Public Rights Project

August 13, 2025

Submitted via regulations.gov

Office of the General Counsel
U.S. Dept. of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: AHRQ-2025-0002, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit'

To Whom It May Concern:

The undersigned local governments and local government officials submit this joint comment in opposition to the attack on health and safety launched by the Department of Health and Human Services (HHS) via its redefinition of "Federal public benefit" under PRWORA. Under the guise of excluding immigrants from services, HHS's re-interpretation will harm the health and well-being of all Americans by purporting to require grantees to divert program funds to impose a "show me your papers" verification regime that will place essential human services out of the reach of many vulnerable citizens and residents. HHS's re-interpretation of "Federal public benefit" is arbitrary and capricious, fails to follow proper procedure, and is in violation of HHS's mission.

Collectively, we urge HHS to withdraw the re-interpretation without implementation or enforcement. In the alternative, we urge HHS to stay implementation until such time as it has (i) considered and responded to all comments filed, and (ii) allowed two years—following the process Congress set out in PRWORA Section 1642—after issuance of regulations for grantees to implement the onerous new verification compliance processes that flow from a sweeping re-interpretation of a term as central as "Federal public benefit"; a term that affects many programs including child welfare and early childhood care; emergency preparedness and disaster relief; medical research and healthcare; and social service programs for families, people with disabilities, and seniors.

1. HHS's "Re-Interpretation" Fails to Properly Weigh Reliance Interests

Local governments provide a range of essential services, directly and indirectly, including services that rely on HHS funding to deliver Congressionally-provided benefits to communities across the country. The programs listed in the HHS PRWORA Notice fund a wide range of services vital to protecting health and safety. For example, they support health clinics (Title X, Health Center Program, Certified Community Behavioral Health Clinics program, and Community Mental Health Services Block Grant), aid substance abuse prevention and treatment (Substance Use Prevention, Treatment and Recovery Support Block Grants and Community Mental Health Services Block Grants), educate and protect low-income children (Head Start and Title IV-E), and help alleviate the causes and conditions of poverty (Community Service Block Grant and Projects for Transitions in Homelessness). In the nearly 30 years since PRWORA became law, HHS has deemed these programs beyond the reach of the law's screening requirements, and has not required grantees to screen participants in these programs for their immigration statuses. Local governments have reasonably relied on HHS's long-standing interpretation to design and operate programs that maximize their ability to meet the needs of their communities without engaging staff in the burdens of eligibility verification, including training on immigration law.[1]

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[1] For example, one category of immigrant "qualified" to receive federal public benefits is defined thus:

(1) an alien who—

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for—

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).[1]

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; [2]

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

HHS's re-interpretation purports to fundamentally change who is eligible for services without adequately considering grantees' reliance on the existing definition of "Federal public benefit" and the enormous costs associated with such a change. As a result, HHS mandates grantees such as local governments to fill the gap by scrambling to assume additional administrative costs—such as overhauling processes, rewriting contracts, developing policies, and re-training staff—to comply with HHS's new haphazardly-imposed verification requirement. Policies, processes, and training take time to implement; when Congress contemplated public entities implementing a verification regime, it set a two-year period for creating verification systems. 8 U.S.C. § 1642(b). Yet here, HHS arbitrarily requires "immediate" compliance, 90 Fed. Reg. 31,232, 31,238 (July 14, 2025),[2] an impossible standard.

HHS's failure to reasonably consider local governments' interests in its decades-long prior interpretation, *see* 63 Fed. Reg. 41,658 (Aug. 4, 1998), and the related enormous costs of compliance with this changed rule, should lead HHS to rescind the re-interpretation as inadequate and contrary to law. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020) (agency acted unlawfully by failing to take into account affected reliance interests).

2. HHS's "Re-Interpretation" Fails to Consider Unintended Effects

To verify eligibility, local governments will be required to take actions destructive to health and safety systems. HHS's demand for proof of citizenship and immigration papers under its "re-interpreted" verification regime will result in many Americans and

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8 U.S.C. § 1641(c). Front line staff at health clinics and head start programs will need to understand and apply this language to comply with the new guidance. Yet HHS's re-interpretation purports to immediately snap into effect as if it assumes a magical overnight transformation of front line staff into seasoned immigration lawyers. Section 1641's definition of "qualified" immigrants is itself riddled with program-specific exceptions, *see, e.g.*, 8 U.S.C. §§ 1612, 1613.

[2] Approximately three weeks after issuing the notice, HHS added a banner to its press release stating its intent to stay implementation for an additional, but still insufficient, six weeks: "HHS has agreed to stay enforcement and application through September 10, 2025, of the following item: U.S. Department of Health and Human Services, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit,'" 90 Fed. Reg. 31,232 (July 14, 2025) ("HHS PRWORA Notice"). This period will permit the agency to consider, as appropriate, whether to provide additional information about the HHS PRWORA Notice." Dep't Health and Human Servs., "HHS Bans Illegal Aliens from Accessing its Taxpayer-Funded Programs" (July 10, 2025) *available at* https://www.hhs.gov/press-room/prwora-hhs-bans-illegal-aliens-accessing-taxpayer-funded-programs.html (last accessed Aug. 3, 2025).

"qualified" immigrants being turned away from essential services for which they are eligible. The programs newly categorized as federal public benefits are most important to to people with lower-than-average access to documents, including people in crisis, elderly, very low-income people, people who are homeless or at imminent risk of becoming homeless, and people with serious mental illnesses or substance use disorders,[3] yet the revised guidance incorrectly presumes documents such as a passport or a birth certificate are easily available.[4]

Under the guidance, many people will be excluded not because they are ineligible but because HHS has decided to demand citizenship and immigration status documents of people who, because they are in crisis or are poor, are unlikely to have a passport in their pocket or a drawer at home. Residents in desperate need may opt to forgo critical services because of new and onerous barriers to entry. Programs that fall into this wide net HHS has created are services of last resort for many residents – without such interventions, the undersigned localities will be strapped with the effects of lost services. Yet HHS failed to consider this foreseeable impact on the very marginalized communities its programs are required to serve, instead "assum[ing]" that "individuals seeking benefits" - which includes many homeless individuals, people with serious mental illnesses, and very low-income people - would need a mere "9 minutes to demonstrate citizenship or qualified alien status, including time gathering supporting documentation, time completing any paperwork, and time consulting instructions as needed."[5] The absurdity of assuming that people relying on social safety nets have the same access to

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[3] *See, e.g.*, Dep't of Health and Human Servs. "HHS Programs to Address Homelessness" *available at* https://www.hhs.gov/programs/social-services/homelessness/programs/index.html#hrsa (last accessed Aug. 5, 2025) (Community Mental Health Services Block Grant funds "to provide . . . services to adults with serious mental illnesses and to children with serious emotional disturbances"; Projects for Assistance in Transition from Homelessness Grant Program serves "individuals who are at imminent risk of or experiencing homelessness who have a serious mental illness or co-occurring serious mental illness and substance use disorder"; Substance Use Prevention, Treatment, and Recovery Services Block Grant funds target populations such as injection drug users).

[4] Dep't of Health and Human Servs. "Final Regulatory Impact Analysis, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit,'" *available at* https://www.regulations.gov/document/AHRQ-2025-0002-0002 (last accessed Aug. 5, 2025) ("To quantify the time spent on verification of immigration status under this notice, . . . we assume that individuals seeking benefits would spend approximately 9 minutes to demonstrate citizenship or qualified alien status, including time gathering supporting documentation, time completing any paperwork, and time consulting instructions as needed.").

[5] *Id.*

documents as highly resourced, able-bodied, young professionals reveals the capriciousness of the agency's action. The agency blithely concludes that "[t]he Department anticipates that numerous unqualified aliens will no longer receive benefits under Federal funded programs due to this notice," 90 Fed. Reg. at 31,238, while ignoring the numerous citizens and qualified immigrants who similarly will no longer receive benefits due to verification screens purportedly required by the notice. Because this tradeoff lies at the heart of the statutory compromises in PRWORA, the agency must grapple with it here.

Based on our conversations with service providers in our communities, we expect that the cost to add a verification screen will shutter or substantially shrink programs. Many safety net and social services programs operate on thin margins. Maintaining personnel and processes to check and understand the import of immigration documents will reduce the funds available to support program services, potentially below a cost-effectiveness baseline. Diverting money from services to eligibility screening will thus reduce community safety and wellbeing. Yet HHS failed to consider this foreseeable impact on essential health and safety net programs' ability to keep their doors open. Nor did HHS explain why its reinterpretation is justified despite this impact. HHS's failure to consider the harms of its "re-interpretation" on health and safety programs and on their eligible recipients, or to explain its reasoning, should lead HHS to rescind the re-interpretation until it determines a process that will not exclude eligible citizens and immigrants, nor unreasonably increase the costs of compliance, from its programs. *Michigan v. E.P.A.*, 576 U.S. 743, 759 (2015) (federal agencies required to engage in reasoned decisionmaking, including considering cost of compliance).

3. HHS's "Re-interpretation" Failed to Follow the APA's Procedural Requirements

As mentioned above, HHS intends its "re-interpretation" to impact individual rights and obligations by excluding people who were previously eligible for health and safety net services from accessing those services. *See* 90 Fed. Reg. at 31,238 ("The Department anticipates that numerous unqualified aliens will no longer receive benefits under Federally funded programs due to this notice."). Such revision of existing rights and obligations requires HHS to follow the Administrative Procedure Act's notice-and-comment process. 5 U.S.C. § 553. Yet HHS did not publish the notice at least "30 days before its effective date," *id.*, nor provide the required reasoned explanation of

its reasoning, instead providing partial explanation for one program (Head Start) out of the likely[6] dozens affected.

HHS's failure to follow required procedural rules is yet another reason HHS should rescind this improper "re-interpretation." *See Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 85 (D.C. Cir. 2020) ("'vacatur is the normal remedy' for a procedural violation").

CONCLUSION

For all the aforementioned reasons, the undersigned strongly oppose HHS's rescission of the 1998 interpretation and re-interpretation of "Federal public benefit" under PRWORA.

Sincerely,

County of Allegheny, Pennsylvania

City of Baltimore, Maryland

City of Cambridge, Massachusetts

City of Chicago, Illinois

City of Cincinnati, Ohio

City of Columbus, Ohio

City and County of Denver, Colorado

City of Evanston, Illinois

City of Los Angeles, California

Los Angeles County, California

[6] The word "likely" is used because HHS's notice does not explain which services within the affected programs are impacted and even states the inadequate list provided is "not exhaustive" but that HHS may announce "additional programs . . . to be Federal public benefits" in other guidances. 90 Fed. Reg. at 31,237.

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City of Pittsburgh, Pennsylvania

City of Saint Paul, Minnesota

City of Santa Monica, California

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