United States as a permanent resident.

**Questionable Citizenship** The member whose citizenship is in question is ineligible to participate until proof of United States citizenship is obtained. A non-citizen must have completed all of the requirements for citizenship and received a certificate of naturalization. Until proof is obtained, income and assets of the household member whose citizenship is questionable are treated as an ineligible household member.

Verification of non-citizen status may be postponed in order to meet the expedited processing standards.

If verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, a signed statement from someone who is a United States citizen must be accepted. Such a statement must read as follows:

"I declare under penalty of perjury that \_\_\_\_\_ is a United States citizen. It is my understanding that intentionally giving false information to help this person get SNAP benefits may result in a fine, imprisonment, or both."

When either a household or an individual indicates inability or unwillingness to provide documentation of alien status for any household member, the person whose alien status is in question is an ineligible (not illegal) alien. If the individual is determined ineligible, the worker must not continue efforts to obtain documentation of alien status.

**Awaiting Verification of Alien Status** If verification of alien status is not provided on a timely basis, the eligibility of the remaining household members must be determined. The income and assets of the individual whose alien status is unverified (where the individual has provided no USCIS documentation of alien status) must be treated in the same manner as a disqualified member and considered available in determining the eligibility of the remaining household members. If verification of eligible alien status is later received, the worker must act on the information as a reported change in household circumstances.

When an applicant has presented an USCIS document containing the individual's alien admission number or alien file number, if the documents appear to be legitimate, the application must be processed within the appropriate time frame without waiting for receipt of secondary verification from USCIS.

<b>IF THE ALIEN WAS ADMITTED AS:</b>	<b>SNAP ELIGIBILITY</b>	<b>ACCEPTABLE VERIFICATIONS OF IMMIGRANT/ALIEN STATUS</b>
Refugee under section 207 of the Immigration and Nationality Act (INA)	Eligible upon entry.	<ul style="list-style-type: none"> <li>- USCIS Form I-94 showing entry as refugee under Section 207 of the INA and date of entry into U.S. (The arrival date is the date used to determine entry date.); or</li> <li>- USCIS Form I-688B annotated 274a.12(a)(3) (The arrival date is the date used to determine entry date.); or</li> <li>- USCIS Form I-766 with code A3; or</li> <li>- USCIS Form I-571; or</li> <li>- USCIS Form I-551 or I-151 with codes RE1, RE2, RE3, RE4, RE5, RE6, RE7, RE8, RE8b, RE9, IC6 or IC7.</li> </ul>
Victim of Human Trafficking	Eligible upon entry.	<ul style="list-style-type: none"> <li>- Certification Document from the Office of Refugee Resettlement (ORR).</li> </ul>
Asylee under Section 208 of INA	Eligible upon entry.	<ul style="list-style-type: none"> <li>- USCIS Form I-94 showing grant of asylum under section 208 (The arrival date is usually the date of designated</li> </ul>



		<p>status.); or</p> <ul style="list-style-type: none"> <li>- USCIS Form I-766 annotated A5; or</li> <li>- Grant letter from Asylum Office of the USCIS; or</li> <li>- Order from immigration judge granting asylum; or</li> <li>- USCIS Form I-688B annotated 274.a12(a)(5) (The arrival date is usually the date of designated status.); or</li> <li>- USCIS Form I-766 with code A5; or</li> <li>- USCIS Form I-551 or I-151 with codes AS6, AS7, AS8, or AS9.</li> </ul>
<p>Deportation withheld under section 243(h) of the INA as in effect prior to April 1, 1997 or whose removal is withheld under section 241(b)(3) of the INA.</p>	<p>Eligible upon entry.</p>	<p>Individuals whose deportation has been withheld should have a court order. The date of the court order is the designated status date.</p> <ul style="list-style-type: none"> <li>- Immigration Judge order showing deportation withheld under section 243(h) or 241(b)(3) of the INA &amp; date of grant; or</li> <li>- USCIS Form I-688B annotated 274a.12(a)(10); or</li> <li>- USCIS Form I-766 with</li> </ul>

		code A10.
Conditional entrant under section 203(a)(7) of the INA as in effect prior to April 1, 1980.	Eligible upon entry.	<ul style="list-style-type: none"> <li>- USCIS Form I-94 showing admission under section 203(a)(7) Refugee-Conditional Entry in effect prior to 04/01/1980; or</li> <li>- USCIS Form I-688B annotated 274a.12(a)(3); or</li> <li>- USCIS Form I-766 annotated A3; or</li> <li>- USCIS Form I-551 or I-151 with code R86.</li> </ul>
Cuban/Haitian Entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.	Eligible upon entry.	<ul style="list-style-type: none"> <li>- USCIS Form I-551 with code CU6, CU7, or CH7</li> <li>- USCIS Form I-94 with code CU6 or CU7, or stamped Cuban/Haitian Entrant under Section 212(d)(5) of the INA (The arrival date is usually the date of designated status.)</li> <li>- Unexpired temporary I-551 stamp in foreign passport.</li> </ul>
Amerasian Entrant as defined in section 584 of PL 100-202, as amended by PL 100-461.	Eligible upon entry.	<ul style="list-style-type: none"> <li>- USCIS Form I-551 with code AM6, AM7, or AM8</li> <li>- USCIS Form I-94 with code AM1, AM2, or AM3 (The arrival date is usually the date of designated status.)</li> </ul>

		<ul style="list-style-type: none"> <li>- Unexpired temporary I-551 stamp in foreign passport.</li> </ul>
Hmong or Highland Laotian	<p>Eligible if:</p> <ul style="list-style-type: none"> <li>- was a member at the time the tribe rendered assistance to the U.S. during the Vietnam era from 08/05/1964 through 05/07/1975; or</li> <li>- spouse or unmarried dependent child of Hmong/Highland Laotian, if they meet one of the following: <ul style="list-style-type: none"> <li>a. Spouse remains married to the tribal member; or</li> <li>b. Was married to the member at the time of the member's death and has not remarried;</li> <li>c. An unmarried dependent child under the age of 18 or if they are a full-time student under the age of 22. This also applies if the parent is deceased provided that the child was</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- States tribe meets Vietnam era involvement and has: <ul style="list-style-type: none"> <li>- USCIS Form I-94 showing entry as refugee under Section 207 of INA and date of entry into the U.S.; or</li> <li>- USCIS Form I-551 or I-151 unless form is marked as admitted under Section 249 &amp; entered after 01/01/72; or</li> </ul> </li> <li>- On master list located in State Office.</li> </ul>



	<p>dependent on the parent at the time of death.</p> <p>An unmarried disabled child age 18 or older if the child was disabled and dependent on the parent prior to the child's 18th birthday.</p> <p>Child in (c) above means biological or adopted.</p>	
Lawfully Admitted for Permanent Residence	<p>Eligible regardless of entry date if:</p> <ul style="list-style-type: none"> <li>- meets the 40 quarters requirement; or</li> <li>- has resided in the US for 5 years with a LPR status.</li> </ul>	<ul style="list-style-type: none"> <li>- USCIS Form I-551 or I-151 (Resident Alien card)</li> <li>- If the individual was admitted under Section 249 and entered after January 1, 1972, no eligibility exists.</li> <li>- Any status code on the I-551 is acceptable unless the I-551 is annotated with 1B6, 1B7, 1B8 and the individual does not meet battered alien criteria.</li> <li>- Unexpired Temporary I-551 stamp in foreign passport or on the I-94 form also verifies the individual is admitted for lawful permanent</li> </ul>

		residence.
Parolee under section 212(d)(5) of the INA and status is granted for at least one year	Eligible upon entry.	- USCIS Form I-94 stating admission under section 212(d)(5) of the INA.
Battered spouse or child	<p>Eligible if:</p> <ul style="list-style-type: none"> <li>- veteran or on active duty in U.S. armed forces or spouse or unmarried dependent child of veteran or person on active duty; and</li> <li>- an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parents' family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered. The battered spouse or child cannot be living</li> </ul>	<ul style="list-style-type: none"> <li>- I-551 annotated with 1B6, 1B7, 1B8; or</li> <li>- Other USCIS documentation of battered status - contact State Office for clarification.</li> </ul>

	with the family who battered them.	
Native Americans	<p>Eligible if:</p> <ul style="list-style-type: none"> <li>- Born in Canada who possesses at least 50% of blood of the American Indian race (Jay Treaty); or</li> <li>- A member of an American Indian Tribe.</li> <li>- Contact State Office if assistance is needed.</li> </ul>	<p>- Enrollment documents, birth records, affidavits from tribal officials, INS Form I-181 or I-551 annotated with KIC, KIP, or S13 or other acceptable documents can be used as verification of 50% American Indian blood.</p> <p>A Blood Quantum Letter containing information from the individual's Band, Tribe, Nation stating the individual's blood quantum, which must be at least 50% aboriginal blood can also be used as verification of 50% American Indian blood. The document may contain the following verbiage:</p> <ul style="list-style-type: none"> <li>• ...at least 50% Aboriginal blood</li> <li>• ...at least 50% Indigenous blood</li> <li>• ...at least 50% North American Indian blood</li> <li>• ...at least 50% American Indian blood</li> </ul>
Iraqi and	Eligible upon entry	- Documentation verifying

Afghani Special Immigrants	for:  Iraqi - 8 months  Afghani - 6 months	admission under section 101(a)(27) of the INA.
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Submitted by:

Julie Leer  
North Dakota Department of Human Services  
June 8, 2010