VAWA BENEFITS FACT SHEET

FEDERAL LAW

This fact sheet is intended to provide organizations with an overview of immigration eligibility for public benefit, specifically when immigrant survivors of domestic violence can qualify.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter PRWORA).¹

The Welfare Reform Law, as PRWORA is commonly referred to, eliminated or severely limited immigrants’ access to certain public benefits. The Welfare Reform Law also left it up to the States’ discretion to determine whether immigrants can qualify for State and local public benefits. The Welfare Reform Law also made some immigrants eligible for public benefits that weren’t eligible before, including battered immigrants.²

PRWORA distinguished “qualified” immigrants from “non-qualified” immigrants. Those immigrants who meet the definition of a qualified immigrant may be eligible for certain benefits. However, PRWORA further established a distinction between qualified immigrants by the date in which they entered the U.S. This distinction meant that those who entered before the designated date were eligible for more benefits than those who entered after the designated date. Furthermore, PRWORA established a 5 year bar to certain benefits for particular classes of qualified immigrants. In addition, PRWORA established strict rules regarding sponsor deeming that make it more difficult for certain qualified immigrants to access benefits.³

Despite these restrictions, PRWORA provided some exemptions for certain qualified immigrants as well as the “40 qualifying Quarters” exemption. These exemptions help some qualified immigrants to overcome the 5 year bar and the income requirements.⁴

While many different immigration statuses are included in the Welfare Reform Law, this fact sheet will focus on battered immigrants and VAWA recipients. For specific information regarding other qualified immigrants, refer to the full text of PRWORA.

² See also the NIWAP Washington College of Law library; Public Benefits Access for Battered Immigrant Women and Children found at http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PubBens_for_IMM_Women_and_Children-MANUAL-BB.pdf
³ Id.
⁴ Id.
BATTERED IMMIGRANTS

Certain survivors of domestic violence are considered “Qualified” Immigrants under PRWORA, specifically:

- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or certain family-based immigrant petitions before CIS; and
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident other parent, who have pending or approved VAWA cases or certain family-based petitions before CIS.5

Requirements for Establishing Battered Immigrant Spouses and Children as “Qualified Immigrants”6:

1. The U.S. Citizen and Immigration Services (CIS) or the Executive Office for Immigration Review (EOIR):
   - Has approved a self-petition or family-based visa (filed by the spouse or parent) for the applicant; OR
   - Has granted cancellation of removal; OR
   - Has granted suspension of deportation; OR
   - Has found that the applicant’s pending petition or application sets forth a prima facie case for such benefit or relief; AND

2. The immigrant or the immigrant’s child has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or LPR spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household; AND

3. There is a substantial connection between the battery or extreme cruelty and the need for public benefits sought; AND

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5 See PRWORA § 431(b), 8 U.S.C. § 1641(b) http://www.law.cornell.edu/uscode/text/8/1641

4. The battered immigrant or child no longer resides in the same household as the abuser.

**Date of Entry to the U.S.**

- Any battered immigrant, who entered the U.S. on or after August 22, 1996 AND becomes a “qualified” immigrant is barred from receiving federal-means tested benefits for the first 5 years in “qualified” immigrant status. However, they are eligible for federal public benefits though the applicant may still be subject to sponsor deeming rules.\(^7\)

**Bars to Accessing Benefits**

- **5 year bar** - a temporary bar established under PRWORA that prevents qualified immigrants from receiving federal means-tested benefits for a period of 5 years after obtaining qualified immigrant status

- **Indefinite bar** - applies to qualified and non-qualified immigrants who entered the U.S. after August 22, 1996 and indefinitely bars them from receiving SSI.

- **Optional State Bar** - There are 2 types of State bars
  - First, States can deny TANF, Medicaid, and Title XX Social Service Block grants to qualified immigrants regardless of whether they have overcome the 5 year bar;
  - Second, States can override the bar that prevents non-qualified aliens, including undocumented immigrants, from receiving state and local public benefits.\(^8\)

**Exemptions to the Bars**

Under the federal laws, certain immigrants are exempt from the bars.\(^9\) Unfortunately, battered immigrants and VAWA recipients are NOT generally exempt from the 5 year bar. This means that unless the state has expanded the eligibility requirements, VAWA recipients would not be eligible for many public benefits.

**Sponsor Deeming Rules**

- Requires the benefits agency to consider the sponsor’s income and assets when determining the immigrant’s income eligibility for public benefits.\(^10\)

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\(^7\) See [http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4_2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf](http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4_2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf)

\(^8\) 8 U.S. CODE § 1622 [HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/8/1622](HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/8/1622)


\(^10\) INA § 212(a)(4)(C) & (D); 8 U.S.C. § 1182(a)(4)(C)&(D); INA § 213A(a)(1); 8 U.S.C. § 1183a(a)(1); See also 8 U.S. CODE § 1631 FOUND AT [HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/8/1631](HTTP://WWW.LAW.CORNELL.EDU/USCODE/TEXT/8/1631)
However, IIRAIRA created exemptions to this rule for Qualified battered immigrant spouses and children\textsuperscript{11}

40 qualifying Quarters Exemption:

- Qualified immigrants that can show 40 quarters of employment (10 years) can overcome the 5 year and indefinite bars
- A qualifying quarter of work = a 3 month work period with enough income earned to qualify as a Social Security quarter;
- The worker could not have received public benefits during the work quarter;
- A spouse’s work quarters can be counted toward the 40 qualifying quarters so long as the qualified immigrant is still married to the spouse;
- A parent’s work quarters prior to the applicant’s 18\textsuperscript{th} birthday can be counted toward the 40 qualifying quarters;
- Work done in the U.S. without authorization can be counted toward the 40 quarters but applicant must consider the tax and immigration risks when disclosing unauthorized work

\begin{center}
\textbf{BREAKDOWN OF FEDERAL, STATE, AND LOCAL BENEFITS}
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This section addresses the different categories of public benefits and the immigrant eligibility requirements for each.

\textbf{Federal Benefits:}

There are 3 categories Federal benefits\textsuperscript{12}:

1. Federal Means-tested public benefits:
   - generally open to qualified immigrants, with restrictions
2. Federal Public benefits:
   - open to all qualified immigrants without limitation
3. Other Federally Funded Social Service Programs:
   - open to all immigrants regardless of status

\textbf{Federal Means-tested Public Benefits:}

- "applies only to mandatory spending programs in which eligibility for the program’s benefits, or the amount of such benefits, or both, are determined on the basis of the

\textsuperscript{11} 8 U.S.C. § 1631(f) http://www.law.cornell.edu/uscode/text/8/1631 See also http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf
\textsuperscript{12} http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf

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income, resources, or financial need of the individual, household, or family unit seeking the benefit. \(^{13}\)

Federal Means-Tested Public Benefits include the following programs.

<table>
<thead>
<tr>
<th>Program</th>
<th>Fed. Agency</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid</td>
<td>HHS</td>
<td>5 year bar applies</td>
</tr>
<tr>
<td>TANF</td>
<td>HHS</td>
<td>5 year bar applies</td>
</tr>
<tr>
<td>Food Stamps</td>
<td>USDA</td>
<td>5 year bar applies</td>
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<tr>
<td>SSI</td>
<td>SSA</td>
<td>Entered before 8/22/1996 And meets exemption</td>
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**Federal Public Benefits:**

As defined under the Welfare Act, federal public benefits include:

- grants, contracts, loans, and professional or commercial licenses provided by, or funded by a U.S. agency;
- benefits for retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, and unemployment, provided by or funded by a U.S. agency

Programs are only considered federal public benefits when payments are made or assistance is provided directly to:

- an individual;
- a household; or
- a family eligibility unit. \(^{14}\)

Federal Public Benefits Available to ALL Qualified Immigrants (No restrictions) and include the following:

- Administration on Developmental Disabilities (direct services only)
- Child Care and Development Fund
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low-Income Home Energy Assistance Program (LIHEAP)
- Medicare


\(^{14}\) See [http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and Children-MANUAL-BB.pdf](http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and Children-MANUAL-BB.pdf)
• Postsecondary Education Loans and Grants
• Public and Assisted Housing
• Refugee Assistance Programs
• Section 8 Subsidized Housing
• State Children’s Health Insurance Program (CHIP)
• Title IV Foster Care and Adoption Assistance Payments
• Title XX Social Services Block Grant Funds

Federally Funded Social Services:

Social service programs may or may not be funded by federal dollars. This includes programs that otherwise might meet the definition of “federal public benefits” but were exempted by PRWORA.15 These services are available to all immigrants including undocumented immigrants.

Federally Funded Social Services Include16:

• Emergency Medicaid;
• Disaster Relief Programs (short term, in-kind);
• Public Health assistance for immunizations and testing and treatment of communicable diseases;
• Programs and services at the community level necessary for the protection of life and safety designated by the Attorney General;
• Programs for housing or community development assistance to the extent that the immigrant is receiving such assistance on August 22, 1996;
• School lunch and breakfast programs
• All services provided by non-profit, charitable organizations are exempt from of immigration status verification regardless if they receive federal, state or local funding. These agencies do not have to verify immigration status but if another agency who is required to verify immigration status informs the non-profit organization of the individual’s non-qualified immigrant status then the non-profit agency must use other funding sources to provide services to that individual.
• Attorney General’s list of services available to all immigrants:
  o Crisis counseling and intervention;
  o Child protection services;
  o Adult protective services;

15 See PRWORA § 401(b), 8 U.S.C. § 1611(b).
16 See http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.2_PB_BB-PublBens_for_Imm_Women_and_Children-MANUAL-BB.pdf)
- Violence and abuse prevention;
- Victims of domestic violence or other criminal activity;
- Treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused or abandoned children;
- Programs to help individuals during adverse weather conditions;
- Soup kitchens;
- Community food banks;
- Senior nutrition programs
- Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life an safety;
- Any other program, service, or assistance necessary for the protection of life or safety

**Special Note on HUD-Funded Programs:**

**Emergency Shelter and Transitional Housing (for up to two years):**

- Are available to **all immigrants** regardless of status.

**Public Housing and Section 8 Programs:**

- At least one person in the household must be eligible based on his or her immigration status to reside in the housing (the eligible person may be a minor child)
- Household members ineligible for housing assistance based on their immigration status may live in an assisted unit, but the household’s subsidy will be prorated, resulting in a higher rent
- Immigration documents will be verified for current tenants and new applicants, but not for household members who do not claim eligibility based on immigration status.\(^{17}\)

**STATE AND LOCAL PUBLIC BENEFITS**

PRWORA limits the State’s ability to provide public benefits to undocumented or non-qualified immigrants. Under PRWORA, each individual state legislature must pass a law specifically authorizing immigrant access to benefits. States cannot rely on pre-existing laws; they must pass a post August 22, 1996 new law authorizing immigrant access.\(^{18}\)

\(^{17}\) See [http://www.nilc.org/guideupdate.html](http://www.nilc.org/guideupdate.html)

\(^{18}\) PRWORA § 411(d), 8. U.S.C. § 1621(c)
State Public Benefits\textsuperscript{19}:

- Are benefits provided by an agency of a state or local government to an individual, household or family eligibility unit.
- This includes a grant or loan, a contract, professional or commercial license, retirement benefits, welfare benefits, health benefits, disability benefits, public or assisted housing, postsecondary education, food assistance, unemployment benefits or any similar benefits.

Note: state public benefits and federal public benefits are mutually exclusive. A program can either be a state public benefit or a federal public benefit but cannot be both.

Illinois Public Benefits:

VAWA recipients are eligible for the following benefits in Illinois regardless of the date they entered:

- TANF (Temporary Assistance for Needy Families)\textsuperscript{20}
- MEDICAID\textsuperscript{21}
- ALL KIDS
- Food Stamps, (adults subject to the 5 year bar)*\textsuperscript{22}
- WIC
- School lunches and breakfast
- Title IV Federal Student Grants and Loans
- Child Care Assistance

VAWA recipients who entered the U.S. before 8/22/1996 are eligible for:

- State-funded SSI Replacement Programs if they:
  - Were not receiving federal SSI on 8/22/1996;
  - Are 65 or older; AND
  - Are determined ineligible for federal SSI because they do not have a disability;
  - Deeming requirements may apply
- Illinois Aid to the Aged, Blind or Disabled if they:
  - Are 65 or older;
  - Were lawfully present in the U.S. on 8/22/1996; AND

\textsuperscript{19} PRWORA § 411(c)(1), 8. U.S.C. § 1621(c)(1)
\textsuperscript{20} See http://www.nilc.org/guide_tanf.html
\textsuperscript{21} See http://www.nilc.org/guideupdate.html
\textsuperscript{22} See Farm Security and Rural Investment Act of 2002 ("2002 Farm Bill"), http://www.nilc.org/children-foodstamps-iru03.html; See also Summary of the USDA guidance on implementation of immigrant food stamp rules http://www.nilc.org/foodnutiru03.html
Have been determined “not disabled” by Social Security

*NOTE: While qualified immigrant children are not subject to the 5 year rule, qualified immigrant adults are subject to the 5 year rule. Thus, a VAWA self-petitioner who has no children will not be eligible for food stamps until she has been in qualified immigrant status for 5 years.

States can elect to provide food assistance to non-qualified immigrants and some states have done this through State-Funded Food Assistance Programs. To see a list of states that provide this assistance see http://www.nilc.org/state_food.html

CONCLUSION

Battered spouses and children are eligible for a variety of federal, state, and local benefits. However, some restrictions do apply and the eligibility varies by state as states have the authority to expand benefit eligibility to immigrants not otherwise eligible under federal law.