

Appendix: Eligibility for Public Benefits

If the applicant provide evidence from a federal, state, local, or tribal agency administering a public benefit, as defined in 8 CFR 212.21(b), specifically showing that the applicant does not qualify or would not qualify for such public benefit by virtue of, for instance, the applicant's annual gross household income or prospective immigration status or length of stay, consider assigning greater positive weight.

Qualified Aliens

Generally, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), “qualified aliens” are eligible for federal means-tested benefits after 5 years, are not eligible for “specified federal programs,” and states are allowed to determine whether the qualified alien is eligible for “designated federal programs.”¹ The following table provides a list of immigration categories that are qualified aliens under PRWORA.²

Qualified Aliens under PRWORA

Category	Subject to Public Charge Inadmissibility under 212(a)(4)?
An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA)	Generally no, ³ however, a lawful permanent resident is subject to public charge inadmissibility under INA 212(a)(4) if one of the situations in INA 101(a)(13)(C) applies
An alien who is granted asylum under INA 208	No
A refugee who is admitted to the United States under INA 207	No
An alien who is paroled into the United States under INA 212(d)(5) for a period of at least 1 year ⁴	Yes ⁵

¹ See Title IV of Pub. L. 104-193, 110 Stat. 2105, 2260-77 (Aug 22, 1996).

² See Section 431 of Pub. L. 104-193, 110 Stat. 2105, 2274 (Aug. 22, 1996) (codified at 8 U.S.C. 1641). See Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7105(b)(1).

³ Lawful permanent residents seeking entry into the United States typically are not applicants for admission, and therefore, generally are not subject to [INA 212\(a\)](#), including INA 212(a)(4), but lawful permanent residents described in [INA 101\(a\)\(13\)\(C\)](#), are regarded as seeking admission and generally are subject to inadmissibility grounds.

⁴ Parole is not a category of admission. See [INA 101\(a\)\(13\)\(B\)](#). See [INA 212\(d\)\(5\)](#).

⁵ While an alien paroled into the United States is not subject to an admission determination at the time the decision to parole the alien is made, if an alien who has been paroled into the United States is applying for an immigration benefit for which admissibility is required, for example, adjustment of status, the parolee will be subject to [INA 212\(a\)\(4\)](#) in the context of seeking the subsequent immigration benefit.

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Qualified Aliens under PRWORA

Category	Subject to Public Charge Inadmissibility under 212(a)(4)?
An alien whose deportation is being withheld under INA 243(h) ⁶ or INA 241(b)(3), as amended	No
An alien who is granted conditional entry under INA 203(a)(7) (as in effect before April 1, 1980)	No
An alien who is a Cuban and Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, Pub. L. 96-422, 94 Stat. 1809, 1810 (October 10, 1980)	No

The Trafficking Victims Protection Act of 2000 further provided that an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant⁷ is eligible for benefits and services under any federal or state program or activity funded or administered by any official or agency.⁸ These aliens are generally exempt from the public charge inadmissibility ground.⁹

Federal Public Benefits Designations

With certain exceptions, aliens who were not “qualified aliens,” including nonimmigrants and unauthorized aliens, were generally barred from obtaining federal benefits.¹⁰ In addition to the federal public benefits definitions, PRWORA categorizes the benefits into the following categories:

- Specified federal programs;
- Designated federal programs; and
- Federal means-tested benefits.

The following tables provide a summary of the definition of federal public benefit and the three categories of public benefits under PRWORA as applicable to aliens and qualified aliens.

⁶ As in effect immediately before the effective date of Section 307 of Division C of Pub. L. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996).

⁷ See [INA 101\(a\)\(15\)\(T\)\(ii\)](#).

⁸ See Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7105(b)(1).

⁹ However, while lawful permanent residents seeking entry into the United States typically are not applicants for admission, and therefore, generally are not subject to [INA 212\(a\)](#) (including INA 212(a)(4)), a lawful permanent resident described in [INA 101\(a\)\(13\)\(C\)](#) is regarded as seeking admission and is subject to INA 212(a)(4).

¹⁰ See Section 401(a) of PRWORA, Pub. L. 104-193, 110 Stat. 2105, 2261 (codified at 8 U.S.C. 1611(a)).

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Federal Public Benefit	
<p>Definition 8 U.S.C. 1611(c)(1) and (c)(2)</p>	<p>8 U.S.C. 1611(c)(1)</p> <ul style="list-style-type: none"> • 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 • 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 a person, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States. <p>8 U.S.C. 1611(c)(1) and (c)(2)</p> <p>The definition of federal public benefit does not include the following:</p> <ul style="list-style-type: none"> • 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;¹¹ • Benefits where there is a reciprocal treaty agreement for payment with another country for nonimmigrant aliens authorized to work or aliens admitted as lawful permanent residents; or • Professional license issued to or renewed by a foreign national not physically present in the United States.
<p>Exceptions from the definition 8 U.S.C. 1611(b)</p>	<ul style="list-style-type: none"> • Medical assistance for emergency medical condition.¹² • Short-term, non-cash, in-kind emergency disaster relief. • Public health assistance for immunizations for immunizable diseases and for testing and treatment of symptoms of communicable diseases. • Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) as specified by the Attorney General, 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.¹³

¹¹ 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.

¹² See 42 U.S.C. 1396(v)(3).

¹³ See 66 FR 3613 (Jan. 16, 2001). See 61 FR 45985 (Aug. 30, 1996).

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Federal Public Benefit	
	<ul style="list-style-type: none"> • Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under Title V of the Housing Act of 1949 or any assistance under Section 1926c of Title 7 which the alien is receiving since before August 22, 1996. • Any benefit payable under Title II of the Social Security Act¹⁴ to an alien who is lawfully present¹⁵ in the United States, any benefit if nonpayment of such benefit would contravene an international agreement described in Section 233 of the Social Security Act,¹⁶ any benefit if nonpayment would be contrary to Section 202(t) of the Social Security Act,¹⁷ or any benefit payable under Title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996. • Any benefit¹⁸ relating to the Medicare program to an alien who is lawfully present in the United States¹⁹ with respect to benefits payable under part A of such title,²⁰ who was authorized to be employed with respect to wages attributable to such benefits. • Any benefit payable under the Railroad Retirement Act of 1974²¹ or the Railroad Unemployment Insurance Act²² to an alien who is lawfully present in the United States or to an alien residing outside the United States. • Receipt of benefits on or before August 22, 1996 (including SSI and SNAP (Food Stamps)).
Categories of Aliens Eligible 8 U.S.C. 1611(a)	<ul style="list-style-type: none"> • Qualified aliens
Categories of Aliens Not Eligible 8 U.S.C. 1611(a)	<ul style="list-style-type: none"> • Aliens not listed as qualified aliens

¹⁴ See 42 U.S.C. 401-434.

¹⁵ See [8 CFR 1.3\(a\)](#).

¹⁶ 42 U.S.C. 433.

¹⁷ 42 U.S.C. 402(t).

¹⁸ Benefits payable under Title XVIII of the Social Security Act. See 42 U.S.C. 1395-1395///.

¹⁹ See [8 CFR 1.3\(a\)](#).

²⁰ See 42 U.S.C. 1395c to 1395i-5.

²¹ See 45 U.S.C. 231-231v.

²² See 45 U.S.C. 351-369.

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Specified Federal Program	
<p>Definition 8 U.S.C 1612(a)(3)</p>	<ul style="list-style-type: none"> • SSI²³ • SNAP (Food Stamps)²⁴
<p>Exemption</p>	<ul style="list-style-type: none"> • Qualified aliens eligible after 5 years Certain grandfathering provision for aliens already receiving SSI²⁵ and SNAP²⁶ <p>SNAP (Food-Stamps) specific exemptions:</p> <ul style="list-style-type: none"> • Children under 18.²⁷ • SNAP (Food Stamps) by aliens who were lawfully residing in the United States on August 22, 1996 and were over the age of 65. • SNAP (Food Stamps) Hmong and Highland Laotians tribe members who are lawfully residing in the United States and were members of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era,²⁸ and the spouse, unmarried dependent child, or un-remarried surviving spouse of such persons.
<p>Categories of Aliens Eligible</p>	<ul style="list-style-type: none"> • Lawful permanent residents with 40 Social Security quarters²⁹ • Veterans and active duty military with honorable service lawfully residing in the United States, and their spouses and unmarried dependent children³⁰ • American Indians born in Canada³¹ or who are members of an Indian tribe³² • Aliens who were receiving SSI on August 22, 1996³³ • Aliens who were lawfully residing in the United States on August 22, 1996 and blind or disabled³⁴

²³ See 42 U.S.C. 1381-1383f.

²⁴ See Food Stamp Act of 1977.

²⁵ In addition, there are certain extensions for SSI benefits through fiscal year 2011. See 8 U.S.C. 1612(a)(2)(M).

²⁶ See 8 U.S.C. 1612(a)(2)(D).

²⁷ See 8 U.S.C. 1612(a)(2)(J).

²⁸ As defined in 38 U.S.C. 101.

²⁹ See 8 U.S.C. 1612(a)(2)(B).

³⁰ See 8 U.S.C. 1612(a)(2)(C).

³¹ See 8 U.S.C. 1612(a)(2)(G). See [INA 289](#).

³² See 8 U.S.C. 1612(a)(2)(G). See 25 U.S.C 5304(e) (defining Indian tribe).

³³ See 8 U.S.C. 1612(a)(2)(E).

³⁴ See 8 U.S.C. 1612(a)(2)(F).

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Specified Federal Program	
	<p>The following categories are eligible for benefits within the first 7 years:³⁵</p> <ul style="list-style-type: none"> • Refugee from the time of admission and asylee from the time status was granted; • Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253³⁶ or section 241(b)(3) of such Act, as amended;³⁷ • Cuban and Haitians entrant from the time the status was granted;³⁸ and Amerasians³⁹
Categories of Aliens Not Eligible	<ul style="list-style-type: none"> • Qualified aliens and all other aliens

PRWORA Public Benefits Summary

Designated Federal Programs ⁴⁰	
Definition 8 U.S.C. 1612(b)	<ul style="list-style-type: none"> • TANF⁴¹ • Social Services Block Grant⁴² • Medicaid⁴³
Categories of Aliens Eligible	<p>States are authorized to determine the eligibility of an alien who is a qualified alien (as defined in 8 U.S.C. 1641) for any designated federal program.</p> <p>The following categories are eligible for designated federal programs without a time limit:</p>

³⁵ See 8 U.S.C. 1612(a)(2)(A).

³⁶ As in effect immediately before the effective date of Section 307 of Division C of Pub. L. 104-208 [110 Stat. 3009-546 (Sept. 30, 1996)].

³⁷ 8 U.S.C. 1231(b)(3).

³⁸ As defined in Section 501(e) of the Refugee Education Assistance Act of 1980.

³⁹ See Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as contained in Section 101(e) of Pub. L. 100-202, 101 Stat. 1329, and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. 100-461, 102 Stat. 2268, as amended).

⁴⁰ An alien who was lawfully residing in the United States and receiving benefits on August 2, 1996, would have continued to receive benefits until January 1, 1997. In addition, an alien who was receiving SSI would still be eligible to receive Medicaid. See 8 U.S.C. 1612(b)(2)(F).

⁴¹ See 42 U.S.C. 601-619.

⁴² See 42 U.S.C. 1397-1397h.

⁴³ See 42 U.S.C. 1396 to 1396w-5.

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Designated Federal Programs⁴⁰	
	<ul style="list-style-type: none"> • Lawful permanent residents with 40 Social Security quarters⁴⁴ • Veterans and active duty personnel lawfully residing in the United States, with a discharge of honorable service who fulfill minimum active-duty service requirements, and their spouse and unmarried dependent child or unmarried surviving spouse⁴⁵ • American Indian born in Canada or who is a member of an Indian tribe would still be eligible for Medicaid⁴⁶ <p>Medicaid, the following categories are eligible for benefits within the first 7 years and Social Services Block Grants and TANF for the first 5 years:⁴⁷</p> <ul style="list-style-type: none"> • Refugee from the time of admission and asylee from the time status was granted; • Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253⁴⁸ or section 241(b)(3) of such Act, as amended;⁴⁹ • Cuban and Haitians entrant from the time the status was granted;⁵⁰ and • Amerasians⁵¹
Categories of Aliens Not Eligible	Aliens not listed as qualified aliens

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Federal Means-Tested Benefits	
Definition 8 U.S.C. 1613	No statutory definition under PRWORA, however, some agencies have defined which benefits would be considered means-tested. ⁵²

⁴⁴ See 8 U.S.C. 1612(b)(2)(B).

⁴⁵ See 8 U.S.C. 1612(b)(2)(C).

⁴⁶ See 8 U.S.C. 1612(b)(2)(E).

⁴⁷ See 8 U.S.C. 1612(b)(2)(A).

⁴⁸ As in effect immediately before the effective date of section 307 of division C of Pub. L. 104-208, 110 Stat. 3009.

⁴⁹ 8 U.S.C. 1231(b)(3).

⁵⁰ As defined in section 501(e) of the Refugee Education Assistance Act of 1980.

⁵¹ See Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in Section 101(e) of Pub. L. 100-202, 101 Stat. 1329, and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989, Pub. L. 100-461, 102 Stat. 2268, as amended).

⁵² See *Federal Means-Tested Public Benefits*, 63 FR 36653 (July 7, 1998).

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Federal Means-Tested Benefits	
Categories of Aliens Eligible	<p>In addition, qualified aliens eligible for all other means-tested benefits after 5 years of entry.</p> <p>However, all aliens are eligible for the following programs:⁵³</p> <ul style="list-style-type: none">• Emergency Medical assistance 8 U.S.C. 1611(b)(1)(A)• Short-term, non-cash, in-kind emergency disaster relief.• National School Lunch Act• Child Nutrition Act of 1966• Public health assistance for immunizations• Payments for foster care and adoption• Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)• Programs of student assistance the Higher Education Act of 1965• Means-tested programs under the Elementary and Secondary Education Act of 1965• Benefits under the Head Start Act• Benefits under title I of the Workforce Innovation and Opportunity Act• Food Stamps for children under 18 <p>In addition, the following aliens are eligible for federal means-tested benefits:⁵⁴</p> <ul style="list-style-type: none">• Refugees and asylees;• Aliens whose deportation was withheld under section 243(h) of the Act, 8 U.S.C. 1253;• Cuban and Haitian entrants;⁵⁵• Amerasians;⁵⁶• Veterans lawfully residing in the United States, with a discharge of honorable service who fulfill minimum active-duty service requirement, and active duty personnel lawfully residing in the United States, and their spouse and unmarried dependent child or unmarried surviving spouse;⁵⁷ and• American Indian born in Canada or who is a member of an Indian tribe⁵⁸

⁵³ See 8 U.S.C. 1613(c).

⁵⁴ See 8 U.S.C. 1613(b)(1).

⁵⁵ See Section 501(e) of the Refugee Education Assistance act of 1980.

⁵⁶ See 8 U.S.C. 1612(a)(2)(A)(i)(V).

⁵⁷ See 8 U.S.C. 1613(b)(2).

⁵⁸ See 8 U.S.C. 1613(d).

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Federal Means-Tested Benefits	
Categories of Aliens Not Eligible	Aliens who enter the United States on or after August 22, 1996, not listed as qualified aliens

Public Benefits Exempt under PRWORA

Although PRWORA provided a broad definition of public benefits that only qualified aliens are eligible to receive,⁵⁹ it also made certain public benefits available even to non-qualified aliens.⁶⁰ Congress excluded certain benefits, such as contracts, professional licenses, and commercial licenses from the “federal public benefit” definition.⁶¹ In addition, Congress further provided that the following public benefits are available to all aliens, regardless of whether a person is a qualified alien:⁶²

- Medical assistance under Title XIX of the Social Security Act⁶³ (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition⁶⁴ of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under Title IV of the Social Security Act,⁶⁵ supplemental security income benefits under Title XVI of the Social Security Act,⁶⁶ or a state supplementary payment).
- Short-term, non-cash, in-kind emergency disaster relief.⁶⁷
- Public health assistance (not including any assistance under Title XIX of the Social Security Act)⁶⁸ 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.

⁵⁹ See Section 401(c) of Pub. L. 104-193, 110 Stat. 2105, 2262 (codified as amended at 8 U.S.C. 1611(c)). Only qualified aliens may be eligible for certain benefits. See 8 U.S.C. 1641.

⁶⁰ See 8 U.S.C. 1611(b).

⁶¹ See 8 U.S.C. 1611(c)(2).

⁶² See 8 U.S.C. 1611(b).

⁶³ See 42 U.S.C. 1396 et seq.

⁶⁴ As defined in Section 1903(v)(3) of the Social Security Act, 42 U.S.C. 1396b(v)(3).

⁶⁵ See 42 U.S.C. 601 et seq.

⁶⁶ See 42 U.S.C. 1381 et seq.

⁶⁷ Such relief would include a range of services and benefits provided by the Federal Emergency Management Agency and other agencies. For instance, it would include the Disaster Supplemental Nutrition Assistance Program (D-SNAP), which “gives food assistance to low-income households with food loss or damage caused by a natural disaster.” See DHS, Disaster Assistance.gov, [Disaster Supplemental Nutrition Assistance Program \(D-SNAP\)](#).

⁶⁸ See 42 U.S.C. 1396 et seq.

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- 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.
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under Title V of the Housing Act of 1949,⁶⁹ or any assistance under Section 1926c of Title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

These benefits⁷⁰ were further clarified by the Department of Justice and some of the agencies that administer these public benefits. On January 16, 2001, the Department of Justice published a notice of final order, "Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation,"⁷¹ which indicated that PRWORA does not preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services programs, services, or assistance. In addition, the notice provided for a three-part test in identifying excluded benefits and services for the protection of life and safety. Specified programs must satisfy all three prongs of this test:

- The government-funded programs, services, or assistance specified are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; do not condition the provision, amount, or cost of the assistance on the individual recipient's income or resources; and serve purposes of the type described in the list below, for the protection of life or safety.
- The community-based programs, services, or assistance are limited to those that provide in-kind (non-cash) benefits and are open to persons needing or desiring to participate without regard to income or resources. Programs, services, or assistance delivered at the community level, even if they serve purposes of the type described, are not within this specification if they condition on the individual recipient's income or resources: (a) the provision of assistance; (b) the amount of assistance provided; or (c) the cost of the assistance provided on the individual recipient's income or resources.

⁶⁹ See 42 U.S.C. 1471 et seq.

⁷⁰ Described in 8 U.S.C. 1611(b).

⁷¹ See *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 FR 3613 (Jan. 16, 2001). See *Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 61 FR 45985 (Aug. 30, 1996).

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- Included within the specified programs, services, or assistance determined to be necessary for the protection of life or safety are the following types of programs:
 - Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;
 - Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
 - Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
 - Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
 - Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety;
 - Activities designed to protect the life or safety of workers, children and youths, or community residents; and
 - Any other programs, services, or assistance necessary for the protection of life or safety.