PRWORA's Restrictions on Noncitizen Eligibility for Federal Public Benefits: Legal Issues

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SUMMARY

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PRWORA's Restrictions on Noncitizen Eligibility for Federal Public Benefits: Legal Issues

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) restricts the eligibility of non-U.S. nationals (aliens) for many federal benefit programs. It applies to federal health care, housing, welfare, unemployment, and retirement benefits, as well as many other types of federal benefits. Before PRWORA, individual program statutes established the eligibility restrictions for aliens, if any, that applied to particular programs. A major purpose of PRWORA was to establish a set of uniform and restrictive eligibility criteria for a broad array of federal benefits. PRWORA also establishes default restrictions on alien eligibility for state and local benefits. Those restrictions, which states can override with affirmative legislation, are not the subject of this report but may be addressed in future CRS products.

Under PRWORA's baseline rule for federal benefits, only "qualified aliens" are eligible for benefits that fall within the statute's definition of "federal public benefit." Qualified aliens include lawful permanent residents, asylees, refugees, and some other groups. This baseline rule, which has some exceptions, bars nonqualified aliens such as holders of Temporary Protected Status (TPS), recipients of Deferred Action for Childhood Arrivals (DACA), and nonimmigrants from receiving federal public benefits. Beyond the baseline rule, the statute imposes additional restrictions on the eligibility of qualified aliens for certain major federal benefit programs, including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicaid, and the Supplemental Nutrition Assistance Program (SNAP).

Whether PRWORA's baseline "qualified alien" restriction applies to a particular federal program typically depends on two legal questions. The first question is whether the program delivers benefits that constitute "federal public benefits" under the PRWORA definition. There is no doubt that TANF, SSI, Medicaid, and SNAP fall within the definition, although this certainty comes more from other provisions of PRWORA than the language of the definition itself. By establishing specialized eligibility rules for these major programs, PRWORA makes obvious that its restrictions apply to them. Outside of these major programs, however, determining whether a given benefit constitutes a "federal public benefit" requires interpretation of multiple elements in the PRWORA definition. In the absence of clear guidance on the issue from agencies or courts, confusion about the correct interpretation sometimes emerges.

The second question that often arises is whether PRWORA's "qualified alien" restriction overrides eligibility rules from other statutes. PRWORA provides that its blanket eligibility rules apply "[n]otwithstanding any other provision of law," but the Act did not repeal the sundry preexisting eligibility criteria in specific program statutes. Where these preexisting eligibility rules differ from PRWORA, uncertainty may result about which rules govern. Similarly, when Congress creates new benefit programs without mentioning PRWORA or establishing clear rules for alien eligibility, confusion can arise as to whether the PRWORA restrictions apply. Much case law stands for the proposition that the statutory language "notwithstanding any other provision of law" unambiguously overrides inconsistent provisions of other statutes. However, some courts have recognized limitations to this proposition, and other principles of statutory interpretation may be invoked in favor of the eligibility criteria in specific program statutes. The power of PRWORA's "notwithstanding" clause to override inconsistent provisions of other statutes remains unclear, particularly with respect to later-enacted statutes.

Federal unemployment benefits and federal student aid programs provide two illustrative examples of the interpretive issues that often arise under PRWORA. Both types of benefits, when federally funded, would appear to constitute "federal public benefits" under the plain language of the PRWORA definition, although there is little federal agency guidance or caselaw to confirm that conclusion. Further, both types of benefits are subject to eligibility rules for aliens that predate PRWORA and that are, to varying degrees, broader than the PRWORA "qualified alien" rule. After PRWORA, federal agencies appear to have continued applying these earlier eligibility rules. Their legal basis for doing so remains largely unexplained. When Congress enacted new types of federal unemployment and student aid benefits in response to the Coronavirus Disease 2019 (COVID-19) pandemic in 2020, the question of whether PRWORA restricted alien eligibility for the new benefits generated confusion and litigation.

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Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"),[1] codified at 8 U.S.C. §§ 1601–1646, establishes a set of overarching rules that restrict the eligibility of non-U.S. nationals (aliens)[2] for public benefits.[3] These restrictions apply to a wide range of federal and state benefits, including health care, housing, welfare, unemployment, and retirement benefits, among many others.[4]

Before PRWORA, the authorizing statute for each federal benefit program generally established its immigration-related eligibility criteria or lack thereof.[5] The statutes for several major federal programs—including Supplemental Security Income (SSI), Medicaid, and the version of federal welfare that existed before PRWORA (Aid to Families with Dependent Children, or AFDC)—limited eligibility to aliens who were "permanently residing [in the United States] under color of law,"[6] an ill-defined category known by the acronym "PRUCOL."[7] Other program statutes did not

[1] Pub. L. No. 104-193, 110 Stat. 2105, 2260 (1996).

[2] 8 U.S.C. § 1101(a)(3) ("The term 'alien' means any person not a citizen or national of the United States."). Some have criticized the term as offensive, but it is woven so deeply into PRWORA and the wider body of federal immigration statutes that avoiding its use when analyzing them would be difficult. Trump v. Hawaii, 138 S. Ct. 2392, 2443 n.7 (2018) (Sotomayor, J., dissenting) ("It is important to note . . . that many consider 'using the term "alien" to refer to other human beings' to be 'offensive and demeaning.' I use the term here only where necessary 'to be consistent with the statutory language' that Congress has chosen and 'to avoid any confusion in replacing a legal term of art with a more appropriate term.'") (quoting Flores v. United States Citizenship & Immigration Servs., 718 F.3d 548, 551-552 n. 1 (6th Cir. 2013)); *but cf.* Barton v. Barr, 140 S. Ct. 1442, 1446 n.2 (2020) ("This opinion uses the term 'noncitizen' as equivalent to the statutory term 'alien.'").

[3] *See, e.g.*, Pimentel v. Dreyfus, 670 F.3d 1096, 1099 (9th Cir. 2012) ("[T]he Welfare Reform Act (or 'PRWORA') . . . dramatically altered alien-eligibility requirements for federal public benefits and for state and local public benefits."); Lewis v. Thompson, 252 F.3d 567, 577 (2d Cir. 2001) ("In the 1996 Welfare Reform Act, Congress altered the terrain . . . by imposing sweeping restrictions on aliens' access to federally sponsored government aid."). PRWORA is sometimes called the "Welfare Reform Act," *see Pimentel*, 670 F.3d at 1099; Soskin v. Reinertson, 353 F.3d 1242, 1245 (10th Cir. 2004), perhaps because, aside from establishing in Title IV the immigration-related eligibility restrictions examined in this report, other titles of the Act reformed major federal welfare and nutritional assistance programs in ways unrelated to immigration. *See* Stone v. McGowan, 308 F. Supp. 2d 79, 86 (N.D.N.Y. 2004) ("PRWORA replaced the 'Aid to Families with Dependent Children ("AFDC")' program with the 'Temporary Assistance to Needy Families ("TANF")' program . . . ."); Arizona v. Shalala, 121 F. Supp. 2d 40, 44–45 (D.D.C. 2000) ("[PRWORA] drastically altered the federal/state balance as well as the relationship between cash assistance, Medicaid, and Food Stamps."); *see generally* Christine N. Cimini, *The New Contract: Welfare Reform, Devolution, and Due Process*, 61 MD. L. REV. 246 (2002) ("[T]he Welfare Reform Act was designed to promote job preparation, work and marriage among recipients, and to increase administrative flexibility for states.").

[4] 8 U.S.C. §§ 1611, 1621; *see Pimentel*, 670 F.3d at 1099.

[5] *See* H.R. REP. NO. 104–725, at 379 (1996) ("Current law limits alien eligibility for most major Federal assistance programs, including restrictions on, among other programs, Supplemental Security Income, Aid to Families with Dependent Children, housing assistance, and Food Stamps programs. Current law is silent on alienage under, among other programs, school lunch and nutrition, the Special Supplemental Food Program for Women, Infants, and Children (WIC), Head Start, migrant health centers, and the earned income credit."); *see also, e.g.*, Mathews v. Diaz, 426 U.S. 67, 70 (1976) (upholding the constitutionality of 42 U.S.C. § 1395o(2), which denied Medicare Part B eligibility to aliens "unless they ha[d] been admitted for permanent residence and also ha[d] resided in the United States for at least five years").

[6] H.R. REP. NO. 104–725, at 379-80 (1996). The Medicaid statute did not establish any eligibility restrictions based on immigration status until 1986, when Congress amended it to limit eligibility to PRUCOL aliens. Lewis v. Thompson, 252 F.3d 567, 573-74 (2d Cir. 2001). Previously, a federal agency had established the PRUCOL requirement by regulation, but a federal court held that the regulation violated the statute. *Id.* at 573.

[7] *Lewis*, 252 F.3d at 571-72 (2d Cir. 2001) ("PRUCOL . . . is an amorphous and 'elastic' [status], but this Court has read it to include at least those aliens who are residing in the United States with the INS's knowledge and permission and whom the INS does not contemplate deporting."); Esparza v. Valdez, 862 F.2d 788, 791-93 (10th Cir. 1988) (noting competing federal court, federal agency, and state court interpretations of PRUCOL); *cf.* 20 C.F.R. § 416.202(b)(3) (regulation listing seventeen categories of PRUCOL aliens, including one catchall category, for purposes of eligibility for supplemental security income).

establish any eligibility criteria for aliens.[8] Sometimes Congress used a single act to amend eligibility rules for aliens in the authorizing statutes of multiple programs at once, but the rules for each program generally remained in that program's particular authorizing statute.[9] A major purpose of PRWORA was to establish a set of restrictive, uniform rules that would apply across a broad spectrum of federal benefit programs.[10]

PRWORA raises a number of legal issues with respect to federal benefit programs. For the most part, these legal issues involve determining which federal programs are governed by the statute's overarching eligibility restrictions. While PRWORA's applicability is clear for four major federal benefit programs—Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Supplemental Nutritional Assistance Program (SNAP), and Medicaid[11]—its applicability to other federal programs is often ambiguous. Often, uncertainty about PRWORA's applicability arises because individual program statutes continue to set forth different immigration-related eligibility rules.[12] PRWORA provides that its blanket eligibility rules apply "[n]otwithstanding any other provision of law," but the Act did not repeal the sundry preexisting eligibility criteria in specific program statutes, such as those for federal student aid programs in the Higher Education Act and those for unemployment insurance in the Federal Unemployment Tax Act.[13] Agencies and courts must therefore determine how the divergent eligibility criteria fit together. PRWORA's applicability is also often unclear where a federal program delivers benefits of a type that PRWORA does not reference specifically but that are arguably similar to referenced benefit types,[14] and where the federal benefits in question were created after PRWORA's enactment.[15]

This report explores these legal issues with respect to federal benefit programs. First, the report reviews the basic rules that PRWORA establishes for alien eligibility for federal public benefits. Second, the report analyzes PRWORA's definition of "federal public benefit" and examines the legal issues that arise when applying the definition to particular federal benefit programs. Third,

[8] H.R. REP. NO. 104–725, at 379 (1996).

[9] *See* Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, 3384-94 (1986) (amending Social Security Act and housing and education statutes to impose immigration status verification requirements). IRCA also imposed a general restriction on federal benefits eligibility for aliens who legalized their status through the statute's major legalization program for aliens who had been unlawfully present since 1982. *Id.* at 3401 ("Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance"). This eligibility restriction thus applied across a spectrum of benefit programs, but because it applied only to one category of aliens (those who legalized through IRCA), it did not constitute the type of overarching eligibility rule that PRWORA would impose in 1996. *Compare id. with* 8 U.S.C. § 1611(a) ("Notwithstanding any other provision of law . . . , an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit . . . .").

[10] *See* 8 U.S.C. § 1601 (Statements of national policy concerning welfare and immigration) (stating that "[c]urrent eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system," and that "[i]t is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy"); Korab v. Fink, 797 F.3d 572, 581 (9th Cir. 2014) ("[PRWORA] establishes a uniform federal structure for providing welfare benefits to distinct classes of aliens.").

[11] *See infra* "Category 1: Programs for Which PRWORA Makes Special Provision."

[12] *See, e.g.*, Mashiri v. Dep't of Educ., 724 F.3d 1028, 1033 (9th Cir. 2013) (not resolving whether divergent eligibility criteria in Higher Education Act "precluded the application of" PRWORA); *see generally infra* "Prospective Application of PRWORA."

[13] *See* 8 U.S.C. § 1611(a).

[14] *See infra* "Category 3: Programs That Deliver Non-enumerated Benefits That Are Arguably "Similar" to Enumerated Benefits."

[15] *See infra* "Emergency Financial Aid Under the CARES Act."

the report analyzes PRWORA's interplay with other federal statutes that govern federal public benefit programs and that sometimes establish different eligibility rules for aliens for particular programs. Finally, the last section of the report examines two case studies—federal unemployment benefits and federal student aid benefits—to illustrate the legal issues discussed in the previous two sections of the report.

PRWORA also establishes default restrictions on alien eligibility for state and local benefits.[16] Those restrictions,[17] which states can override with affirmative legislation, are not the subject of this report but may be addressed in future CRS products.

What Are the PRWORA Restrictions on Alien Eligibility?

As discussed later, PRWORA gives rise to significant legal issues about whether its eligibility restrictions for aliens apply to particular federal programs. The eligibility restrictions themselves, however, are relatively clear. Once the determination is made that PRWORA restrictions apply to a benefit program, the statute does not leave significant ambiguity as to which categories of aliens it renders ineligible.

PRWORA's framework of eligibility restrictions for federal benefits may be summarized as follows (**bolded terms** are defined in the glossary at the end of the report):

1. Aliens who are not **qualified aliens** are not eligible for **federal public benefits**.[18]
    a. Exceptions:
        - treatment of emergency medical conditions;
        - "short-term, non-cash, in-kind emergency disaster relief";[19]
        - non-cash community assistance programs "such as soup kitchens, crisis counseling and intervention, and short-term shelter" specified by the Attorney General that are necessary to protect life and safety;
        - "lawfully present" aliens are eligible for benefits under Title II of the Social Security Act (i.e., retirement, survivors, and disability benefits) and for Medicare Part A benefits; and

[16] 8 U.S.C. § 1621.

[17] PRWORA's provisions about state benefit programs also raise significant issues of statutory interpretation, federalism, and constitutional law. Many of these issues concern the reach of the states' statutory and constitutional authority to create their own restrictions on alien eligibility for benefits that they administer. *See, e.g.*, Bruns v. Mayhew, 750 F.3d 61, 63 (1st Cir. 2014) (rejecting equal protection challenge to Maine's termination of state-funded health care benefits for aliens ineligible for Medicaid under PRWORA); *Korab*, 797 F.3d at 583-84 (rejecting equal protection challenge to Hawaii's reduction of state-funded health benefits for certain nonimmigrants ineligible for Medicaid under PRWORA); Pimentel v. Dreyfus, 670 F.3d 1096, 1098 (9th Cir. 2012) (rejecting similar challenges to Washington State's termination of state-funded food assistance program for some aliens); *but see* Aliessa ex. rel. Fayad v. Novello, 96 N.Y. 2d 418, 433 (N.Y. 2001) (holding that PRWORA cannot "constitutionally authorize New York to determine for itself the extent to which it will discriminate against legal aliens for State Medicaid eligibility").

[18] 8 U.S.C. § 1611(a).

[19] For an analysis of this exception, see *Poder in Action v. City of Phoenix*, No. CV-20-01429, 2020 WL 5038582, at *8-*9 (D. Ariz. Aug. 26, 2020).

- other exceptions specified in 8 U.S.C. § 1611(b).[20]

2. Qualified aliens are not eligible for **federal means-tested public benefits** until five years after they enter the United States in a qualified alien status (in other words, there is a five-year waiting period for qualified aliens to receive these benefits).[21]

   a. Exceptions:

   - refugees, asylees, lawfully residing veterans and members of the Armed Forces, and other categories of aliens described in 8 U.S.C. § 1613(b);
   - certain "assistance and benefits" listed in § 1613(c), including treatment of emergency medical conditions and non-cash, short-term disaster relief;
   - groups described in § 1613(d)—e.g., certain American Indians born in Canada—who are seeking SNAP, SSI, or Medicaid.

3. Qualified aliens are not eligible for SSI or SNAP.[22] (PRWORA calls these two programs "**specified federal programs**.")[23]

   a. Exceptions:

   - lawful permanent residents (LPRs) with forty qualifying quarters of work history;
   - aliens admitted to the United States within the prior seven years as refugees, asylees, or in other statuses listed in 8 U.S.C. § 1612(a)(2)(A);
   - for SNAP only, qualified aliens under age 18 and qualified aliens who have been in the United States for five years in any status;[24] and
   - other exceptions listed in 8 U.S.C. § 1612(a)(2).

4. States may impose additional restrictions on qualified alien eligibility for TANF, Medicaid, and Social Services Block Grant programs (SSBG).[25] (PRWORA calls these three programs "**designated federal programs**.")[26]

   a. Exceptions: States may not limit the eligibility of

   - LPRs with forty qualifying quarters of work history;

[20] *Id.* § 1611(b) (exceptions).

[21] *Id.* § 1613(a).

[22] *Id.* § 1612(a).

[23] *Id.* § 1612(a)(3).

[24] Under a separate statute, a state may issue SNAP benefits to qualified aliens who are ineligible for the benefits under § 1612(a) and § 1613(a), but the state must reimburse the federal government for the benefits. 7 U.S.C. § 2016(i); Pimentel v. Dreyfus, 670 F.3d 1096, 1100-01 (9th Cir. 2012).

[25] 8 U.S.C. § 1612(b); *see* Tennessee v. Dep't of State, 329 F. Supp. 3d 597, 606 (W.D. Tenn. 2018) ("Five years following their entry into the United States, qualified aliens may be considered eligible for certain designated federal programs, including Medicaid."), *aff'd*, 931 F.3d 499 (6th Cir. 2019).

[26] 8 U.S.C. § 1612(b)(3).

- refugees, asylees, and other specified categories of aliens for five years (seven years for Medicaid) following their admission to the United States in that status;
- other groups of aliens described in 8 U.S.C. § 1612(b)(2).[27]

Thus, PRWORA establishes one baseline eligibility rule for federal public benefits and a series of additional rules for specific categories of federal public benefits (e.g., means-tested federal public benefits). The baseline rule, which has important exceptions, is that an alien must fall within one of the eight categories listed in the definition of "qualified alien" to be eligible for federal public benefits.[28] For example, LPRs, asylees, and refugees are "qualified aliens," but Deferred Action for Childhood Arrivals (DACA) recipients and Temporary Protected Status (TPS) holders are not.[29] For this reason, DACA recipients and TPS holders—to name just two examples of nonqualified alien categories—do not qualify for federal public benefits under PRWORA unless an exception applies (such as the exception for emergency medical treatment).[30]

Moving beyond the baseline rule, even LPRs must wait five years to be eligible for means-tested benefits such as Medicaid, TANF, SSI, and SNAP.[31] LPRs also must accumulate a ten-year work history to be eligible for SSI, SNAP, and (in some states) Medicaid, TANF, and SSBG.[32] Other categories of qualified aliens, such as asylees and refugees in the country for more than a certain number of years who have yet to adjust to LPR status, do not qualify for some of these benefit types at all.[33]

For more detail about the eligibility rules for major federal benefit programs broken down by immigration status, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*, coordinated by Abigail F. Kolker.

Which Federal Benefit Programs Are Subject to the PRWORA Restrictions?

Where the PRWORA eligibility restrictions apply, their consequences for particular categories of aliens are rather clear, as described above. Determining *whether* the restrictions apply to a federal benefit program, however, is often the source of legal confusion. This issue turns primarily upon

[27] *Id.* § 1612(b)(2) (exceptions). A federal district court held in 2018 that the provision in § 1612(b) requiring states to extend coverage for Medicaid to certain refugees does not violate the Tenth Amendment. *See* Tennessee v. Dep't of State, 329 F. Supp. 3d 597, 625 (W.D. Tenn. 2018); *aff'd on other grounds*, 931 F.3d 499 (6th Cir. 2019).

[28] *See, e.g.*, Korab v. Fink, 797 F.3d 572, 575 (9th Cir. 2014); Pimentel v. Dreyfus, 670 F.3d 1096, 1100 (9th Cir. 2012) ("Qualified" status is essentially a prerequisite for federal benefits . . . ."). For the groups that fall within the definition of qualified alien, see the Glossary in the **Appendix**.

[29] 8 U.S.C. § 1641. For definitions of immigration statuses such a "refugee" and "asylee," as well as other immigration terms, see the United States Citizenship and Immigration Services Glossary, available at https://www.uscis.gov/tools/glossary.

[30] *See Korab*, 797 F.3d at 575 ("The Act renders aliens who are not qualified aliens ineligible for all federal public benefits, with only limited exceptions, such as the provision of emergency medical assistance.").

[31] 8 U.S.C. § 1613(a); *see, e.g.*, Odi v. Alexander, 378 F. Supp. 3d 365, 382 (E.D. Pa. 2019) (explaining that an LPR who "had not had LPR status for five years . . . was indisputably" barred from Medicaid eligibility under § 1613(a), except for emergency treatment).

[32] 8 U.S.C. § 1612(a), (b). For Medicaid, a later statute expressly overrides PRWORA to give states the option extend coverage to "lawfully residing" children and pregnant women. 42 U.S.C. § 1396b(v)(4)(A) (providing states such flexibility "notwithstanding sections 1611(a), 1612(b), 1613, and 1631 of Title 8").

[33] 8 U.S.C. § 1612(a)(2)(A) (providing for refugee and asylee eligibility for SSI and SNAP only during the first seven years in such status).

two questions: (1) whether the program delivers benefits that fit PRWORA's definition of "federal public benefit"; and (2) whether divergent language about alien eligibility in other statutes limits or overrides the PRWORA restrictions.

This section begins by reviewing the "federal public benefit" definition. It then discusses how the definition applies to three categories of federal programs: (1) major federal programs for which PRWORA makes special provision, such as Medicaid, SNAP, SSI, and TANF; (2) programs that deliver benefits enumerated in the "federal public benefit" definition; and (3) programs that deliver benefits that are arguably "similar to" the enumerated benefits. The benefits delivered by the first category of programs clearly constitute "federal public benefits" governed by PRWORA. The second and third categories raise more difficult issues.

Next, the section reviews the interpretive issues that arise when the PRWORA restrictions conflict with or are in tension with eligibility language in other statutes. These interpretive issues come in two main varieties: (1) retrospective issues, concerning statutes that predate PRWORA; and (2) prospective issues, concerning statutes enacted after PRWORA.

PRWORA's "Federal Public Benefit" Definition

PRWORA defines "federal public benefit" as follows:

> (1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—
>
> > (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
> >
> > (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.[34]

The next paragraph in the statute specifies some benefit types that do *not* count as federal public benefits, such as professional licenses for nonimmigrants admitted to work in that profession.[35]

The "federal public benefit" definition requires interpretation because it does not identify the specific federal programs that fall within its scope.[36] Two federal agencies—the Department of Justice (DOJ) and the Department of Health and Human Services (HHS)—have published interpretations of the "federal public benefit" definition.[37] DOJ and HHS interpret prong (A) similarly, but their interpretations of prong (B) differ in some respects.

Under both agencies' interpretations of prong (A), it covers programs that provide one of the enumerated benefit types (e.g., grants, loans) to individuals through a federal agency or with

[34] *Id.* § 1611(c)(1).

[35] *Id.* § 1611(c)(2).

[36] Dep't of Health and Human Servs., Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998) ("PRWORA does not identify the specific benefits that are 'Federal public benefits,' and the definition in section 401(c), standing alone, does not provide sufficient guidance for benefit providers to make that determination.") [hereinafter HHS Guidance].

[37] *Id.*; Dep't of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997) [hereinafter DOJ Guidance].

federally appropriated funds.[38] Thus, in the words of the DOJ guidance, if a program "provides a 'grant,' 'contract,' 'loan,' 'professional license,' or 'commercial license' to an individual, either through a U.S. agency or with U.S. appropriated funds, then [the program] provide[s] a 'federal public benefit.'"[39]

Prong (B) of the definition is more complicated, primarily because it contains catchall language that prong (A) does not. To be a federal public benefit under prong (B), according to the agency interpretations, a federal program must meet three elements.[40] The benefits that the program provides must be (1) one of the enumerated benefit types (e.g., welfare, public housing) or "similar" to them; (2) provided by a federal agency or with appropriated federal funds; and (3) provided to "an individual, household, or family eligibility unit."[41] Unlike benefits identified under prong (A), a program's benefits do not necessarily fall outside of prong (B) simply because they are not enumerated therein.[42] Instead, the first element of prong (B) requires an assessment of whether a program's benefits are "similar" to those enumerated in that prong.[43] (This catchall language is analyzed further below in the subsection titled "Category 3: Programs That Deliver Non-enumerated Benefits That Are Arguably "Similar" to Enumerated Benefits.") As for the third element, concerning benefit recipients, the HHS interpretation takes the position that a benefit program does not meet it unless the statute authorizing the program has exclusive eligibility criteria—that is, unless it "mandate[s] ineligibility" for certain recipients.[44] The DOJ interpretation does not include this additional gloss about the third element.[45] This divergence in the agency interpretations could affect decisions about PRWORA's applicability to federally funded, enumerated benefit types that are generally available to broad categories of recipients, such as a new form of emergency financial aid that Congress created in 2020 and made generally available to higher education students.[46] At least one federal court has analyzed this point of divergence between the two agency interpretations and rejected the HHS interpretation as unpersuasive.[47]

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[38] DOJ Guidance, *supra* note 37, at 61,361; HHS Guidance, *supra* note 36, at 41,659.

[39] DOJ Guidance, *supra* note 37, at 61,361.

[40] *Id.*; HHS Guidance, *supra* note 36, at 41,659. The HHS Guidance actually describes a two-part test, but the effect is the same because it combines two elements of the DOJ test (the provision of benefits to an enumerated category of recipient, and provision by a federal agency or with appropriated funds) into a single two-part element. *Id.*

[41] DOJ Guidance, *supra* note 37, at 61,361; HHS Guidance, *supra* note 36, at 41,659. The HHS Guidance actually describes the test as having two parts, but the effect is the same because it combines the last two parts of the DOJ test into a single element. *Id.*

[42] DOJ Guidance, *supra* note 37, at 61,361.

[43] *Id.* ("If your program provides payments or assistance to an individual, household or family eligibility unit through a U.S. agency or by U.S. appropriated funds, but the benefits are not expressly enumerated above, you should consider whether the benefits are 'similar' to one of the benefits enumerated in (b)."); HHS Guidance, *supra* note 36, at 41,659.

[44] HHS Guidance, *supra* note 36, at 41,659 ("[I]n order for a program to be determined to provide benefits to 'eligibility units' the authorizing statute must be interpreted to mandate ineligibility for individuals, households, or families that do not meet certain criteria, such as a specified income level or a specified age.").

[45] DOJ Guidance, *supra* note 37, at 61,361.

[46] *See* Oakley v. DeVos, No. 20-cv-03215-YGR, 2020 WL 3268661, at *14 (N.D. Cal. June 17, 2020) (citing HHS Guidance); Pls. Reply in Support of Mot. For Prelim. Inj, Oakley v. DeVos, No. 20-cv-03215-YGR, Dkt. no. 21, at 12 (N.D. Cal. June 1, 2020) (relying on the HHS Guidance to argue that PRWORA does not apply to a form of federally funded emergency financial aid that does not contain criteria mandating ineligibility for certain students).

[47] Poder in Action v. City of Phoenix, No. CV-20-01429, 2020 WL 5038582, at *8 (D. Ariz. Aug. 26, 2020) ("Not only did HHS fail to explain why a benefit program's status should turn on whether Congress explicitly laid out the eligibility criteria in the statutory text, but HHS's approach would result in a large number of benefit programs falling outside PRWORA's reach, which would run counter to Congress's intent in enacting PRWORA.").

Under the agency interpretations, neither prong of the "federal public benefit" definition encompasses benefits provided to public or private entities. As such, grants, loans, and other enumerated benefit types provided to those entities—rather than to individuals or households—do not *themselves* count as federal public benefits.[48] However, under the DOJ guidance, PRWORA still restricts how entities use federal funds to deliver benefits to individuals.[49] As DOJ puts it, if an entity uses federal grant money "to provide a 'federal public benefit'—e.g., a 'loan' or 'welfare' payment to a poor 'individual, household or family eligibility unit'—then . . . non-qualified aliens would be ineligible for such benefits."[50] In other words, PRWORA's restrictions carry through to state, local, and private benefit providers that deliver federally funded benefits.[51] At least two federal court decisions support this interpretation.[52] The language of the federal public benefit definition also appears to support the interpretation, by encompassing benefits provided with federal funds even if they are not provided by a federal agency.[53] The HHS Guidance appears to support the interpretation as well, although it does not address the issue thoroughly.[54]

Still, the general rule that PRWORA's restrictions carry through to public and private entities that deliver federally funded benefits has an important limitation for "nonprofit, charitable organizations."[55] PRWORA does not require such organizations to verify recipient immigration status when using federal funds to pay out federal public benefits to individuals or households.[56]

The agency interpretations described above were issued as guidance that did not go through the notice and comment rulemaking process set forth in the Administrative Procedure Act (APA) for agency rules with the force of law.[57] As such, the interpretations may not trigger the highest level of judicial deference from federal courts.[58] Nonetheless, the DOJ and HHS interpretations

[48] DOJ Guidance, *supra* note 37, at 61,361; HHS Guidance, *supra* note 36, at 41,659.

[49] DOJ Guidance, *supra* note 37, at 61,361.

[50] *Id.* at 61,361-62.

[51] *See id.*

[52] Pimentel v. Dreyfus, 670 F.3d 1096, 1099 n.4 (9th Cir. 2012) ("[A] federally funded benefit is still considered a 'federal public benefit' even if administered by a state or local agency."); Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *14 (N.D. Ala. Nov. 16, 2010), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011).

[53] *See* 8 U.S.C. § 1611(c)(1)(A), (B) (covering enumerated benefits "provided by an agency of the United States or by appropriated funds of the United States").

[54] HHS Guidance, *supra* note 36, at 41,661 ("Without prompt issuance of this interpretation, state and local governments and other public and private benefit providers will remain confused over how to implement the requirements of Title IV of PRWORA.").

[55] DOJ Guidance, *supra* note 37, at 61,345-46.

[56] 8 U.S.C. § 1642(d) ("[A] nonprofit charitable organization, in providing any Federal public benefit (as defined in section 1611(c) of this title) or any State or local public benefit (as defined in section 1621(c) of this title), is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits."). Other statutes, however, may require such organizations to verify immigration status notwithstanding the exception in PRWORA. DOJ Guidance, *supra* note 37, at 61,346 ("[I]ndependent requirements are not altered by the provision exempting nonprofit charitable organizations from [PRWORA]'s verification requirements."). If an organization that falls within the exemption chooses to verify immigration status on its own initiative, then PRWORA still prohibits the organization from delivering federal public benefits to nonqualified aliens. *Id.*

[57] DOJ Guidance, *supra* note 37, at 61,345; HHS Guidance, *supra* note 36, at 41,660-61. On APA notice and comment requirements, see CRS Report R44356, *The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action*, by Jared P. Cole, at 1.

[58] *See* CRS Report R44954, *Chevron Deference: A Primer*, by Valerie C. Brannon and Jared P. Cole, at 5; *cf.* United States v. Mead Corp., 533 U.S. 218, 226-27 (2001) ("[A]dministrative implementation of a particular statutory provision qualifies for *Chevron* deference when it appears that Congress delegated authority to the agency generally to

represent perhaps the most thorough analysis of the "federal public benefit" definition issued by agencies or courts.[59] More formal agency interpretations of the "federal public benefit" definition are lacking. DOJ proposed regulations to implement the PRWORA eligibility rules, in conformity with a provision of the statute that charged DOJ with this responsibility,[60] but it never finalized them.[61] Other agencies have issued regulations reflecting determinations that PRWORA applies to particular federal programs, but these regulations do not offer broad interpretations of the "federal public benefit" definition.[62] Judicial interpretation of the definition has also been sparse, as discussed in more detail below.[63]

Category 1: Programs for Which PRWORA Makes Special Provision

PRWORA leaves little doubt that the benefits delivered by some major federal programs fall within the sweep of its restrictions. In provisions outside of the "federal public benefit" definition, PRWORA makes clear that its eligibility framework applies to a set of "specified" or "designated" federal programs, including Medicaid, TANF, SSI, SNAP, and SSBG. Specifically, PRWORA cites the authorizing statutes for these programs and establishes additional eligibility restrictions for them in 8 U.S.C. § 1612 that go beyond the "qualified alien" requirement.[64]

These major, federally funded programs deliver benefits enumerated in the "federal public benefit" definition and therefore appear to fit within it (e.g., Medicaid delivers "health" benefits; TANF delivers "welfare" benefits).[65] But because PRWORA creates special eligibility rules for these programs, it is not necessary to parse the elements of the "federal public benefit" definition to determine that PRWORA restricts eligibility for them.[66]

Later statutes may expressly amend or override PRWORA to ease eligibility restrictions for these programs.[67] Short of such an express exception, however, the PRWORA eligibility rules clearly

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make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority."); *see also* Poder in Action v. City of Phoenix, No. CV-20-01429, 2020 WL 5038582, at *7 (D. Ariz. Aug. 26, 2020) (declining to apply *Chevron* deference to the HHS interpretation). Federal courts might still find the reasoning in the agency interpretations persuasive, however. *See* Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *14 (N.D. Ala. Nov. 16, 2010) (quoting the DOJ Guidance with approval), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011); *Poder in Action*, 2020 WL 5038582 at *7 ("[T]he deference owed to HHS's interpretation (if any) would reach only to the extent that the agency's reasoning is persuasive.") (internal quotation marks omitted).

[59] *See* Oakley v. DeVos, No. 20-cv-03215-YGR, 2020 WL 3268661, at *14 (N.D. Cal. June 17, 2020) (relying on HHS Guidance); *Uriostegui*, 2011 WL at *14 (relying on DOJ Guidance).

[60] 8 U.S.C. § 1641(a).

[61] *See* Dep't of Justice, Verification of Eligibility for Public Benefits, 63 *Fed. Reg.* 41,665 (Aug. 4, 1998).

[62] *See* 7 C.F.R. § 400.679(d) (providing that nonqualified aliens are not eligible for federal crop insurance benefits due to PRWORA); 42 C.F.R. § 436.406 (applying PRWORA rules to Medicaid).

[63] *See* Mashiri v. Dep't of Educ., 724 F.3d 1028, 1032 (9th Cir. 2013) (mentioning PRWORA's eligibility rules without determining their impact on federal financial aid programs); *infra* text at note 180 (discussing lack of case law on PRWORA's applicability to unemployment insurance programs).

[64] 8 U.S.C. § 1612(a) (framework of rules for the "specified federal programs" of SSI and SNAP), (b) (framework of rules for the "designated federal programs" of TANF, SSBG, and Medicaid).

[65] *Id.* § 1611(c)(1)(B).

[66] *See id.* § 1612; HHS Guidance, *supra* note 36, at 41,658 (stating that Medicaid, SSBG, and TANF, among other programs, are "federal public benefits" under PRWORA); *id.* at 41,660 (explaining that, without the citation to SSBG in 8 U.S.C. § 1612, HHS would have harbored doubt about whether some benefits provided through the program constituted "federal public benefits").

[67] *E.g.,* Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3 § 214(a), 123 Stat. 8, 56-57 (2009) (codified at 42 U.S.C. § 1396b(v)(4)(A)) (overriding PRWORA to allow states to grant Medicaid coverage to

apply to these programs.[68] Questions may still arise over the correct outcome under the rules in some liminal cases—particularly when the immigration status that an alien holds is unclear.[69] But there is typically no uncertainty about the foundational point that the PRWORA rules do, in fact, apply to these major programs.[70]

Conversely, PRWORA also makes clear that its eligibility rules for federal public benefits do *not* apply to some other federal programs that it cites by authorizing statute, such as "the school lunch program under the Richard B. Russell National School Lunch Act" and "the school breakfast program under section 4 of the Child Nutrition Act of 1966."[71] In a similar vein, PRWORA exempts other federal programs from its general eligibility rules and subjects them instead to more forgiving eligibility criteria. For example, Section 1611(b) specifies that aliens need not be "qualified aliens" to be eligible for retirement, survivors, and disability benefits under Title II of the Social Security Act; instead, aliens may be eligible for these benefits if they are "lawfully present."[72] Medicare receives the same treatment under PRWORA,[73] as do certain railroad retirement and unemployment benefits.[74] In each case, PRWORA's impact on the eligibility rules is clear.[75]

Category 2: Programs That Deliver Enumerated Benefits

Beyond the major federal programs described above that are cited by their authorizing statutes and singled out for special treatment in the text of PRWORA, a second category of federal programs deliver benefits enumerated in the "federal public benefit" definition. Examples include Department of Labor programs that provide unemployment benefits,[76] Department of Education

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some nonqualified children and pregnant women); Noncitizen Benefit Clarification and Other Technical Amendments Act, Pub. L. No. 105-306, § 2, 112 Stat. 2926, 2927 (1998) (codified at 8 U.S.C. § 1611(b)(5)) (amending PRWORA to add an exception allowing nonqualified aliens who were receiving SSI benefits before August 22, 1996, to remain eligible for such benefits).

[68] *See, e.g.*, Lewis v. Thompson, 252 F.3d 567, 580-82 (2d Cir. 2001) (holding that PRWORA "unequivocal[ly]" renders nonqualified aliens ineligible for Medicaid); City of Chicago v. Shalala, 189 F.3d 598, 601 (7th Cir. 1999) ("In § 402(b) of [PRWORA] [8 U.S.C. § 1612(b)], Congress authorized the states, subject to certain exceptions, to determine the eligibility of qualified aliens for three other federal benefit programs: Temporary Assistance for Needy Families ('TANF'), Social Services Block Grants ('SSBG'), and Medicaid."); HHS Guidance, *supra* note 36, at 41,658-660.

[69] *See* Taylor v. Barnhart, 399 F.3d 891, 896 (8th Cir. 2005) (considering whether an alien who had been admitted as an adoptive child in 1984 but did not have further evidence of status was "lawfully present" for purposes of 8 U.S.C. § 1611(b)(2)); Joubert v. Barnhart, 396 F. Supp. 2d 1320, 1326 (S.D. Fla. 2005) (analyzing whether an alien was a "Cuban and Haitian entrant" for purposes of an exception to the general bar on the eligibility of qualified aliens for SSI).

[70] *See Lewis*, 252 F.3d at 580-82; *see generally* Andrew Hammond, *The Immigration-Welfare Nexus in A New Era?*, 22 LEWIS & CLARK L. REV. 501, 515-16 (2018) (describing post-PRWORA eligibility rules for TANF, Medicaid, SNAP, and SSI).

[71] 8 U.S.C. § 1615(a).

[72] *Id.* § 1611(b)(2).

[73] *Id.* § 1611(b)(3).

[74] *Id.* § 1611(b)(4).

[75] *See* Texas v. United States, 809 F.3d 134, 198 (5th Cir. 2015) (explaining that PRWORA permits lawfully present aliens to be eligible for Medicare, social security retirement, and social security disability benefits),

[76] *See* Wimberly v. Labor and Indus. Relat. Comm'n of Missouri, 479 U.S. 511, 514 (1987) ("The Federal Unemployment Tax Act (Act), 26 U.S.C. § 3301 *et seq.*, enacted originally as Title IX of the Social Security Act in 1935, 49 Stat. 639, envisions a cooperative federal-state program of benefits to unemployed workers."); *see generally* CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Julie M. Whittaker and Katelin P. Isaacs, at 1-2.

programs that provide federal student aid,[77] and Department of Housing and Urban Development programs that provide housing benefits.[78]

PRWORA's applicability to programs in this category is not as clear as its applicability to the major federal programs in Category 1. To be sure, by delivering enumerated benefits, these programs clearly satisfy one element of the "federal public benefit" definition.[79] But that definition has other elements, as described above. To constitute a "federal public benefit," an enumerated benefit must also be delivered by a federal agency or with federally "appropriated funds."[80] Further, for benefits under prong (B) of the definition (e.g., unemployment and housing benefits), the benefits must be provided "to an individual, household, or family eligibility unit."[81] Thus, where PRWORA does not otherwise make clear that it applies to a particular program—as in the case of Medicaid, TANF, SSI, and SNAP—assessing whether the program provides enumerated benefits that satisfy these additional elements requires interpretation.[82] For example, one court has expressed doubts about whether a form of federally funded student aid widely available to university students during the COVID-19 pandemic satisfied the "individual, household, or family eligibility unit" element of prong (B) of the "federal public benefit" definition.[83] Furthermore, separate questions often arise about whether alien eligibility for programs in this category is governed by other statutes that are more specific to the programs, rather than by PRWORA.[84] With respect to federal housing programs, for instance, doubt has persisted over the relationship between PRWORA and the slightly divergent eligibility criteria in Section 214 of the Housing and Community Development Act of 1980.[85] These significant interpretive issues about whether programs in this category are subject to the PRWORA eligibility restrictions are explored in more depth below, in the discussion of PRWORA's interplay with other statutes and in the case studies section of this report.

Resolution of the ambiguity about whether federal programs in this category deliver "federal public benefits" often depends upon whether the relevant federal agency promulgates regulations or other guidance on the topic. Where an agency specifies by regulation or guidance that PRWORA's "qualified alien" restriction applies, the ambiguity often ends there.[86] The HHS Guidance examined above, for example, lists thirty-one HHS programs that the agency has

[77] *See* 20 U.S.C. § 1070; *see generally* CRS Report R43351, *The Higher Education Act (HEA): A Primer*, by Alexandra Hegji, at 9 ("Title IV of the HEA contains nine parts that authorize a broad array of programs and provisions to assist students and their families in gaining access to and financing a postsecondary education.").

[78] *See* 42 U.S.C. § 1436a; *see* CRS Report R46462, *Noncitizen Eligibility for Federal Housing Programs*, by Maggie McCarty and Abigail F. Kolker, at 7.

[79] *See* 8 U.S.C. § 1611(c)(1); DOJ Guidance, *supra* note 37, at 61,361.

[80] *See* 8 U.S.C. § 1611(c)(1)(A); DOJ Guidance, *supra* note 37, at 61,361.

[81] *See* 8 U.S.C. § 1611(c)(1)(B); DOJ Guidance, *supra* note 37, at 61,361.

[82] *See* HHS Guidance, *supra* note 36, at 41,659 (commenting that the federal public benefit definition requires interpretation because it does not specify the particular programs to which it applies).

[83] *See* Oakley v. DeVos, No. 20-cv-03215-YGR, 2020 WL 3268661, at *14 (N.D. Cal. June 17, 2020) ("HEERF relief is targeted toward [universities] to provide aid to their students, not directed to individual eligibility units. These characteristics suggest that HEERF does not meet the definition of 'Federal public benefit' in Section 1611(a).")

[84] *See, e.g.*, Mashiri v. Dep't of Educ., 724 F.3d 1028, 1033 (9th Cir. 2013) (not resolving whether divergent eligibility criteria for federal student aid in Higher Education Act "precluded the application of" PRWORA).

[85] *Compare* 8 U.S.C. §§ 1611, 1642 (qualified alien rule), *with* 42 U.S.C. § 1436a (eligibility criteria for certain federal housing assistance programs); *see* CRS Report R46462, *Noncitizen Eligibility for Federal Housing Programs*, by Maggie McCarty and Abigail F. Kolker, at 7 ("The inconsistent statutory treatment of certain categories of noncitizens between Section 214 and PRWORA has led some to call for statutory changes.").

[86] *See, e.g.*, HHS Guidance, *supra* note 36, at 41,658.

determined deliver "federal public benefits" within the meaning of § 1611(c).[87] In a more targeted action, the Department of Agriculture issued a bulletin taking the position that only "qualified aliens" are eligible for the federal crop insurance program.[88] The agency reasoned that the benefits are delivered in the form of "contracts that are supported by appropriated funds" and therefore fell within prong (A) of the federal public benefit definition.[89] The agency later revised its program regulations to conform to this interpretation.[90] Such agency interpretations, supported by legal reasoning, have brought a level of clarity to how PRWORA affects these specific programs.[91] Even if an agency's interpretation of how PRWORA applies to a federal program is challenged in court, which appears uncommon, the challenge may produce case law that itself clarifies the applicable eligibility rules.[92]

On the other hand, when agency guidance imposes immigration-related eligibility rules that appear to derive from PRWORA, but does not clearly explain the legal reasoning behind the rules, unresolved questions may linger about how PRWORA applies and what limitations it imposes.[93] Similarly, where an agency remains silent about PRWORA's impact on a federal program's eligibility rules for aliens, significant doubt may persist about whether it applies.[94] Such doubt becomes particularly relevant to Congress when it seeks to create new benefits of a similar nature to be administered by the same agency; unless the new legislation addresses alien eligibility expressly, at the time of enactment Congress will not know with certainty which categories of aliens will be eligible for the new benefits.[95]

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[87] HHS Guidance, *supra* note 36, at 41,658.

[88] Dep't of Agric., Bulletin No: MGR-05-008, Eligibility for Federal Crop Insurance Benefits for Non-Citizens without a Social Security Number, at 2 (May 26, 2005), https://www.ag-risk.org/FCICDOCU/MGRBUL/2005/m05008.pdf.

[89] *Id.*

[90] 7 C.F.R. § 400.679(d); *see* Dep't of Agric., General Administrative Regulations; Mutual Consent Cancellation; Food Security Act of 1985, Implementation; Denial of Benefits; and Ineligibility for Programs Under the Federal Crop Insurance Act, 79 Fed. Reg. 2075, 2080 (Jan. 13, 2014) (issuance of final rule).

[91] *See, e.g.*, 45 C.F.R. § 1370.5(d) ("All [Family Violence Prevention and Services Act]-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPSA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status."); Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 623 n.224 (2001) (explaining that "[a]ny HHS-funded program not on the list is not a federal public benefit").

[92] *See* Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *12 (N.D. Ala. Nov. 16, 2010) (rejecting DOJ interpretation of PRWORA's applicability to a federally funded victim's compensation program), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011); *cf.* Washington v. DeVos, -- F. Supp. 3d -- , 2020 WL 4275041, at *6 (E.D. Wash. July 24, 2020) ("Congress's inconsistent language in Section 18004 of the CARES Act is too ambiguous to demonstrate a 'clear and manifest' intent to override the longstanding and generally applicable PRWORA bar."); Oakley v. DeVos, -- F. Supp. 3d --, 2020 WL 3268661, at *15-16 (N.D. Cal. June 17, 2020) (in contrast to *Washington*, holding that 8 U.S.C. § 1611 likely does not restrict eligibility for the emergency financial aid grants).

[93] *E.g.*, DEP'T OF EDUC., FEDERAL STUDENT AID HANDBOOK 2019-20, at 1-41 (stating that aliens granted withholding of removal are ineligible for federal student aid, without explaining apparent tension with the classification of such aliens as "qualified aliens" under 8 U.S.C. § 1641(b)(5)) [hereinafter Federal Student Aid Handbook], https://ifap.ed.gov/sites/default/files/attachments/2019-08/1920FSAHbkVol1Master.pdf; SMALL BUS. ADMIN., DISASTER ASSISTANCE PROGRAM, STANDARD OPERATING PROC. 50 30 9, at 19 (May 31, 2018) (stating that alien-owned business entities ineligible for economic injury disaster loans (EIDL) if a nonqualified alien owns twenty percent or more of the entity, without explaining whether this rule is based in PRWORA or, if so, why the agency determined that PRWORA applies to business entities).

[94] *See infra* "Federally Funded Unemployment Insurance Benefits."

[95] *Compare Oakley*, 2020 WL 3268661, at *15-16 (holding that PRWORA likely does not restrict emergency financial aid under the CARES Act), *with Washington*, 2020 WL 4275041, at *6 (holding that PRWORA does restrict eligibility

Category 3: Programs That Deliver Non-enumerated Benefits That Are Arguably "Similar" to Enumerated Benefits

A third category of federal programs do not receive specialized treatment under PRWORA, do not deliver benefits of a type enumerated in the "federal public benefit" definition (such as "welfare" or "unemployment benefits"), but do deliver benefits of a type that are arguably "similar" to the enumerated benefit types.[96] Examples from federal case law include federally funded victim's compensation programs[97] and life insurance benefits for the survivors of federal employees.[98] Whether the benefits delivered by such programs constitute "federal public benefits" under PRWORA is often unclear.

Sometimes, language from other parts of PRWORA helps to resolve such questions. For example, the Federal Emergency Management Agency (FEMA) administers some federal programs that deliver cash assistance for people affected by disasters.[99] Examples include the Individuals and Households Program, through which FEMA may provide grants directly to individuals and households after a disaster,[100] and the Disaster Unemployment Assistance program.[101] PRWORA does not cite either program by their authorizing statutes or create specialized eligibility rules for them. Nor does PRWORA's definition of "federal public benefits" include disaster relief benefits in its list of enumerated benefit types.[102] Yet there has not been confusion on the point that PRWORA does, in fact, restrict eligibility for these cash assistance programs. This is because 8 U.S.C. § 1611(b) provides that the baseline eligibility rule restricting federal public benefits to "qualified aliens" does not apply to "[s]hort-term, non-cash, in-kind emergency disaster relief."[103] By carving out "non-cash" disaster assistance from the baseline eligibility restriction for federal public benefits, PRWORA implies that the restriction does apply to other forms of disaster relief (including cash assistance).[104] FEMA has interpreted PRWORA this way—to bar nonqualified aliens from eligibility for disaster relief paid in cash—and the interpretation does not appear to have generated disagreement.[105]

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for the financial aid); *see infra* "Emergency Financial Aid Under the CARES Act."

[96] *See* 8 U.S.C. § 1611(c).

[97] Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *14 (N.D. Ala. Nov. 16, 2010), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011).

[98] Herrera v. Metro. Life Ins. Co., No. 11-CV-1901, 2011 WL 6415058, at *9 (S.D.N.Y. Dec. 19, 2011).

[99] *See generally* CRS Report R46014, *FEMA Individual Assistance Programs: An Overview*, by Elizabeth M. Webster.

[100] See Barbosa v. Dep't of Homeland Sec., 916 F.3d 1068, 1069 (D.C. Cir. 2019); CRS Report R44619, *FEMA Disaster Housing: The Individuals and Households Program—Implementation and Potential Issues for Congress*, by Shawn Reese.

[101] *See* Maleche v. Solis, 692 F. Supp. 2d 679, 683 (S.D. Tex. 2010).

[102] 8 U.S.C. § 1611(c).

[103] *Id.* § 1611(b)(1)(B).

[104] *See id*.

[105] *See* Fed. Emergency Mgmt. Agency, FACT SHEET: Citizenship Status and Eligibility for Disaster Assistance FAQ (Nov. 15, 2019) ("[Y]ou must be a U.S. citizen, non-citizen national or Qualified Alien to be eligible for Disaster Unemployment Assistance."), https://www.fema.gov/news-release/20200220/fact-sheet-citizenship-status-and-eligibility-disaster-assistance-faq; *cf.* Coal. of Fla. Farmworker Orgs., Inc. v. Fed. Emergency Mgmt. Agency, No. 06-80143-CIV, 2007 WL 9701970, at *2 (S.D. Fla. Sept. 12, 2007) (explaining without deciding on the merits the question whether PRWORA renders nonqualified aliens ineligible for temporary housing assistance—as opposed to emergency disaster shelter—under Section 408 of the Stafford Act). Separately, the Small Business Administration (SBA) appears to interpret PRWORA to restrict the eligibility even of business entities for federally funded disaster loans. The agency's standard operating procedure for disaster loans states that "[i]f any member, partner, or shareholder, owning

Where other provisions of PRWORA do not clarify the reach of the catchall language, agencies and courts must determine whether benefits from a program in this category are "similar" to the enumerated benefit types in 8 U.S.C. § 1611(c). Many different considerations might inform that determination, and, as a result, federal case law in this area is varied. In one case, a federal district court held that a victim's compensation program in Alabama that delivers cash payments to some victims of violent crime is subject to the PRWORA eligibility restrictions, meaning that nonqualified aliens are not eligible for the program.[106] The program is administered by a state agency, but sixty percent of the cash payments are funded by federal grants authorized by the Victims of Crime Act of 1980.[107] The court reasoned that cash payments for victim compensation "cushion the economic blow that often results when a claimant becomes a 'victim' of a particular unfortunate occurrence," similar to enumerated benefit types in the "federal public benefit" definition (such as unemployment and disability benefits).[108]

In a different case, a federal district court held that life insurance proceeds from a postal employee's Federal Employee Group Life Insurance (FEGLI) policy were not a "federal public benefit," such that PRWORA did not bar an employee's nonqualified alien beneficiary from receiving such proceeds.[109] The court acknowledged that a FEGLI policy might be considered a "contract" within the meaning of 8 U.S.C. § 1611(c)(1).[110] However, the court concluded that the proceeds were not a federal public benefit because the legislative history of PRWORA indicated that Congress intended it to restrict only benefits available to the general public, not aspects of individual employee compensation packages.[111] Further, the court reasoned that even if the FEGLI policy was a federal public benefit, it was a benefit provided to the federal employee (who, in this case, was a citizen not barred from eligibility by PRWORA) and not to the nonqualified alien beneficiary.[112]

These two district court decisions do not directly conflict with each other, given that one concerns victim's compensation and the other concerns life insurance proceeds. Yet the courts took different approaches to interpreting the reach of the federal public benefits definition. In the victim's compensation case, the court seemed to read the "similar" clause as establishing a presumption that public benefits fall within PRWORA's sweep.[113] The list of benefits enumerated

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20 percent or more of the applicant business is in the USA they must be a qualified alien." Small Business Admin, Disaster Assistance Program, SOP 50 30 9 (May 31, 2018), https://www.sba.gov/sites/default/files/2018-06/SOP%2050%2030%209-FINAL.PDF. The extent to which PRWORA restricts benefits received by business entities would appear to be an open question. *See* 8 U.S.C. § 1611(a) ("[A]n *alien* who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit . . . .") (emphasis added).

[106] Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *15 (N.D. Ala. Nov. 16, 2010), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011).

[107] *Id*. at *2.

[108] *Id*. at *15. The New Jersey Supreme Court reached a different conclusion on the related issue of whether victim's compensation payments constituted a "state or local public benefit" under 8 U.S.C. § 1621(c). Caballero v. Martinez, 897 A.2d 1026, 1031 n.1 (N.J. 2006). Although the parties in the litigation did not dispute the issue, the court reasoned in a footnote that victim's compensation payments "are not similar to the need-based benefits enumerated in § 1621(c)(1)(B), such as retirement and welfare assistance, which the statute cites as examples of benefits covered by PRWORA." *Id*.

[109] Herrera v. Metro. Life Ins. Co., No. 11-CV-1901, 2011 WL 6415058, at *9 (S.D.N.Y. Dec. 19, 2011).

[110] *Id*. at *8.

[111] *Id*. at *9.

[112] *Id*. at *8.

[113] *Uriostegui*, 2010 WL 11613802 at *15.

in 8 U.S.C. § 1611(c)(2) are "quite broad in their variety," the court reasoned, meaning that non-enumerated benefit types such as victim's compensation cannot readily be distinguished from them.[114] In contrast, the court in the FEGLI case read PRWORA's structure and legislative history to give the federal public benefits definition a more limited scope.[115] Congress intended the statute's eligibility restrictions to cover only publicly available "welfare" programs such as SSI and food stamps, the court reasoned, not more narrowly targeted programs such as FEGLI.[116] Under that line of reasoning, victim's compensation might not be considered to fit within the "similar" clause.[117] Because the "similar" clause itself gives limited direction as to the range of benefits it covers, future courts may continue to take varied approaches in interpreting it.

State and federal courts have grappled with the related issue of whether non-enumerated benefits fall within the definition of "state or local public benefit" under 8 U.S.C. § 1621(c).[118] The "state or local public benefit" definition tracks the "federal public benefit" definition and has the same catchall language for "similar" benefits.[119] These decisions have tended to read the catchall language narrowly, restricting its coverage of non-enumerated state and local benefits.[120] Future CRS products may analyze these cases in more depth. For purposes of this report about PRWORA's restrictions on federal public benefits, these state cases provide further examples of the interpretive challenge posed by PRWORA's catchall language for "similar" benefit types.

[114] *Id*.

[115] *Herrera*, 2011 WL 6415058 at *9.

[116] *Id*.

[117] *See id*.

[118] *See* Equal Access Educ. v. Merten, 305 F. Supp. 2d 585, 605 n.18 (E.D. Va. 2004) ("It is clear . . . that PRWORA does not consider mere admission or attendance at a public post-secondary institution to be a public benefit."); City Plan Dev., Inc. v. Office of Labor Comm'r, 117 P.3d 182, 190 (Nev. 2005) (holding that payment of prevailing wage under a public works contract does not constitute a state or local public benefit); Matter of MH2015-002490, 422 P.3d 1043, 1047 (Ariz. Ct. App. 2018) (holding that court-ordered psychiatric treatment is not a state or local public benefit under § 1621(c)); Rajeh v. Steel City Corp., 813 N.E.2d 697, 706-07 (Ohio Ct. App. 2004) (holding that workers' compensation is not a state or local public benefit); Cnty. of Alameda v. Agustin, No. HF05217109, 2007 WL 2759474, at *3 (Cal. Ct. App. Sept. 24, 2007) (unpublished) (holding that child support collection services are not a state or local public benefit).

[119] *See* 8 U.S.C. § 1621(c).

[120] *See Matter of MH2015-002490*, 422 P.3d at 1046-47 (interpreting PRWORA to apply only to benefits "for which an individual voluntarily applies," and rejecting interpretations that would read the statute more broadly on the ground that they would produce "absurd results"); *Rajeh*, 813 N.E. at 707 (emphasizing that Congress "chose not to include workers' compensation" on the list of enumerated benefits, and reasoning that "[t]o refuse to allow illegal aliens injured on the job to recover from the Workers' Compensation Fund would be to encourage the hiring of illegal aliens and downgrade workplace safety").

Framework for Determining Whether PRWORA Applies to a Particular Federal Benefit Program

1. Does PRWORA cite the program by authorizing statute and create specialized eligibility rules for it?
    - If yes, PRWORA applies. (E.g., Medicaid, SNAP, SSI, TANF.) Congress may carve out exceptions in later legislation.
2. If PRWORA does not cite the program, are the benefits that the program provides enumerated in the federal public benefits definition at § 1611(c)(1) and not exempted from its reach?
    - If yes, agency guidance may clarify whether PRWORA restrictions apply. Absent agency guidance, unresolved legal questions may persist, and the program might continue to follow differing eligibility rules in its authorizing statute.
3. If neither (1) nor (2), PRWORA applies only if the program provides benefits "similar" to the enumerated benefit types in § 1611(c)(1)(B) (e.g., welfare, unemployment).
    - Agency guidance or case law may analyze the issue. Otherwise, the answer will be subject to interpretation, and opinions may differ.

PRWORA's Interplay with Other Statutes

Even if a federal program delivers benefits that meet the definition of "federal public benefit," questions often arise about whether a more specific statute governing the program displaces PRWORA's "qualified alien" rule. These interpretive issues come in two main varieties: retrospective issues (concerning divergent eligibility rules in statutes that predate PRWORA) and prospective issues (concerning later statutes).

Retrospective Application of PRWORA

Before PRWORA, an array of federal statutes established alien eligibility rules for particular types of federal benefits. There was no overarching eligibility rule—instead, statutes specific to particular programs imposed the eligibility restrictions for aliens, if any.[121] The Medicaid statute, for example, generally denied eligibility to non-PRUCOL aliens (i.e., aliens not "permanently residing under color of law").[122] The Federal Unemployment Tax Act (FUTA) generally limited eligibility for unemployment insurance to aliens with work authorization.[123]

PRWORA did not expressly repeal the eligibility criteria in these preexisting program statutes.[124] However, PRWORA does provide that its baseline "qualified alien" requirement applies "[n]otwithstanding any other provision of law."[125] Similarly, PRWORA states that the specialized eligibility rules for major federal programs (Medicaid, TANF, SSI, and SNAP) apply "notwithstanding any other provision of law."[126] Typically, federal courts interpret

[121] *See* H.R. REP. NO. 104–725, at 379 (1996) ("Current law limits alien eligibility for most major Federal assistance programs, including restrictions on, among other programs, Supplemental Security Income, Aid to Families with Dependent Children, housing assistance, and Food Stamps programs. Current law is silent on alienage under, among other programs, school lunch and nutrition, the Special Supplemental Food Program for Women, Infants, and Children (WIC), Head Start, migrant health centers, and the earned income credit.")

[122] 42 U.S.C.A. § 1396b(v)(3); *see* Lewis v. Thompson, 252 F.3d 567, 574 (2d Cir. 2001) (describing legislative history).

[123] 26 U.S.C. § 3304(a)(14)(A); *see infra* "Federally Funded Unemployment Insurance Benefits."

[124] *See* 8 U.S.C. § 1611(c); *see, e.g.*, 42 U.S.C. § 1396b(v)(3).

[125] 8 U.S.C. § 1611(c).

[126] *Id.* § 1612(a)(1), (b)(1); *see also id.* § 1613(a) ("notwithstanding" clause for restrictions on federal means-tested public benefits).

"notwithstanding" clauses of this variety to override inconsistent provisions in other statutes.[127] This general rule of interpretation may have limits, however. In particular, case law in the U.S. Court of Appeals for the Ninth Circuit instructs that "the phrase 'notwithstanding any other law' should not always be read literally."[128] Under that case law, courts may read a "notwithstanding clause" to have more limited effect based on "its context and its history."[129]

For the major federal programs described above in Category 1—Medicaid, SSI, TANF, and SNAP—it is well settled that the "notwithstanding" clauses in PRWORA override divergent eligibility criteria in the more specific statutes that govern these programs. Federal agencies have come to this conclusion,[130] and courts have agreed.[131] As explained previously, because PRWORA cites these programs by their authorizing statutes and develops specialized eligibility rules specifically for them, PRWORA makes clear that its eligibility rules apply to them.[132] This clarity holds even in the face of divergent rules in preexisting statutes.[133]

However, the clarity does not hold for other federal programs that appear to deliver "federal public benefits" but are not the subject of specialized rules under PRWORA. When an earlier and more specific statute establishes differing eligibility criteria for such programs, there can be confusion about whether PRWORA overrides those criteria.[134] Prime examples include federal unemployment insurance,[135] federal student aid,[136] and federal housing programs.[137] Pre-PRWORA statutes for each of these benefit types establish eligibility rules for aliens that differ from PRWORA to varying degrees.[138] On the one hand, the "notwithstanding" clause in Section 1611 could be interpreted to override these earlier rules.[139] On the other hand, a different canon of

[127] *See* Cisneros v. Alpine Ridge Group, 508 U.S. 10, 17-18 (1993) ("[T]he use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section."); Field v. Napolitano, 663 F.3d 505, 511 (1st Cir. 2011).

[128] Ordlock v. C.I.R., 533 F.3d 1136, 1143 (9th Cir. 2008); Or. Nat'l Res. Council v. Thomas, 92 F.3d 792, 796 (9th Cir. 1996).

[129] *Ordlock*, 533 F.3d at 1144 ("Because it is unlikely that Congress intended the 'notwithstanding any other rule law of law' phrase to be a broad, catch-all preemption clause, we examine its context and its history of the phrase to derive its meaning.").

[130] *See* HHS Guidance, *supra* note 36, at 41,658 (stating that Medicaid, SSBG, and TANF, among other programs, are "federal public benefits" under PRWORA).

[131] Lewis v. Thompson, 252 F.3d 567, 580-82 (2d Cir. 2001) (holding that PRWORA "unequivocal[ly]" renders nonqualified aliens ineligible for Medicaid); City of Chicago v. Shalala, 189 F.3d 598, 601 (7th Cir. 1999) ("In § 402(b) of [PRWORA] [8 U.S.C. § 1612(b)], Congress authorized the states, subject to certain exceptions, to determine the eligibility of qualified aliens for three other federal benefit programs: Temporary Assistance for Needy Families ('TANF'), Social Services Block Grants ('SSBG'), and Medicaid.").

[132] *See supra* "Category 1: Programs for Which PRWORA Makes Special Provision."

[133] *See Lewis*, 252 F.3d at 581 (explaining the preexisting eligibility criteria for aliens in the Medicaid statute are "clearly trumped" by PRWORA).

[134] Mashiri v. Dep't of Educ., 724 F.3d 1028, 1033 (9th Cir. 2013) (not resolving whether divergent eligibility criteria in Higher Education Act "precluded the application of" PRWORA).

[135] *See infra* "Federally Funded Unemployment Insurance Benefits."

[136] *See Mashiri*, 724 F.3d at 1033; *infra* "Federal Student Aid."

[137] See CRS Report R46462, *Noncitizen Eligibility for Federal Housing Programs*, by Maggie McCarty and Abigail F. Kolker, at 7 ("The inconsistent statutory treatment of certain categories of noncitizens between Section 214 and PRWORA has led some to call for statutory changes.").

[138] 20 U.S.C. § 1091(a)(5)(eligibility criteria for Higher Education Act student aid); 26 U.S.C. § 3304(a)(14)(A) (eligibility criteria for unemployment insurance); 42 U.S.C. § 1436a (eligibility criteria for certain federal housing assistance programs).

[139] *See* Cisneros v. Alpine Ridge Group, 508 U.S. 10, 17-18 (1993).

statutory interpretation—the general/specific canon—provides that a more specific statute governs over a conflicting general statute.[140] Because PRWORA sweeps more broadly than the program-specific statutes that prescribe divergent eligibility criteria, the argument can be made that the program-specific statute prevails under the general/specific canon.[141] Two specific examples of this problem of statutory interpretation—concerning federal unemployment insurance and federal student aid—are analyzed below in the case studies section.[142]

Prospective Application of PRWORA

A different issue of statutory interpretation arises when Congress creates new benefits that appear to constitute "federal public benefits" under the PRWORA definition. If the new law that creates the benefits does not clarify whether they are subject to PRWORA's restrictions on alien eligibility, thorny questions may emerge about whether Congress intended PRWORA to apply.

Congress may carve out exceptions to an existing statutory rule expressly or, more rarely, by implication.[143] There is no question that PRWORA does not apply in instances where Congress overrides it expressly in a later statute.[144] Thus, where Congress legislated in 2009 to allow states to provide Medicaid coverage to "lawfully residing" pregnant women and children "notwithstanding" PRWORA, it made clear that PRWORA does not limit eligibility for this federally funded health benefit.[145]

Courts disfavor reading statutes to repeal earlier laws by implication, but Congress may nonetheless override PRWORA implicitly by creating eligibility criteria in a later statute that conflict irreconcilably with the PRWORA criteria.[146] It is rather clear, for instance, that PRWORA does not restrict alien eligibility for the health benefits authorized in the Patient Protection and Affordable Care Act (ACA) of 2010.[147] The ACA does not override PRWORA expressly but does extend eligibility to "lawfully present" aliens, a more expansive category than "qualified aliens" under PRWORA.[148]

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[140] *See* RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one."); CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 55 ("Where two laws conflict, the specific governs the general (*generalia specialibus non derogant*). That is, a precisely drawn, detailed statute pre-empts more general remedies, and conversely, a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.") (citations and quotation marks omitted).

[141] *See RadLAX Gateway Hotel*, 566 U.S. at 645; *see also* Noerand v. Devos, -- F. Supp. 3d --, 2020 WL 4274559, at *7 (D. Mass. July 24, 2020) (relying on the general/specific canon to conclude that language in a later-enacted benefits statute overrides the PRWORA eligibility restrictions for aliens).

[142] *See infra* "Case Studies."

[143] *See* United States v. Fausto, 484 U.S. 439, 676 (1988) ("[I]t can be strongly presumed that Congress will specifically address language on the statute books that it wishes to change."); Radzanower v. Touche Ross & Co., 426 U.S. 148, 153-54 (1976).

[144] *See* Hagen v. Utah, 501 U.S. 399, 416 (1994) (discussing Congress's power to expressly repeal any earlier statutes).

[145] Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3 § 214(a), 123 Stat. 8, 56-57 (codified at 42 U.S.C. § 1396b(v)(4)(A)).

[146] *See* Garfield v. Ocwen Loan Servicing, LLC, 811 F.3d 86, 89 (2d Cir. 2016) ("'In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.'") (quoting Morton v. Mancari, 417 U.S. 535, 550 (1974)).

[147] *See* Pub. L. No. 111-148, 124 Stat. 119 (2010).

[148] *Compare id*. at 142, 184 (codified at 42 U.S.C. §§ 18001, 18032), *with* 8 U.S.C. § 1611 (restricting access to federal

Where a later benefit statute is silent about PRWORA and does not impose immigration-related eligibility criteria that conflict with PRWORA, the argument that it overrides PRWORA implicitly might be less persuasive but could still find support.[149] In recent litigation over benefits created in response to the COVID-19 pandemic, plaintiffs have had mixed success in arguing that language in a new benefit statute may create an "irreconcilable conflict" with PRWORA even if the new statute is silent about alien eligibility for the benefits in question.[150] These issues are analyzed in more depth in the case studies below.[151] The key point, at least under current case law, is that PRWORA's applicability to newly enacted federal public benefits often will not be clear unless the new statute addresses PRWORA expressly or establishes express rules for alien eligibility.[152]

Case Studies

This section explores two illustrative examples of types of federal benefits that have generated unresolved questions and doubt about PRWORA's applicability: federally funded unemployment insurance benefits, and federal student aid programs.

Federally Funded Unemployment Insurance Benefits

For the federal-state unemployment insurance (UI) system overseen by the U.S. Department of Labor (DOL),[153] confusion about the applicability of PRWORA exists in law more than in practice. DOL and state labor agencies continue to apply eligibility rules for aliens that predate

public benefits, including health benefits, to "qualified aliens"); *see* 45 C.F.R. §§ 152.2, 155.20 (defining "lawfully present" for ACA purposes to include several categories of nonqualified aliens, including nonimmigrants, TPS recipients, and deferred action recipients other than DACA recipients); Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115, 1181 n. 276 (2015) ("The Department of Health and Human Services (HHS) has not included the Affordable Care Act (ACA) in the definition of either 'federal public benefit' or 'federal means-tested public benefit' in the only notices that it has published on the issue . . . . As a result, the ACA is not subject to the restrictions on alien access to benefits contained in the PRWORA.").

[149] *See Garfield*, 811 F.3d at 89 (discussing limited grounds for finding implicit repeal); *cf.* Ill. Nat'l Guard v. FLRA, 854 F.2d 1396, 1404-05 (D.C. Cir. 1988) (explaining that the presumption again repeals by implication has most force "when it is urged that a specific statute has been repealed by a later but more general one").

[150] *Compare* Oakley v. Devos, -- F. Supp. 3d --, 2020 WL 3268661, at *15-16 (N.D. Cal. June 17, 2020) (holding that PRWORA likely does not restrict emergency financial aid under the CARES Act), *and* Noerand v. Devos, -- F. Supp. 3d -- , 2020 WL 4274559, at *7 (D. Mass. July 24, 2020) (similar), *with* Washington v. Devos, -- F. Supp. 3d -- , 2020 WL 4275041, at *6 (E.D. Wash July 24, 2020) (holding that PRWORA does restrict eligibility for the financial aid), *and* Poder in Action v. City of Phoenix, No. CV-20-01429, 2020 WL 5038582, at *5 (D. Ariz. Aug. 26, 2020) ("Section 5001 [of the CARES Act] cannot be said to evince a 'clear and manifest' intention to override PRWORA. Its silence as to who may receive [Coronavirus Relief Fund] funds, although perhaps creating some ambiguity, can easily be viewed as acquiescence to PRWORA's longstanding limitations."); *see infra* "Emergency Financial Aid Under the CARES Act."

[151] *See infra* "Emergency Financial Aid Under the CARES Act."

[152] *See Washington*, 2020 WL 4275041 at *6 (reasoning that "statutory language discrepancies" between PRWORA and a new benefits statute "are more likely attributable to inartful drafting under the constraints of a global pandemic rather than any clearly expressed intent to override a longstanding provision of federal law with an overarching 'notwithstanding' clause").

[153] *See* Wimberly v. Labor and Indus. Relat. Comm'n of Missouri, 479 U.S. 511, 514 (1987) ("The Federal Unemployment Tax Act (Act), 26 U.S.C. § 3301 *et seq.*, enacted originally as Title IX of the Social Security Act in 1935, 49 Stat. 639, envisions a cooperative federal-state program of benefits to unemployed workers."); *see generally* CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Julie M. Whittaker and Katelin P. Isaacs, at 1-2 [hereinafter RL33362].

PRWORA, even—judging by the limited available information—for UI benefits paid in whole or in part with federal funds. Little published analysis explains how this practice comports with PRWORA.

The UI system is governed by the Federal Unemployment Tax Act (FUTA).[154] DOL has statutory responsibility for ensuring that state UI systems meet the "minimum federal standards" set forth in FUTA.[155] The states administer the UI programs and deliver benefits to individuals, but the federal government pays the states' administrative expenses.[156] State payroll taxes are the exclusive source of funding for regular UI benefits.[157] Federal payroll taxes partially or fully fund other kinds of UI benefits—such as "extended benefits"—that become available primarily during times of high unemployment.[158]

Since 1977, FUTA has established the following immigration-related eligibility restrictions for UI benefits:

> [C]ompensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act) . . . .[159]

Under these criteria, alien eligibility for UI benefits turns mainly on employment authorization.[160] If an alien had employment authorization at the time she performed past work, then she was "lawfully present for purposes of performing" such past work and is not barred from UI eligibility under this FUTA provision.[161] (Under other aspects of unemployment law, the alien must also have work authorization at the time she applies for and receives UI benefits.[162]) Many categories

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[154] *Wimberly*, 479 U.S. at 514.

[155] *Id*.

[156] *Id*. at 515; *see* RL33362, *supra* note 153, at 2.

[157] *See* CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*, by Julie M. Whittaker, at 1.

[158] *Id*.; Paschal v. Jackson, 936 F.2d 940, 941 (7th Cir. 1991) ("[T]he extended benefits ('EB') program . . . pays benefits during periods of sufficiently high unemployment to claimants who have exhausted their regular benefits.").

[159] 26 U.S.C. § 3304(a)(14)(A); *see* Pub. L. No. 95-19, 91 Stat. 39 (1977) (adopting current language). Congress first added immigration-related eligibility criteria to FUTA one year earlier, in 1976, but the original criteria did not create eligibility for aliens who were "lawfully present for purposes of performing such services." *See* Pub. L. 94-566, 90 Stat. 2667 (1976).

[160] Sudomir v. McMahon, 767 F.2d 1456, 1464 (9th Cir. 1985) ("The legislative history indicates that Congress intended to extend benefits to nonresident aliens who are lawfully present to work in the United States for temporary periods while excluding illegal aliens from coverage."); *see also* Texas v. United States, 809 F.3d 134, 166 (5th Cir. 2015) (explaining that deferred action programs generally trigger UI eligibility).

[161] *Sudomir*, 767 F.2d at 1464. FUTA establishes "minimum standards" for state UI systems and, as such, may not prohibit states from creating stricter immigration-related eligibility criteria for UI benefits. *See* Wimberly v. Labor and Indus. Relat. Comm'n of Missouri, 479 U.S. 511, 514 (1987). State authority to create stricter criteria may have other limitations, however, including from constitutional law principles and from PRWORA itself. *See* Arizona Dream Act Coal. v. Brewer, 855 F.3d 957, 972 (9th Cir. 2017) ("[S]tates may not directly regulate immigration, and the power to classify aliens for immigration purposes is committed to the political branches of the Federal Government.") (citations and quotation marks omitted); 8 U.S.C. § 1622(b) (cabining state authority to limit eligibility of qualified aliens for state public benefits).

[162] *See, e.g.*, Claim of Graif, 250 A.D.2d 1012, 1013 (N.Y. Ct. App. 3d Dep't 1998) ("Claimant . . . was not, at the time of her application [for unemployment benefits], legally authorized to work in the United States and, therefore, could not

of aliens who are not "qualified aliens" under PRWORA are eligible for employment authorization.[163] Such categories include DACA recipients, TPS holders, and aliens with nonimmigrant work visas.[164] Thus, the FUTA eligibility criteria are broader than PRWORA.

For UI benefits funded in part or in full by the federal government, does PRWORA override the FUTA criteria, such that only "qualified aliens" are eligible for the benefits? No federal case law or agency interpretation addresses this question authoritatively. In 1998, DOL issued guidance to state agencies expressing the view that PRWORA restricts federally funded UI benefits.[165] Such benefits are "federal public benefits" and are available only to "U.S. nationals and qualified aliens" under 8 U.S.C. § 1611(c), according to the guidance.[166] However, more recent DOL guidance about alien eligibility for UI benefits mentions only FUTA, not PRWORA.[167]

Whether PRWORA restricts eligibility for federally funded UI benefits turns on two primary issues: first, whether such benefits are "federal public benefits" under the PRWORA definition;[168] and second, whether the FUTA eligibility criteria for aliens applies instead of PRWORA.[169]

With respect to the first issue, federally funded UI benefits plainly satisfy two elements of prong (B) of the "federal public benefit" definition. The benefits are enumerated in the definition—they are "unemployment benefits"—and are also delivered to "individuals."[170] Yet prong (B) has a third element: it encompasses only benefits provided "by an agency of the United States or by appropriated funds of the United States."[171] State agencies, not DOL, provide federally funded UI benefits directly to individuals, so the benefits probably are not "provided by an agency of the United States."[172] As for the funding stream, the federal share of the special UI benefits available during periods of high unemployment, such as "extended benefits," often comes from federal employer taxes deposited into a dedicated trust fund in the federal treasury.[173] Questions could

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be considered legally 'available for work' as required for a claim for unemployment insurance benefits."); *see also* Dep't of Labor, Comparison of State Unemployment Insurance Laws, at 5-29 (2019) ("The Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) added an explicit statutory requirement to Federal law that individuals must be able to work, available for work, and actively seeking work to be eligible for regular unemployment compensation."), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/complete.pdf [hereinafter DOL Comparison of State Unemployment Laws].

[163] *Compare* 8 U.S.C. § 1641(b), (c) (listing categories of "qualified aliens"), *with* 8 C.F.R. § 274a.12 (Classes of aliens authorized to accept employment).

[164] *See* 8 C.F.R. § 274a.12(a)(12), (b)(9)-(16), (c)(14).

[165] Dep't of Labor, Unemployment Ins. Program Letter No. 47-98 (Sept. 22, 1998), https://oui.doleta.gov/dmstree/uipl/uipl98/uipl_4798.htm.

[166] *Id.* ("[U]nemployment benefits payable under all Federal unemployment compensation programs (UCFE, UCX, DUA, TRA) and joint Federal/State programs, including extended benefits (EB), are 'Federal public benefits' [under 8 U.S.C. § 1611(c)].").

[167] DOL Comparison of State Unemployment Laws, *supra* note 162, at 5-42.

[168] *See supra* "PRWORA's "Federal Public Benefit" Definition."

[169] *See supra* "PRWORA's Interplay with Other Statutes."

[170] *See* 8 U.S.C. § 1611(c)(1)(B); DOJ Guidance, *supra* note 37, at 61,361 (explaining three-element test for "federal public benefit" definition under prong (B)).

[171] *See* 8 U.S.C. § 1611(c)(1)(B); DOJ Guidance, *supra* note 37, at 61,361. If federally funded UI benefits are not "federal public benefits," they may still meet the definition of "state public benefit" and thus be subject to PRWORA's default restrictions for such benefits. *See* 8 U.S.C. § 1621(c)(1), (3) (defining "state public benefit" to exclude any "federal public benefit").

[172] *See* Wimberly v. Labor and Indus. Relat. Comm'n of Missouri, 479 U.S. 511, 514-15 (1987); *see* RL33362, *supra* note 153, at 2.

[173] *See* CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding*

arise about whether such funds constitute "appropriated funds" within the meaning of § 1611(c).[174] By way of contrast, Disaster Unemployment Assistance (DUA), which is also administered through state agencies under DOL supervision, is funded through traditional appropriations and thus clearly satisfies this element of the definition.[175] DOL and FEMA have taken clear positions that PRWORA restricts eligibility for DUA.[176]

Second, one could argue that the FUTA eligibility criteria override the stricter PRWORA criteria under the general/specific canon of statutory construction, which provides that a more specific statute governs over a conflicting general statute.[177] Because FUTA addresses noncitizen eligibility for unemployment insurance specifically, a court might interpret the broader FUTA criteria to govern over the more general and restrictive PRWORA criteria.[178] The "notwithstanding" clause at the beginning of § 1611 of PRWORA might undermine this argument—as it suggests that the provision's eligibility restrictions are meant to override inconsistent statutes—but the point remains that the interplay of the FUTA and PRWORA criteria is subject to statutory interpretation.[179]

There is not any federal case law or other authoritative source of legal interpretation that analyzes and resolves these legal issues about the applicability of PRWORA to federal UI programs. State unemployment agencies appear to apply the broader eligibility rules from FUTA to federally funded UI benefits.[180] However, the legal basis for this general bureaucratic practice remains uncertain and subject to the unexplored legal issues discussed above.

UC Benefits, by Julie M. Whittaker, at 1.

[174] *See* 3 GOV'T ACCOUNTABILITY OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 15-237 (3d ed. 2008) (explaining that GAO takes the position that "revolving funds" operate with appropriated funds even though they are not funded through the annual appropriations process, but noting countervailing caselaw in the Federal Circuit); *but cf.* Uriostegui v. Alabama Crime Victims Comp. Comm'n, No. 2:10-CV-1265-PWG, 2010 WL 11613802, at *16 (N.D. Ala. Nov. 16, 2010) (suggesting that unemployment insurance is funded by "appropriated funds" within the meaning of PRWORA even though "it is not funded by general tax revenues but rather by special payroll taxes on employers, employees, or both") (N.D. Ala. Nov. 16, 2010), *report and recommendation adopted*, No. 2:10-CV-1265-LSC, 2011 WL 13285298 (N.D. Ala. Jan. 12, 2011).

[175] *See* CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*, by Julie M. Whittaker, at 1; *see also* Maleche v. Solis, 692 F. Supp. 2d 679, 683-84 (S.D. Tex. 2010) (discussing structure of DUA program, including administration by state agencies under DOL supervision).

[176] Dep't of Labor, Disaster Unemployment Assistance Program, 68 Fed. Reg. 10.932, 10,935 (Mar. 6, 2003) ("[O]nly aliens falling within the definition of 'qualified aliens' are eligible for federal public benefits, which include benefits under the DUA program. Therefore, DUA payments to other than qualified aliens are prohibited."); Federal Emergency Management Agency, FACT SHEET: Citizenship Status and Eligibility for Disaster Assistance FAQ (Nov. 15, 2019) ("[Y]ou must be a U.S. citizen, non-citizen national or Qualified Alien to be eligible for Disaster Unemployment Assistance."), https://www.fema.gov/news-release/20200220/fact-sheet-citizenship-status-and-eligibility-disaster-assistance-faq.

[177] *See* RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one."); CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 55.

[178] *See RadLAX Gateway Hotel*, 566 U.S. at 645.

[179] *See* Lake Cnty. Rehabilitation Ctr., Inc. v. Shalala, 854 F. Supp. 1329, 1340-41 (N.D. Ind. 1994) (rejecting application of the general/specific canon where it would render a "notwithstanding" clause in the general statute "devoid of any meaning"); *see generally* Cisneros v. Alpine Ridge Group, 508 U.S. 10, 17-18 (1993) (discussing power of a "notwithstanding" clause to override inconsistent provisions); United States v. Novak, 476 F.3d 1041, 1046 (9th Cir. 2007) (en banc) ("[W]e have determined the reach of each such 'notwithstanding' clause by taking into account the whole of the statutory context in which it appears.").

[180] *See* DOL Comparison of State Unemployment Laws, *supra* note 162, at 5-42 (mentioning only FUTA eligibility

Federal Unemployment Benefits Created After PRWORA

Recently, questions have arisen about PRWORA's applicability to new types of federally funded unemployment benefits. The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 authorized various forms of federally funded unemployment benefits outside of FUTA, including Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC).[181] DOL's extensive guidance about these CARES Act benefit programs does not address PRWORA.[182] It is possible that DOL has concluded that PRWORA does not apply to the programs, but DOL has not publicized any such conclusion.[183] With DOL silent on the issue, state labor agencies appear to apply the broader FUTA criteria to the CARES Act benefits, although the evidence of bureaucratic practice at the state level is far from conclusive.[184] At least one exception has emerged: in the Commonwealth of the Northern Mariana Islands, the local labor agency has taken the position that PRWORA does restrict eligibility for the CARES Act benefits.[185]

The CARES Act unemployment benefits would appear to constitute "federal public benefits" under the plain language of the PRWORA definition. That definition covers "unemployment" benefits that are delivered to individuals and that are federally funded.[186] Unlike UI benefits under FUTA, the CARES Act benefits are funded by appropriations provisions in the CARES Act, not

criteria for aliens, not PRWORA).

[181] Pub. L. No. 116-136, §§ 2102, 2104, 2107 (2020); *see* CRS In Focus IF11475, *Unemployment Insurance Provisions in the CARES Act*, by Katelin P. Isaacs and Julie M. Whittaker.

[182] *See* Dep't of Labor, Unemployment Insurance Program Letter No. 23-20, at 8 (May 11, 2020) (directing states to implement immigration status verification functions "for the PEUC and PUA programs in the same manner as for the regular UI programs," without mentioning PRWORA), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_23-20.pdf; *see also* Dep't of Labor, Unemployment Insurance Program Letter No. 17-20, Change I, at I-3 (May 13, 2020) (discussing state obligation to "re-verify an alien's work authorization when considering [a] PEUC claim" and mentioning "qualified alien status," but apparently only in reference to work authorization), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_17-20_Change-1.pdf; Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1, at II-1 (Apr. 27, 2020) (addressing FUTA eligibility requirements with respect to PUA but not mentioning PRWORA), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf.

[183] *See, e.g.*, Dep't of Labor, Unemployment Insurance Program Letter No. 23-20, at 8 (May 11, 2020); *but cf.* Iva Maurin, *No PUA for CWs*, SAIPAN TRIBUNE (Aug. 10, 2020) (describing letter from DOL to a Member of Congress, in which DOL takes the position that PRWORA limits eligibility for PUA to qualified aliens), https://www.saipantribune.com/index.php/no-pua-for-cws/.

[184] *See, e.g.*, State of Delaware Dep't of Labor, Unemployment Benefits FAQs (May 4, 2020) (covering PUA, FPUC, and PEUC eligibility, and explaining that alien eligibility requires work authorization), https://dol.delaware.gov/uifaqs/; State of Wisconsin Dep't of Workforce Development, Unemployment COVID-19 Public Information (June 24, 2020) (similar), https://dwd.wisconsin.gov/covid19/public/ui.htm; South Carolina Dep't of Employment & Workforce, Unemployment Insurance During COVID-19, at 10 (July 1, 2020) (discussing only the work authorization requirement), https://dew.sc.gov/docs/default-source/covid-faq/ui-during-covid-19.pdf?sfvrsn=de1c442_2.

[185] Commonwealth of the Northern Mariana Islands, Office of the Governor, Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) available for Workers and Self-Employed Individuals in the CNMI (June 10, 2020) (restricting PUA and FPUC eligibility to qualified aliens under PRWORA), https://governor.gov.mp/news/press-releases/pandemic-unemployment-assistance-pua-and-federal-pandemic-unemployment-compensation-fpuc-available-for-workers-and-self-employed-individuals-in-the-cnmi/; *see also* Iva Maurin, SAIPAN TRIBUNE, "*Congress Needed to Extend PUA benefits to CWs*" (June 23, 2020), https://www.saipantribune.com/index.php/congress-needed-to-extend-pua-benefits-to-cws/.

[186] 8 U.S.C. § 1611(c).

through federal employer taxes.[187] Thus, the CARES Act benefits appear to meet every element of the PRWORA definition.[188]

One might argue, nonetheless, that the CARES Act expresses an intent that the PRWORA restrictions should not apply to the new unemployment benefits—in other words, that the CARES Act repeals PRWORA by implication on this issue.[189] For PUA, for instance, the CARES Act defines "covered individuals" to generally include people who are not eligible for other unemployment benefits and who are out of work due to COVID-19.[190] The Act does not set forth any immigration-related restrictions for PUA.[191] It disqualifies people from PUA coverage based on ability to telework and receipt of paid leave benefits, but not based on immigration status.[192] On the one hand, this language could be interpreted to confer eligibility on workers affected by COVID-19 regardless of immigration status.[193] On the other hand, the statute that created the DUA program—which served as the model for PUA—contains similarly broad eligibility language, but federal agencies have long interpreted it to fall within PRWORA's restrictions.[194] The language may also not be seen by reviewing courts to create an "irreconcilable conflict" sufficient to override the PRWORA rules by implication.[195]

After the enactment of the CARES Act, commentators expressed doubts about whether PRWORA would restrict the benefits.[196] Unless DOL or a federal court weighs in on PRWORA's

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[187] *See* Pub. L. No. 116-136, 134 Stat. 281, 316 (authorizing the transfer of funds from the general fund of the Treasury to fund PUA payments to states), 320 (appropriating funds from the general fund of the Treasury to pay for FPUC payments to states), 326 (appropriating funds from the general fund of the Treasury to pay for PEUC payments to states).

[188] *See* DOJ Guidance, *supra* note 37, at 61,361 (explaining three-element test for "federal public benefit" definition under prong (B)).

[189] *See supra* "Prospective Application of PRWORA."

[190] Pub. L. No. 116-136, 134 Stat. 281, 313-14.

[191] *Id*.

[192] *Id*.

[193] *See id*.

[194] *See id*; 42 U.S.C. § 5177(a) ("The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation . . . ."). *See also supra* note 176 (citing agency authorities declaring that PRWORA applies to DUA).

[195] *See* Garfield v. Ocwen Loan Servicing, LLC, 811 F.3d 86, 89 (2d Cir. 2016); Christina S. Ho, *Budgeting on Autopilot: Do Sequestration and the Independent Payment Advisory Board Lock-in Status Quo Majority Advantage?*, 50 TULSA L. REV. 695, 713 (2015) ("The implied repeals doctrine construes a subsequent statute as repealing an earlier statute if the two are in irreconcilable conflict. This principle is congruent with the 'last-in-time rule,' which provides that if there is no way to give effect to two statutory provisions, then the last-in-time will be favored. Under this doctrine, . . . 'notwithstanding' statutes do not have force against Congress' clear attempts to override, and must often cede even in the face of Congress' later implied decisions to override.").

[196] *See* Nat'l Immigration Law Ctr., *Understanding the Impact of Key Provisions of COVID-19 Relief Bills on Immigrant Communities*, at 9 (May 27, 2020) ("The U.S. Department of Labor has not yet clarified the eligibility criteria that will apply to the new programs created by the CARES Act. It is possible that the Department of Labor will apply a more restrictive set of eligibility criteria to these programs, such as those used in the Disaster Unemployment Assistance Program (DUA)."), https://www.nilc.org/issues/economic-support/impact-of-covid19-relief-bills-on-immigrant-communities/; Nat'l Employment Law Project, Immigrant Workers' Eligibility for Unemployment Insurance (Mar. 31, 2020) ("It is not yet clear whether [PRWORA's eligibility restrictions] will apply to benefits under the temporary Pandemic Unemployment Assistance program established by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act."), https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/; *see also* CRS Legal Sidebar LSB10442, *Recovery Rebates and Unemployment Compensation under the CARES Act: Immigration-Related Eligibility Criteria*, by Ben Harrington (April 7, 2020).

applicability to PUA and other new unemployment benefits authorized by the CARES Act, such legal uncertainty may persist.

Federal Student Aid

The U.S. Department of Education (ED) has woven PRWORA into its guidance to institutions of higher education about eligibility rules for federal student aid programs authorized by Title IV of the Higher Education Act (referred to here as HEA programs).[197] ED guidance specifies particular categories of aliens who are eligible to participate in HEA programs.[198] These categories generally track the categories of "qualified aliens" under PRWORA, but not perfectly.[199] However, the guidance does not explain the legal basis for the eligibility categories—it mentions PRWORA only in passing[200]—and the relevant regulations continue to cite different immigrant-related eligibility criteria in the HEA itself.[201] As a result, courts have expressed confusion about whether PRWORA overrides the HEA criteria.[202] This confusion exists even though PRWORA cites the HEA programs by authorizing statute at one point, to make clear that the additional restrictions for "federal means-tested public benefits" do not apply to the HEA programs.[203] (PRWORA does not create specialized rules for the HEA programs, as it does for SSI, SNAP, TANF, Medicaid, and SSBG.)[204]

Section 484 of the HEA establishes the following immigration-related eligibility criteria:

> (a) **In general** In order to receive any grant, loan, or work assistance under this subchapter, a student must—
>
> . . . .
>
> (5) be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; . . . .[205]

These criteria have been in the HEA since 1986.[206] Since the enactment of PRWORA in 1996, Congress has made amendments to the HEA criteria that concern citizens of the Freely Associated States (Micronesia, Palau, and the Marshall Islands), but has not otherwise amended the criteria.[207] The outer boundaries of the language granting eligibility to aliens "in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent

[197] *See* 20 U.S.C. § 1091(a)(5).

[198] *See* Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 34.

[199] *Compare id.* at 34-41, *with* 8 U.S.C. § 1641(b), (c); *see infra* note 211.

[200] Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 41 (mentioning PRWORA in connection with U-visa holders).

[201] 34 C.F.R. § 668.33.

[202] *See* Mashiri v. Dep't of Educ., 724 F.3d 1028, 1033 (9th Cir. 2013) (declining to decide how PRWORA and HEA criteria interact).

[203] 8 U.S.C. § 1613(c)(2)(H).

[204] *See id*. § 1612.

[205] 20 U.S.C. § 1091(a)(5).

[206] An Act to reauthorize and revise the Higher Education Act of 1965, and for other purposes, Pub. L. No. 99–498, 100 Stat. 1268, 1480 (1986).

[207] *See, e.g.*, Pub. L. No. 110–315 (2008) (deleting "citizen of any of the Freely Associated States" from the eligibility criteria).

resident" are not well defined.[208] It seems likely, however, that this language would grant eligibility to at least some aliens who are not "qualified aliens" under PRWORA.[209] Thus, as in the case of unemployment insurance, the eligibility criteria in the HEA for federal student aid appear broader than PRWORA.

In contrast to the approach taken by DOL in determining alien eligibility for UI, ED appears to have taken efforts to conform its guidance on eligibility for financial aid programs under the HEA to PRWORA. The *Federal Student Aid Handbook* is an annual guide to HEA student aid programs that ED publishes for financial aid administrators in higher education.[210] With two discrepancies, the *Handbook* identifies only those categories of aliens who are "qualified aliens" under PRWORA as eligible for HEA student aid programs.[211] Similarly, the Department's application form for federal student aid—the Free Application for Federal Student Aid (FAFSA)—defines "eligible noncitizen" in a way that closely tracks the PRWORA definition of "qualified alien."[212] Thus, PRWORA apparently forms the foundation for the Department's guidance.[213]

However, some lack of clarity on this point remains. The existence of the two discrepancies between the guidance and PRWORA, along with certain statements by ED, indicate that ED may blend the HEA eligibility rules with the PRWORA rules to some extent.[214] Further, the guidance does not fully explain the legal basis for the eligibility restrictions it describes—the *Federal Student Aid Handbook* mentions PRWORA at one point, but only to explain the ineligibility of

[208] *See Mashiri*, 724 F.3d at 1033 (holding that status as asylum applicant does not satisfy the HEA criteria, without providing general interpretation of the statutory standard); Department of Education Reply Brief, Mashiri v. Dep't of Educ., 2010 WL 1229084 (S.D. Cal. Feb. 22, 2010) ("[T]here is no definitive interpretation of this broad language, which could literally include all persons unlawfully present in the United States who plan to stay until someday legalized . . . ."); *but cf.* Dep't of Educ., Interim Final Rule, Eligibility of Students at Institutions of Higher Education for Funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, https://www2.ed.gov/about/offices/list/ope/caresactifreligibility6112020.pdf, at 9 n.1 (contending that the HEA eligibility standards are "similar in most respects" to the PRWORA standards, such that "there is little remaining application for the prohibition in 8 U.S.C. 1611 once [HEA] eligibility requirements have been applied").

[209] *See Mashiri*, 724 F.3d at 1032-33 (analyzing HEA eligibility criteria separately after determining that an alien clearly did not qualify for federal student aid under PRWORA); Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 41 (regarding U-visa holders).

[210] Federal Student Aid Handbook, *supra* note 93, at AVG-1.

[211] *Id*., Vol. 1, at 30, 34-42. The Handbook states that aliens who have been granted withholding of removal are not eligible for HEA programs, *id*. at 41, but such aliens are "qualified aliens" under PRWORA. 8 U.S.C. § 1641(b)(5). The Handbook also states that Citizens of the Freely Associated States are eligible for some HEA programs, including Pell Grants. Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 30. These aliens are not "qualified aliens" under PRWORA. 8 U.S.C. § 1641(b). The latter discrepancy appears to arise from express eligibility rules included in statutory implementations of the United States' compacts with the Freely Associated States. *See* 48 U.S.C. § 1905(h)(5) (establishing eligibility for certain federal educational grants); Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 30 (discussing eligibility rules under statutes amending the compacts).

[212] Dep't of Educ., Free Application for Federal Student Aid, at 9 (July 1, 2020–June 30, 2021), https://studentaid.gov/sites/default/files/2020-21-fafsa.pdf. The notable discrepancy with the PRWORA "qualified alien" definition is, again, that the FAFSA does not include aliens granted withholding of removal on the list of eligible noncitizens. *See id*.

[213] *See* Dep't of Educ., Interim Final Rule, Eligibility of Students at Institutions of Higher Education for Funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 85 Fed. Reg. 36494, 36497 (June 17, 2020) (stating that verification systems for Title IV HEA financial aid programs ensure "compliance with the independent statutory restriction found in 8 U.S.C. 1611") [hereinafter ED CARES Act IFR].

[214] *Id*. at 36496 n.1 (suggesting that the Department applies HEA rules and PRWORA rules together); Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 41 (rendering aliens granted withholding of removal, who are qualified aliens under PRWORA, ineligible for HEA federal student aid).

one discrete category of aliens (U visa holders).[215] It does not cite PRWORA as the authority for the overall framework of eligibility restrictions in the guidance.[216] The Department's regulation on alien eligibility continues to track the criteria from HEA § 484.[217]

Federal case law reflects confusion about which set of immigration-related eligibility rules govern HEA financial aid programs: PRWORA, the program-specific criteria in HEA § 484, or both. In a 2013 Ninth Circuit case, a student argued that HEA § 484 governed because it is the more specific statute.[218] The Ninth Circuit declined to resolve the issue, holding instead that the student was ineligible for financial aid under either statute—in other words, that he did not meet even the more forgiving eligibility criteria of HEA § 484.[219] In a different case, the Eleventh Circuit in dicta cited HEA § 484 as the statute that "set[s] the eligibility standard for federal student aid."[220] No court has resolved whether PRWORA renders a nonqualified alien ineligible for federal student aid even if he or she would be eligible under HEA § 484.[221] The ED guidance suggests that PRWORA would bar eligibility in such a case, given that it generally tracks the PRWORA eligibility rules and cites PRWORA to explain the disqualification of aliens with U visa status,[222] but the federal cases show that the question remains open.[223]

Emergency Financial Aid Under the CARES Act

More recently, confusion over the applicable eligibility rules for aliens has extended into a new form of federal student aid authorized by the CARES Act. Section 18004 of that Act creates the Higher Education Emergency Relief Fund (HEERF) to distribute funds to institutions of higher education for costs related to COVID-19.[224] Section 18004 does not mention PRWORA or otherwise address the subject of alien eligibility.[225] It does, however, articulate general parameters not related to immigration for how institutions may use HEERF funds, including a requirement that universities use at least half of their funds on emergency financial aid grants for students:

> [A]n institution of higher education . . . may use the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship. Institutions of higher education shall use no less than 50 percent of such funds to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus

[215] Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 41.

[216] *Id.* at 34-42.

[217] 34 C.F.R. § 668.33.

[218] Mashiri v. Dep't of Educ., 724 F.3d 1028, 1032-33 (9th Cir. 2013).

[219] *Id.* at 1033 ("Even if this statute [HEA § 484] precluded the application of 8 U.S.C. § 1641, none of the documents Mashiri provided during the eligibility verification process could conceivably show the statute's required non-temporary purpose.")

[220] Estrada v. Becker, 917 F.3d 1298, 1304 (11th Cir. 2019).

[221] *See Mashiri*, 724 F.3d at 1033 (leaving the question open).

[222] Federal Student Aid Handbook, *supra* note 93, Vol. 1, at 41.

[223] *See Mashiri*, 724 F.3d at 1033.

[224] *See* Pub. L. No. 116-136, § 18004, 134 Stat. 281, 567 (2020) (codified at 20 U.S.C. § 3401 Note).

[225] *See id*.

> (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care).[226]

Soon after enactment, some universities expressed uncertainty about whether DACA recipients and other nonqualified aliens were eligible for the emergency financial aid grants under Section 18004.[227] In other words, schools were confused about whether PRWORA restricted the emergency financial aid.[228] ED issued guidance on April 22, 2020, about one month after enactment of the CARES Act, stating that "[o]nly students who are or could be eligible to participate in programs under Section 484 of the HEA may receive emergency financial aid grants" under the CARES Act.[229] The guidance noted that, to be eligible for the HEA programs, a student must be a U.S. citizen or "eligible noncitizen."[230] This CARES Act guidance did not mention PRWORA.[231] However, by invoking the Department's immigration-related eligibility rules for HEA student aid programs, which as described above appear to be based on PRWORA, the April 2020 CARES Act guidance seemed to indicate that the Department was interpreting the PRWORA restrictions to apply to the new emergency financial aid grants as well.[232] In other words, because the restrictions in ED's HEA guidance generally come from PRWORA, the immigration restrictions in ED's CARES Act guidance also appeared to be based on PRWORA.[233]

One month later, after lawsuits challenging the April 2020 guidance had been filed, the Department issued new guidance on its website that expressly cited PRWORA as a source of eligibility restrictions for the emergency financial aid.[234] Then, in June 2020, the Department issued an interim final rule reiterating its position that only students eligible to participate in HEA programs were eligible to receive HEERF funds.[235] In the preamble to the rule, ED argues mainly that HEA § 484 limits eligibility for HEERF funds.[236] But the preamble also reaffirms ED's

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[226] *Id.* § 18004(c) (Uses of Funds).

[227] Lilah Burke, *Still in Limbo?*, INSIDE HIGHER ED (Apr. 14, 2020) ("[S]ome in higher education have questioned whether the aid will be available to students who immigrated to the U.S. illegally as children, many of whom have received work authorization and relief from deportation from the Deferred Action for Childhood Arrivals program. Though the CARES Act does not specify that students must be eligible for federal financial aid (which DACA recipients are not), existing law signed in the 1990s specifies that those who immigrated illegally are ineligible for federal benefits."), https://www.insidehighered.com/news/2020/04/14/stimulus-benefits-unclear-daca-students.

[228] *See id*. (mentioning "existing law signed in the 1990s").

[229] Dep't of Educ., Frequently Asked Questions about the Emergency Financial Aid Grants to Students under Section 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Apr. 22, 2020), https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf.

[230] *Id.*

[231] *Id.*

[232] *See id*.

[233] *See id*.

[234] Dep't of Educ., Updated Statement 5/21/2020 ("The underlying statutory terms in the CARES Act are legally binding, as are any other applicable statutory terms, such as the restriction in 8 U.S.C. § 1611 on eligibility for Federal public benefits including such grants [under CARES Act sec. 18004]."), https://www2.ed.gov/about/offices/list/ope/caresact.html.

[235] ED CARES Act IFR, *supra* note 213, at 36947 ("For purposes of the phrases 'grants to students' and 'emergency financial aid grants to students' in sections 18004(a)(2), (a)(3), and (c) of the CARES Act, 'student' is defined as an individual who is, or could be, eligible under section 484 of the HEA, to participate in programs under title IV of the HEA.")

[236] *Id.* at 36945-47.

stance that PRWORA prohibits nonqualified aliens from receiving HEERF funds and concludes that the HEA and PRWORA limitations are "similar in most respects."[237]

Lawsuits filed in federal district court have challenged ED's position that students are not eligible for the emergency financial aid if they are not eligible for HEA programs.[238] The lawsuits remain pending. They argue that HEA limitations do not apply to HEERF—which was enacted as an independent statute and not as an amendment to the HEA—and that Congress did not specify any other immigration-related eligibility restrictions.[239] Instead, in the plaintiffs' view, the general parameters quoted above on "Uses of Funds" in Section 18004 of the CARES Act establish the only applicable restrictions on how the funds can be used.[240] The plaintiffs also rely on a formula in the statute that allocates funds based on the number of full-time, nonremote students at an institution.[241] Because the statute does not exclude students from the allocation formula based on immigration status, the plaintiffs argue that the students should not be barred from receiving benefits based on immigration status, either.[242]

ED has argued in response that PRWORA restricts eligibility for emergency financial aid through HEERF to "qualified aliens."[243] The emergency financial aid comes in the form of "grants" and thus deliver "federal public benefits" within the meaning of 8 U.S.C. § 1611, the Department argues.[244] (ED also argues in the lawsuits, as in the preamble to the June interim final rule, that the eligibility restrictions from HEA § 484 apply to the HEERF funds.[245] In the preliminary stages of the ongoing lawsuits, ED has lost that argument.[246] This report about PRWORA does not explore whether the HEA applies to the HEERF funds.)

Thus far in the lawsuits, federal district courts have disagreed about PRWORA's applicability. The District of Massachusetts and Eastern District of California held in preliminary rulings that plaintiffs were likely to succeed on the merits of their argument that "the specific, one-time emergency disbursement of HEERF Assistance in the CARES Act is not subject to the more general prohibition in the earlier statute [PRWORA]."[247] In other words, according to these courts, the CARES Act overrides PRWORA by authorizing students to receive the HEERF grants and not specifying restrictions based on immigration status.[248] In contrast, the Eastern District of

[237] *Id*. at 36946.

[238] *See* Oakley v. DeVos, -- F. Supp. 3d --, 2020 WL 3268661, at *13 (N.D. Cal. June 17, 2020); Washington v. DeVos, -- F. Supp. 3d -- , 2020 WL 4275041, at *1 (E.D. Wash. July 24, 2020); Noerand v. Devos, -- F. Supp. 3d --, 2020 WL 4274559, at *1 (D. Mass. July 24, 2020).

[239] *See Oakley*, 2020 WL 3268661 at *7.

[240] *See id*.

[241] *See* Pub. L. No. 116-136, § 18004(a), 134 Stat. 281, 567 (2020).

[242] *See Oakley*, 2020 WL 3268661 at *15.

[243] *Id*. at *13 ("[D]efendants raise the argument that plaintiffs cannot prevail on the relief they seek here for the independent reason that, regardless of whether title IV's eligibility criteria apply, 8 U.S.C. section 1611 bars most non-citizens (i.e., those not considered 'qualified aliens' under the statute) from receiving 'Federal public benefits.'"); *Washington*, 2020 WL 4275041 at *6; *Noerand*, 2020 WL 4274559 at *6.

[244] *See* ED CARES Act IFR, *supra* note 213, at 36496. ED also argues that HEERF grants are federal public benefits under prong (B) of the definition, because they are "postsecondary education" benefits paid with appropriated federal funds. *Id*.

[245] *See Washington*, 2020 WL 4275041 at *2-3.

[246] *Id*. ("[T]he limited incorporation of certain provisions of Title IV [of the HEA] into the CARES Act does not imply a general Congressional intent to subject all CARES Act HEERF funds to the restrictions in Title IV."); *Oakley*, 2020 WL 3268661 at *11.

[247] *Oakley*, 2020 WL 3268661 at *15; *Noerand*, 2020 WL 4274559 at *7.

[248] *Noerand*, 2020 WL 4274559 at *7 ("Section 18004 of the CARES Act is a specific statutory enactment in which

Washington held at summary judgment that PRWORA does restrict the HEERF grants.[249] The CARES Act language about student eligibility, in this court's view, "is too ambiguous to demonstrate a 'clear and manifest' intent to override the longstanding and generally applicable PRWORA bar."[250]

As the lawsuits progress, they could generate useful precedent for analyzing PRWORA's applicability to newly created benefit programs. If Congress is silent about PRWORA and about immigration-related eligibility criteria when creating a new benefit program that fits the definition of "federal public benefit," does PRWORA apply? Will courts interpret later statutes to override PRWORA by implication, even if the statutes do not establish immigration-related criteria that directly conflict with PRWORA? Even if the lawsuits do clarify these questions, however, the lawsuits do not have potential to resolve the legal questions described above about the retrospective application of PRWORA's notwithstanding clause with respect to the preexisting HEA criteria for federal financial aid programs.[251] In other words, the HEERF lawsuits may resolve questions about the prospective application of PRWORA, but not the retrospective application of it.

Conclusion

Determining whether PRWORA restricts alien eligibility for specific federal benefit programs triggers two main interpretive issues: (1) whether the benefits in question are "federal public benefits" under the PRWORA definition, and (2) whether the PRWORA eligibility restrictions apply notwithstanding countervailing eligibility language in more specific program statutes. Other than for Medicaid, TANF, SSI, and SNAP—the major programs that are the subject of specialized rules under PRWORA—these questions often blend together to create confusion about PRWORA's applicability to particular federal programs. This confusion tends to persist where federal agencies do not issue definitive guidance on PRWORA. Federally funded unemployment insurance benefits under FUTA and federal student aid under the Higher Education Act are prime examples of this phenomenon.

Issues about PRWORA's applicability to new benefit programs have become particularly salient during the COVID-19 pandemic. When Congress creates a new federal benefit program without specifying rules for alien eligibility, PRWORA's inherent ambiguities often make it difficult to predict what eligibility rules will apply in practice. Federal agencies may take different approaches to similar issues. The federal benefits authorized by the CARES Act are a case in point. Whereas DOL remained mostly silent about whether PRWORA restricts eligibility for the new types of federally funded unemployment benefits authorized by the Act, the Department of Education has taken the position that PRWORA bars nonqualified aliens from receiving emergency financial aid under the same Act. As a result, even though unemployment and postsecondary education benefits receive similar treatment under PRWORA, these two types of CARES Act benefits appear to be subject to different eligibility rules in practice. Congress may see fit to leave eligibility issues to agency interpretation in this fashion. If Congress wants clarity about the immigration-related rules that will govern new benefit programs, its options are to state expressly in the authorizing legislation whether PRWORA applies, expressly establish

Congress unambiguously directed certain aid to a plainly defined group of people. In these circumstances, to the extent that the CARES Act directs a federal public benefit, it constitutes a statutory exception to Section 1611's general denial of federal public benefits.").

[249] *Washington*, 2020 WL 4275041 at *6.

[250] *Id*.

[251] *See id*. (not addressing the interplay between HEA § 484 and PRWORA).

immigration-related eligibility criteria that differ from PRWORA in the authorizing legislation, or both. Alternatively, Congress could repeal PRWORA or amend it to expressly limit its prospective applicability, leaving new benefit statutes as the only source of immigration-related eligibility restrictions for the benefits they create.

Appendix. Glossary

Qualified Alien	Aliens who fall within one of the following categories enumerated in 8 U.S.C. § 1641(b) and (c): • lawful permanent residents; • asylees; • refugees; • aliens paroled into the United States under 8 U.S.C. § 1182(d)(5) for a period of at least one year; • aliens granted withholding of removal under 8 U.S.C. § 1231(b)(3), or its predecessor statute, 8 U.S.C. § 1253 (for aliens placed into deportation proceedings before April 1, 1997);[252] • aliens granted conditional entry under 8 U.S.C. § 1153(a)(7), as in effect before April 1, 1980; • Cuban and Haitian entrants, as defined in § 501(e) of the Refugee Education Assistance Act of 1980;[253] and • certain abused spouses and children described in 8 U.S.C. § 1641(c)(1)-(3); victims of a severe form of trafficking in persons who have acquired or set forth a prima facie case for T visa nonimmigrant status.
Federal Public Benefit	Defined as follows in 8 U.S.C. § 1611(c): (1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States. (2) Such term shall not apply- (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect; (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. §§ 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

[252] *See* Yousefi v. INS, 260 F.3d 318, 322 n.2 (4th Cir. 2001) ("The withholding of deportation provision, appearing in INA § 243(h) and codified at 8 U.S.C. § 1253(h), was repealed. A similar form of relief is still available, however, under the current INA § 241(b)(3).") (citations omitted).

[253] Pub. L. No. 96-422, 94 Stat. 1799 (1980).

Federal Means-Tested Public Benefit	PRWORA does not define this term. The bill that originally passed in the House contained the following definition: > [A] public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.[254] Due to a point of order, Congress omitted the definition from the final version of the Act. The Conference Report states that "[i]t is the intent of conferees that th[e] definition be presumed to be in place for purposes of this title."[255] Federal agency guidance has identified the following programs as delivering federal means-tested public benefits: TANF,[256] Medicaid,[257] SSI,[258] and SNAP.[259] The Child Health Insurance Program (CHIP) also appears to be considered a federal means-tested public benefit,[260] although, notwithstanding PRWORA, states have the option to provide CHIP and Medicaid to "lawfully residing" children and pregnant women.[261]
Specified Federal Programs	SSI and SNAP.[262]
Designated Federal Programs	TANF, SSBG, and Medicaid.[263]

[254] H.R. REP. NO. 104–725, at 381-82 (1996).

[255] *Id*.

[256] Dep't of Health and Human Servs., Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of "Federal Means-Tested Public Benefit", 62 Fed. Reg. 45256, 45257 (Aug. 26, 1997) ("[T]he HHS programs that constitute 'Federal means-tested public benefits' under PRWORA are Medicaid and TANF.").

[257] *Id*.

[258] Soc. Sec. Admin, Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Federal Means-Tested Public Benefits Paid by the Social Security Administration, 62 Fed. Reg. 45284, 45284-85 (Aug. 26, 1997) ("The Social Security Administration announces that, of the programs it administers, only supplemental security income benefits under title XVI of the Social Security Act are 'Federal means-tested public benefits' for purposes of [PRWORA].").

[259] Food and Nutrition Service, U.S. Dep't of Agric., Federal Means-Tested Public Benefits, 63 Fed. Reg. 36653, 36653 (July 7, 1998) ("This notice announces that the Food Stamp Program and the food assistance block grant programs in Puerto Rico, the Commonwealth of the Northern Marianna Islands and American Samoa are Federal means-tested programs."); *see also* Garnett v. Zeilinger, 313 F. Supp. 3d 147, 151 n.1 (D.D.C. 2018) ("The program's name was changed from its original name, the 'Food Stamp Program,' to SNAP in 2008. See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–234, § 4001, 122 Stat. 923, 1092.").

[260] *See* Exec. Order 13880, Collecting Information about Citizenship Status in Connection with the Decennial Census, 84 Fed. Reg. 33821, 33823 (July 16, 2019) ("Aliens who are "qualified aliens"—that is, lawful permanent residents, persons granted asylum, and certain other legal immigrants—are, with limited exceptions, ineligible to receive benefits through Temporary Assistance for Needy Families, Medicaid, and State Children's Health Insurance Program for 5 years after entry into the United States (8 U.S.C. 1613(a).").

[261] Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3 § 214(a), 123 Stat. 8, 56-57 (codified at 42 U.S.C. § 1396b(v)(4)(A)).

[262] 8 U.S.C. § 1612(a)(3).

[263] *Id*. § 1612(b)(3).

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