



DEPARTMENT OF AGRICULTURE

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);

Interpretation of “Federal Public Benefit”

AGENCY: Office of the General Counsel, Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice sets forth the interpretation that the U.S. Department of Agriculture (USDA) uses for the term “Federal public benefit” as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, 8 U.S.C. § 1611. In doing so, this notice supersedes any prior interpretation in any notice or other document issued by any USDA agency. This notice also describes and preliminarily identifies the USDA programs that provide “Federal public benefits” within the scope of PRWORA.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Poe, Office of the General Counsel, USDA, 1400 Independence Avenue SW., Washington, DC 20250-1400, (202) 769-8247.

SUPPLEMENTARY INFORMATION:

I. Background

According to Section 401 of PRWORA, 8 U.S.C. § 1611(a), aliens who are not “qualified aliens” are not eligible for any “Federal public benefit” as defined in 8 U.S.C. § 1611(c). The prohibition set forth in § 1611(a) is subject to certain exceptions set forth in § 1611(b). The application of § 1611(a) and exceptions contained in § 1611(b) are conceptually distinct from the meaning of “Federal public benefit” and is not addressed in this Notice.

The statutory text, § 1611(c), defines “Federal public benefit” as “(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.” 8 U.S.C. § 1611(c)(1). This definition, too, is subject to certain exceptions. *See id.* (c)(2) (setting forth certain exceptions to the definition of “Federal public benefit”).

In addition, under Section 432 of PRWORA, as amended, to the extent required by law, providers of a nonexempt “Federal public benefit” must verify that a person applying for the benefit is a qualified alien and is eligible to receive the benefit. 8 U.S.C. § 1642. While the verification requirement is necessary to proper enforcement of PRWORA, it is conceptually distinct from the meaning of the term “Federal public benefit” and this Notice is not intended to address application of such requirement. Neither does this Notice speak to “Federal public benefits” that may be subject to other statutory authority besides PRWORA regarding citizenship and alien eligibility.

II. Interpretation

Statutory construction ““must begin, and often should end as well, with the language of the statute itself.”” *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998) (quoting *Merritt v. Dillard*, 120 F.3d 1181, 1185 (11th Cir. 1997)). “The plain meaning controls.” *United States v. Robinson*, 94 F.3d 1325, 1328 (9th Cir. 1996) (citation omitted). The statutory language is clear: if a USDA program falls into either § 1611(c)(1)(A) or (c)(1)(B), such benefits are not available to individuals who are aliens, unless (i) that individual is a qualified alien, or (ii) some other exception applies to the USDA program, either under § 1611(b) or via the definitional limits on “Federal public benefit” set forth in (c)(2). Thus, the task is simple: construe the plain language of (c)(1)(A) and (c)(1)(B). Those provisions state that “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.

If USDA “provide[s]” the (i) “grant, contract, loan, professional license, or commercial license,” or if the “grant, contract, loan, professional license, or commercial license” is “provided by” “appropriated funds of the United States,” then such item is a “Federal public benefit.” Similarly, if USDA “provide[s]” the “retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit,” or such “benefit” is “provided by” “appropriated funds of the United States,” then such benefit is a “Federal public benefit,” as long as the benefit is “provided to” one of three types of recipients: (i) “an individual,” (ii) a “household,” or (iii) a “family eligibility unit.”

1. Grant

Section 1611(c)(1)(A) reaches “any grant, contract, loan, professional license, or commercial license” provided by USDA. For purposes of PRWORA, a grant means the award of funding for an individual or entity to carry out specified activities without the direct involvement of USDA. USDA administers a multitude of grant programs, including those in which the grants go to institutions, States, local governments, private entities and private organizations. Sometimes the activity supported by the grant is carried out by the “recipient”; sometimes the recipient issues a subgrant to an individual or entity. For PRWORA purposes, the term “grant” includes any “subgrant” derivative of a grant.

2. Contract

Many USDA programs and activities are carried out by the use of contracts. For example, contracts are used by the Farm Service Agency to provide assistance to agricultural producers in the form of income support payments and by the Forest Service in conducting forest management activities to reduce the risk of wildfires. USDA also provides assistance and benefits to individuals and entities through the use of several different types of instruments including loan guarantees

(e.g., programs of the Rural Development agencies), reinsurance agreements (core operations of the Risk Management Agency), cooperative agreements (agreements used by numerous USDA agencies when the agency is working with another party to accomplish a public purpose authorized by law) and “export credit guarantees” (financial assurances made available through programs administered by the Foreign Agricultural Service). In the context of PRWORA, all instruments that are contractual in nature that are used by USDA agencies are considered to be contracts.

With respect to any contract, professional license, or commercial license, PRWORA excludes from the definition of “Federal public benefit” “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.” *See* 8 U.S.C. § 1611(c)(2)(A).

3. Loan

The majority of loans made by USDA agencies are “recourse” loans meaning the borrower is responsible for repayment of the full amount of the accumulated principal and interest that has accumulated; in the event the loan collateral is forfeited, the borrower remains responsible for any difference between the value of the collateral and the amount of the outstanding loan balance (principal plus interest). Many loans made by the Commodity Credit Corporation (CCC), an agency and instrumentality of the United States within USDA, are “nonrecourse” loans meaning that a borrower may forfeit the loan collateral to CCC in full satisfaction of the loan. In the context of PRWORA, both recourse and nonrecourse loans are considered to be loans.

4. Commercial license

As in the case of contracts, various types of legal documents are considered by USDA to be a “commercial license” for PRWORA purposes. For example, 7 CFR 6.20(b) provides: “Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the tariff-rate

quotas are listed in Appendices 1, 2, and 3 to be published annually in a notice in the Federal Register. Licenses permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to licensing, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.” The United States Warehouse Act establishes a voluntary system under which parties that store agricultural commodities may obtain a license from USDA in lieu of obtaining licenses from States. These, and similar licenses are “commercial licenses” for PRWORA purposes. The Forest Service issues a variety of permits (i.e., “special use permits” issued under 36 CFR 251) that allow individuals and private entities the privilege of conducting activities on land administered by the Forest Service. These activities include non-commercial and commercial activities. If USDA issues a special permit that allows the holder of the permit to engage in a commercial activity, such permit is a “commercial license” for PRWORA purposes.

5. PRWORA Provisions Applicable to the Food and Nutrition Service (FNS)

As previously discussed, the application of § 1611(a) is conceptually distinct from the definition of a “Federal public benefit” under §1611(c). Nonetheless, to avoid confusion the application of 8 U.S.C. § 1615 to certain FNS programs is briefly discussed. Section 1615(a) provides:

Notwithstanding any other provision of [PRWORA], an individual who is eligible to receive free public education benefits under State or local law shall not be ineligible to receive benefits provided under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. § 1751, *et seq.*) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) on the basis of citizenship, alienage, or immigration status.

Further, § 1615(b) provides:

Nothing in [PRWORA] shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien, as defined in section 1641(b) of [Title 8], benefits under programs established under the provisions of law described in paragraph (2).

In particular, the statutory provisions in paragraph (2) are “(A) Programs (other than the school lunch program and the school breakfast program) under the Richard B. Russell National School

Lunch Act (42 U.S.C. 1751 *et seq.*) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*);] (B) Section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note);] (C) The Emergency Food Assistance Act of 1983;] [and] (D) The food distribution program on Indian reservations established under section 2013(b) of Title 7.”

Although they each fall within the meaning of “Federal public benefit” under § 1611(c), FNS continues to administer the following programs in accordance with the superseding provisions of § 1615:

Food Distribution Program on Indian Reservations (FDPIR).

The Emergency Food Assistance Program (TEFAP).

Commodity Supplemental Food Program (CSFP).

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

WIC Farmers’ Market Nutrition Programs.

Senior Farmers’ Market Nutrition Programs.

National School Lunch Program.

School Breakfast Program.

Child and Adult Care Food Program.

Fresh Fruit and Vegetable Program.

Special Milk Program.

Summer Food Service Program.

Summer EBT.

USDA Food and Nutrition Service Disaster Assistance. (FNS does not administer a distinct disaster assistance program but utilizes various flexibilities, waivers, and options within the nutrition programs to provide assistance. Therefore, 8 U.S.C. § 1615 would continue to apply where relevant.)

III. USDA Programs

Activities of All Agencies Except FNS

The majority of the regulations of USDA programs and activities are set forth in Title 7 of the Code of Federal Regulations. Regulations of the Forest Service are set forth in Chapter II of Title 36 of the Code of Federal Regulations. Regulations of the Food Safety Inspection Service and certain activities of the Agricultural Marketing Service and the Animal and Plant Health Inspection Service are set forth in Title 9 of the Code of Federal Regulations. USDA has not previously considered many USDA programs and activities to provide “Federal public benefits”; however, after a focused review of these programs, USDA has concluded that many such programs and activities clearly fall within the PRWORA definition of “Federal public benefits”. The major USDA programs and activities that provide “Federal public benefits” generally fall into these categories:

Payments and loans made by CCC to support agricultural producers’ income and to support market prices of agricultural commodities

Grants and payment guarantees by CCC for the development of foreign markets

Farm operating and farm purchase loans under programs administered by the Farm Service Agency (FSA) and Rural Development

Rural Development loans, loan guarantees and grants to enhance living conditions in communities across rural America including loans for business and industry development, sewer and water projects, single and multi-family housing construction, and rural telecommunication projects

Grants made by the National Institute of Food and Agriculture to develop, improve, and protect agricultural commodities and livestock

Grants and contracts used to protect National Forest System (NFS) lands under the management of the Forest Service and lands that are devoted to private forestry and receive assistance from the Forest Service and permits issued by the Forest Service for activities on NFS lands such as mining, timber harvesting and grazing

Grants and contracts used by the Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC) to provide assistance to farmers and ranchers to protect soil and water resources on their farms and ranches

Specific programs and activities include: Licenses issued by the Secretary of Agriculture under 7 CFR Part 6 to allow duty-free importation of certain dairy products otherwise subject to tariffs

Payments for the procurement of commodities, payments to producers of commodities, and issuance of licenses (excluding inspections of commodities) under 7 CFR Parts 27 through 205 by AMS

Activities of the Risk Management Agency relating to the administration of crop insurance and re-insurance (excluding disaster payments made to producers for crop losses) under 7 CFR Parts 400 through 460

Activities of NRCS to provide financial assistance for the protection of soil and water resources on farmland, private forest land, and rangeland under 7 CFR Parts 600 through 699

Activities of FSA to provide financial assistance for the protection of soil and water resources on farmland, private forest land, and rangeland; and loans for the purchase and operation of farming, ranching, and other agricultural operations under 7 CFR Parts 700 through 799 (excluding disaster payments made to producers for crop losses)

Activities of AMS under 7 CFR Parts 800 through 870 that provide licenses to store agricultural commodities and that provide grants to domestic textile mills

Activities of CCC under 7 CFR Parts 1400 through 1450 that provide income support and price support benefits to producers of agricultural products (excluding disaster payments made to producers for crop losses)

Activities of CCC to provide financial assistance for the protection of soil and water resources on farmland, private forest land, and rangeland under 7 CFR Parts 1455 through 1470 and Part 1491

Grants and payment guarantees made by CCC for the development of domestic and foreign markets under 7 CFR Parts 17, 1484 through 1489, 1493, 1499, and 1570 through 1599

Grants, loans, and loan guarantees made by RD agencies for development of rural communities, and rural businesses and industry under CFR Parts 1700 through 2045, 3350 through 3570, and 4200 through 5001

Grants made by agencies in the Research, Education and Economics mission area of USDA relating to all aspects of agricultural research including improvements in the quality of commodities and animals, disease prevention, enhanced crop production practices, and food safety under 7 CFR Parts 3400 through 3431

Any grant, contract, loan, or commercial license (including any special use permit) issued by the Forest Service under 36 CFR Parts 212 through 296 that relate to use of any portion of a National Forest including mining, timber harvesting and grazing; and any contract with the Forest Service to perform any land management function such as timber thinning, road and trail maintenance, and campground concessions

Licenses and registrations issued the Agricultural Plant and Health Inspection Service (APHIS) relating to the exhibition and sale of certain animals under 9 CFR Part 2

Licenses issued by APHIS relating to persons authorized to handle biological agents used to produce veterinary biological products, and licenses to import such products under 9 CFR Part 102

Licenses for the transfer and use of biological agents and toxins issued by APHIS under 7 CFR Part 331 and 9 CFR Part 121

Programs and Activities of FNS

Federal Public Benefit Under the Meaning of § 1611(c)(1)(A)

FNS administers a variety of grants, cooperative agreements, and contracts. FNS grants primarily fall into two categories – discretionary grants and mandatory grants. FNS Standard Operating Procedure (SOP) refer to cooperative agreements and grants under the term “grants.” Authority to enter into contracts, grants, and cooperative agreements in accordance with section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, is delegated to the Under Secretary for Food, Nutrition, and Consumer Services pursuant to 7 C.F.R. 2.19. Other legal statutory authorities for such instruments include the Food and Nutrition Act of 2008, as amended, the Richard B. Russell National School Lunch Act, as amended, the Child Nutrition Act of 1966, as amended, and annual appropriations legislation.

Section 1611(c)(1)(A) applies to “any” of the instruments listed. The term “any” is all encompassing. Unlike its neighboring provision, subparagraph (B), § 1611(c)(1)(A) is void of limiting language based on characteristics of the recipient(s) of the benefit or other factors if the contract, grant, loan, professional license, or commercial license is “provided by an agency of the United States or by appropriated funds of the United States.” Congress explicitly provided specific exceptions for contracts, professional licenses, and commercial licenses at 8 U.S.C. § 1611(c)(2) and the absence of other qualifications on instruments listed at § 1611(c)(1)(A) indicates there are no others. Therefore, FNS interprets § 1611(c)(1)(A) that every grant, contract, loan, commercial license, and professional license, of any kind or nature whatsoever regardless of its authorizing statute or regulation provided by FNS or appropriated funds of the United States is a “Federal public benefit” without exception other than those contained at § 1611(c)(2).

The statutory language at § 1611(c)(1)(A) reaches all instruments listed if “provided by an agency of the United States or by appropriated funds of the United States.” Therefore, FNS considers a sub-grant and a sub-contract made from a prime grant or prime contract provided by FNS or appropriated federal funds to be a “Federal public benefit.” Accordingly, the ultimate beneficiaries to whom federal funds flow from a contract or grant provided by FNS or appropriated funds of the United States are recipients of a “Federal public benefit.” For example, if a food bank receives a grant which is used to purchase food for distribution, the individual who receives the food assistance has received a “Federal public benefit.”

As stated above, the applicability of other provisions of PRWORA is conceptually distinct from the question of what the term “Federal public benefit” means, and this Notice does not intend to address that question except to the extent of the brief discussion concerning § 1615 above.

FNS issues commercial licenses by authorizing retailers to accept Supplemental Nutrition Assistance Program (SNAP) benefits pursuant to 7 CFR 278.1 and 7 U.S.C. § 2018. Applicants are required to submit an application that FNS must approve. Only if authorized, may a retailer engage in the commercial activity of accepting SNAP benefits as payment for certain commercial goods. Therefore, FNS interprets “Federal public benefit” to include a retailer authorization to participate in SNAP because such authorization is in the form of a commercial license.

FNS administers 16 food and nutrition programs under a variety of statutes like the Food and Nutrition Act of 2008, Richard B. Russell National School Lunch Act, Child Nutrition Act of 1966, Agriculture and Consumer Protection Act of 1973, Emergency Food Assistance Act of 1983, and 7 U.S.C. § 2013(b) (*i.e.*, Food Distribution Program on Indian Reservations). All food and nutrition programs meet the definition of “Federal public benefit” pursuant to § 1611(c)(1)(B). The 16 programs are as follows:

The Supplemental Nutrition Assistance Program (SNAP).

Nutrition Assistance Program for Territories.

Food Distribution Program on Indian Reservations (FDPIR).

The Emergency Food Assistance Program (TEFAP).

Commodity Supplemental Food Program (CSFP).

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

WIC Farmers' Market Nutrition Programs.

Senior Farmers' Market Nutrition Programs.

National School Lunch Program.

School Breakfast Program.

Child and Adult Care Food Program.

Fresh Fruit and Vegetable Program.

Special Milk Program.

Summer Food Service Program.

Summer EBT.

Disaster Assistance

In particular, these are benefits “provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.” As discussed earlier, some of the above programs are administered pursuant to 8 U.S.C. § 1615 even though they are “Federal public benefits”. FNS also recognizes that the definition of “Federal public benefit” is inapplicable “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 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.” *See* 8 U.S.C. § 1611(c)(2)(B).

IV. Verification and Economic Impact

Due to the multitude of USDA programs that are available to tens of millions of individuals,

USDA will continue to evaluate the manner in which it will verify compliance with PRWORA.

USDA will, to the maximum extent possible, minimize the imposition of reporting and information and information collection requirements. Similarly, USDA continues to analyze the economic impact of this interpretation, but at this time, has not found there to be significant economic impact. USDA will issue subsequent guidance on verification actions and a final determination regarding the economic impact of this interpretation.

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