



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[DOCKET No. FR-6573-N-01]

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit”

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: This notice sets forth the interpretation that the U.S. Department of Housing and Development (HUD) uses for the term “Federal public benefit” as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and its exceptions. In doing so, this notice supersedes any prior interpretation in any notice or other document issued by any HUD program or office.

FOR FURTHER INFORMATION CONTACT:

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<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

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).

Section 401(c) of PRWORA, 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 for 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 the 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.

In the list of substantive exceptions under 8 U.S.C. 1611(b)(1) Congress provided that the prohibition against providing non-qualified aliens with any federal public benefit “shall not apply with respect to the following Federal public benefits:

(B) Short-term, non-cash, in-kind emergency disaster relief [. . .] “(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (iii) are necessary for the protection of life or safety

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 HUD 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 HUD 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 (emphasis added)*, 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 HUD “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 HUD “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) applies to “any grant, contract, loan, professional license, or commercial license” provided by HUD. 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 HUD.

HUD administers a multitude of grant programs, including those in which the grants go to individuals, private entities, and institutions (such as building or services grants) and those in which the grants go to States, units of local government as well as non-profit organizations. The grant “recipient” may carry out the activity supported by the grant, but sometimes the recipient may issue a subgrant to an individual or entity. For PRWORA purposes, the term “grant” includes any “subgrant” derivative of a grant. Sometimes the activity supported by the grant is carried out by the recipient and sometimes the recipient acts as a "pass-through entity" "that provides a subaward to a subrecipient to carry out part of a Federal program," 2 CFR 200.1 (definitions for uniform grants guidance for all Federal financial assistance), under which the obligations and requirements on the recipient flow down to the subrecipient.

Section 1611 (c)(1) of PRWORA defines a “Federal public benefit” to mean *"any grant"* (emphasis added). "Read naturally, the word 'any' has an expansive meaning, that is, one or some indiscriminately of whatever kind." *Ali v Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (cleaned up). The statutory text does not distinguish between grants "to individuals" and grants "provided to states or localities." *Contra* 63 FR at 41659. And so, HUD must apply the plain meaning of the statutory text. *E.g., Pub. Serv. Elec. & Gas Co. v. F.E.R.C.*, 989 F.3d 10, 19 (D.C. Cir. 2021) ("[A] regulation can never trump the plain meaning of a statute.") (quotes omitted).

It is HUD’s position that any grants it administers that are not explicitly governed by another statute are federal public benefits related to housing assistance and are subject to the eligibility requirements under PRWORA. HUD intends to revise its guidance as to which grant programs are deemed covered by PRWORA or by another statute.

2. "Any Other Similar Benefit"

To determine whether a HUD program provides “any other similar benefit(s)” under 8 U.S.C. 1611(c)(1)(B), it is instructive to look not just to the enumerated benefits within 8 U.S.C. 1611(c)(1), but also to the exempted Federal public benefits under 8 U.S.C. 1611(b)(1). Here, Congress specified under subparagraphs (B) and (D) that there are exemptions from the general alien restrictions of 8 U.S.C. 1611(a) for certain types of Federal public benefits, including non-cash benefits or in-kind services. In-kind is defined as “in the same manner or with something equivalent” Webster’s II: New Riverside University Dictionary (1994). In the context of the statute, “in-kind” means some sort of non-cash benefit that provides goods or services directly, rather than providing cash to procure those goods or services. The exception under subparagraph (D) applies more specifically to in-kind services that are delivered “at the community level, including through public or private nonprofit agencies.” It would not make sense for Congress to exclude these limited non-cash or in-kind services explicitly in 8 U.S.C. 1611(b)(1)(B) and (D) if at least some of those benefits were not already captured under the operative definition of “Federal public benefit” under 8 U.S.C. 1611(c). Congress would have no need to carve something out that would not otherwise be covered in the first instance under the “Federal public benefit” definition. As such, the general definition of “Federal public benefit” is best understood to include “assistance” similar to the “deliver[y] [of] in-kind services at the community level, including through public or private nonprofit agencies” where such benefits have not been specifically excluded by 8 U.S.C. 1611(b)(1).

III. Application to HUD Programs

HUD interprets PRWORA to apply to all HUD programs related to public or assisted housing as they are “public or assisted housing” 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” unless a more specific federal statute applies, e.g. Section 214 of the Housing and Community Development Act of 1980, as amended.

HUD has applied the provisions of PRWORA to its Community Planning and Development programs and grants which include Homeless Assistance Programs, particularly the Emergency Solutions Grants (ESG) and Continuum of Care (CoC) programs (*see* 24 CFR parts 576 and 578). HUD considers these programs to award “grants” as defined in PRWORA and therefore covered by the definition of “Federal public benefit” under the statute. As a result, these grant programs are subject to the eligibility and verification provisions under PRWORA.

The covered grant programs include, but are limited to, grants to governments (state and local) or to other organizations. Covered grant programs with governmental grantees include HOME, HOME Investment Partnerships American Rescue Plan (HOME-ARP), National Housing Trust Fund, Community Development Block Grant (CDBG), Community Development Block Grant Disaster Recovery (CDBG-DR), Housing Opportunities for Persons with AIDS (HOPWA) formula, and ESG, but also include Pathways to Removing Obstacles to Housing (PRO Housing) and Preservation and Reinvestment Initiative for Community Enhancement (PRICE) (both competitive). Programs that award grants to non-profit organizations include the CoC program, Congressional earmarks, the HOPWA competitive program, PRO Housing, PRICE and the Self-Help Homeownership Opportunity Program (SHOP).

IV. Verification and Economic Impact

HUD will undertake a review and revised guidance in order to determine the means of verification of immigration status as they affect those programs not exempt under Section 1611(b)(1). These will address those program recipients (such as States and government actors) who have access to the Systemic Alien Verification for Entitlements (SAVE) program as well as non-government recipients. Under PRWORA, although nonprofit charitable organizations that administer “Federal public benefits” are not required to conduct eligibility verification under 8 U.S.C. 1642(d), it does not relieve states or other governmental from the requirements to ensure that all relevant programs are in compliance with PWRORA. As a result, HUD will be issuing new guidelines related to the verification for benefits provided through its housing assistance and

grant programs, including for benefits distributed by charitable non-profit organizations. HUD will be relying in guidance issued by the Department of Homeland Security once that is published.

Due to the multitude of HUD programs that are available to tens of millions of individuals, HUD will continue to evaluate the manner in which it will verify compliance with PRWORA. HUD will, to the maximum extent possible, minimize the imposition of reporting and information and information collection requirements. Similarly, HUD continues to analyze the economic impact of this interpretation, but at this time, has not found there to be significant economic impact. HUD will issue subsequent guidance on verification actions and a final determination regarding the economic impact of this interpretation.

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