

Access and Obstacles in Obtaining Public Benefits for Immigrants

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I. Overview of Public Benefit Eligibility

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), as related to immigration benefits

- Limited access to most federal public benefits to “qualified” immigrants
- Maze of restrictions and conditions regarding which immigrants could be eligible for which federal public benefits
- Allows states to restrict or expand benefits for “unqualified” immigrants

Definition of “qualified” immigrant” under 8 U.S.C. section 1641:

(b) Qualified alien. For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is-

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
- (2) an alien who is granted asylum under section 208 of such Act,
- (3) a refugee who is admitted to the United States under section 207 of such Act,
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,
- (5) an alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980,
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), or
- (8) an individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in section 1612(b)(2)(G) of this title.

(c) Treatment of certain battered aliens as qualified aliens [for instance, under VAWA]

Note regarding Compact of Free Association (“COFA”) migrants:

- As of March 9, 2024, COFA migrants are eligible for all benefits
- State of Hawai'i is still awaiting guidance from the federal government on how to process SNAP benefits
- Biggest changes will be access to SNAP benefits and SSI. COFA migrants already were eligible for Medicaid, SSDI, and state financial assistance and public housing.

What are “federal public benefits” under 8 U.S.C. section 1611:

(c) “Federal public benefit” defined

(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 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.

Some federal benefits are exempt from PRWORA

- Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) 8 U.S.C.A. § 1615 (West) – all school children qualify based on need
- Emergency Shelter – cannot be restricted on the basis of immigrant status
- Short-term, non-cash, in-kind emergency disaster relief. 8 USC 1611(b)
- Emergency Medical Assistance. 8 USC 1611(b)
- Federally qualified health centers

- Public health assistance (not including any assistance under title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease. 8 USC 1611(B)
- Federal housing programs and Social Security Retirement and Disability and Medicare have their own more expansive eligibility written specifically in statute.
- Marketplace health insurance (ACA) is not considered a federal public benefit and is open to many (but not all) immigrants and non-immigrants in lawful status and some immigrants with pending applications.

Federal Benefits included under PRWORA

Means Tested Benefits:

- SNAP – food assistance
- TANF – temporary financial assistance for families
- SSI - Supplemental Security Income (for individuals who are blind, disabled or aged based and have limited incomes)*
- Medicaid

SSI eligibility is further restricted and only covers some groups of “qualified” immigrants.

Some “qualified” immigrants have a 5 year wait period to qualify for SNAP and Medicaid benefits

No five year wait period:

- COFA Migrants
- Asylees and Refugees and those granted withholding of removal
- Trafficking Survivors
- Cuban and Haitian Entrants
- Amerasian
- Children under 18
- Members of the military and their families

Five year waiting period:

- Most Lawful Permanent Residents
- Victims of Domestic Violence qualifying on the basis of the approval of VAWA self-petition or prima facie notice on a filed petition

State benefits in Hawaii provide coverage to some federally excluded group

- The State of Hawaii’s Temporary Assistance for Other Needy Families program expands financial assistance to some lawful permanent residents and victims of domestic violence with VAWA prima facie.
- AABD and GA benefits are available to all qualified immigrants as well as LPRs with less than 5 years and victims of domestic violence with VAWA prima facie.

Key Issue: Public Benefits for U.S. Children (and Legal Permanent Resident (“LPR”) children)

- U.S. children and LPR children who otherwise qualify for benefits are NOT restricted from receiving benefits because of their parents’ immigration status or their parents’ lack of a social security number.
- Parents can apply for their households to receive benefits based upon their children’s citizenship or qualified status. They can elect not to receive benefits for themselves and not provide information about their immigration status.

The Public Charge Rule

- The Public Charge rule has limited applicability. It specifically applies to immigrants applying for green cards who have received state or federal financial cash assistance. It does not apply to people who already have green cards, who receive benefits on behalf of family members, or those who are in exempt statuses.
- Housing assistance, medical assistance (with the exception of long-term institutional care), food assistance (including SNAP) do not count as “financial assistance” for the purpose of the Public Charge rule. Assistance from private groups do not count towards public charge. Furthermore, certain groups, such as asylees, refugees and victims of domestic violence are exempt from the public charge rule.
- USCIS considers current and/or past receipt of public cash assistance for income maintenance and long-term institutionalization at government expense in the totality of the circumstances, taking into account the amount, duration, and recency of the receipt. Current and/or past receipt of these benefits alone is not a sufficient basis to determine that an applicant is likely at any time to become a public charge.

Resources:

- Living in the United States, a Guide for Hawaii’s Immigrant Youth. Chart showing benefit eligibility by immigration status can be found at [https://www.tlchawaii.org/resources\(pages 43-45\)](https://www.tlchawaii.org/resources(pages%2043-45)).
- National Immigrant Women’s Advocacy Project has a benefits chart that explains eligibility of benefits in Hawaii for immigrant victims of domestic violence and other grimes. <https://niwaplibrary.wcl.american.edu/wp-content/uploads/HI-Public-Benefits-Screening-Chart-9.5.22-1.pdf>

II. Lessons in Advocacy from the Maui Wildfires

Assistance in the Immediate Aftermath of the Fire

- 30% of people displaced by the Lahaina fire were foreign born. Large numbers of people from Mexico, Guatemala, Argentina, Venezuela, Philippines, Micronesia and Tonga
- Immediate needs – food, shelter, medical, locating missing people, document replacement

The Community Response: Young people, many of them immigrants, quickly mobilized to form Roots Reborn to fill immediate needs

- Assisted with locating missing people and reunite family members
- Provided interpretation at shelters
- Helped survivors navigate relief and benefits
- Non-profit legal service providers worked together to triage large numbers of immigrants needing document replacement

Innovative Emergency Legal Services

Air Table with QR questionnaire to create queue of clients seeking pro-bono help

- Allowed non-profits to share work
- Respond quickly to community needs
- Protect confidentiality

Response of Governmental Agencies

- USCIS set up field office in Maui
- EOIR continued cases
- ICE postponed reports

Benefits and Relief Eligibility versus Access

- Eligibility does not mean Access
- Barriers to obtaining services, such as fear, misconceptions, language barriers, confusing and document heavy application processes, distrust of government

Solutions for Improving Access

- Trusted Community Orgs
- Direct Aid (cash)
- Local “Gap” funding

Next Phase—Long Term Recovery; Immigration Related Needs

- Relief in immigration court

- Fee waivers and expedite request due to displacement
- Increase in VAWA and U visa eligibility
- Direct aid for families who do not qualify for benefits
- Mental health services
- Housing