



PRWORA and the CARES Act: What's the Prospective Power of a "Notwithstanding" Clause?

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Which categories of non-U.S. nationals (aliens) are eligible for the student financial aid, unemployment compensation, and other benefits authorized by the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#)? Particularly in the case of student financial aid, the question has produced debate and controversy. The CARES Act itself is mostly silent about alien eligibility. The legal debate centers upon a [provision](#) from the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, which renders many aliens ineligible for federal public benefits. PRWORA says that its restriction applies "notwithstanding any other provision of law." What power does that phrase have to limit eligibility for the benefits created 24 years later in the CARES Act?

CARES Act Background

The list of federally funded benefits that the CARES Act created in response to the Coronavirus Disease 2019 (COVID-19) pandemic is [long](#). Major examples include the one-time [recovery rebate](#) (providing a maximum payment of \$1,200 for individuals or \$2,400 for married couples, with a \$500 supplement per qualifying child); the [Paycheck Protection Program](#); federally funded [unemployment benefits](#) such as Federal Pandemic Unemployment Compensation (FPUC), which boosts weekly compensation by \$600, and Pandemic Unemployment Assistance (PUA), which provides benefits to self-employed individuals and others not eligible for other types of unemployment compensation; and emergency financial aid for higher education students through the [Higher Education Emergency Relief Fund \(HEERF\)](#).

For the recovery rebates, Congress expressly denied eligibility to "[nonresident aliens](#)" and people without social security numbers. (There is ongoing [litigation](#) about the constitutionality of a sub-provision that bars some mixed-status couples from receiving the rebates.) For the other benefit types, however, Congress did not explicitly address the eligibility of aliens in the CARES Act itself. Some of the benefit provisions restrict eligibility or use of funds according to other criteria. People able to [telework](#) cannot receive PUA, for example, and universities cannot use HEERF funds for certain "[capital outlays](#)." But

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aside from the recovery rebate provisions, nothing in the CARES Act directly restricts eligibility for a benefit by immigration status.

PRWORA

PRWORA complicates matters. Enacted in 1996, the law sought in relevant part to impose [uniform restrictions](#) on alien access to a broad array of federal benefits. The key provision is codified at [8 U.S.C. § 1611\(a\)](#) and states that “notwithstanding any other provision of law . . . an alien who is not a ‘qualified alien’ . . . is not eligible for any Federal public benefit.” (PRWORA has many other features not relevant here, including special eligibility [rules](#) for major federal programs such as Medicaid and default restrictions on [state and local benefits](#).) The term “qualified alien” is [defined](#) to include only eight categories of aliens—[lawful permanent residents](#), [refugees](#), [asylees](#), and some other groups. “Federal public benefit” is [defined](#) expansively to cover a range of benefits that are federally funded or provided by federal agencies, including grants, loans, postsecondary education benefits, and unemployment benefits, to name only the most relevant types for CARES Act purposes. (The definition does not explicitly encompass tax credits, which seems to explain why the IRS has never taken the position that § 1611 restricts eligibility for tax credits, including CARES Act recovery rebates.)

The upshot of § 1611 is to bar non-qualified aliens, including recipients of [Deferred Action for Childhood Arrivals](#) (DACA) and holders of [Temporary Protected Status](#) (TPS), from receiving federal public benefits. This bar has some exceptions spelled out in PRWORA and elsewhere. Non-qualified aliens [may receive](#) emergency medical treatment funded by Medicaid and non-cash emergency disaster relief, for example. But the exceptions generally do not enable non-qualified aliens to receive federal public benefits in the form of cash, other than under some specialized rules for retirement, disability, and railroad worker benefits.

Interpretive Difficulty: Retrospective Application of PRWORA

The proper reach of PRWORA’s “notwithstanding” clause in the qualified alien provision of § 1611 has long generated confusion. Until recently, that confusion was mainly about the *retrospective* application of the “notwithstanding” clause—in other words, about its application to conflicting eligibility rules in pre-existing statutes. Before PRWORA, a plethora of more specific federal statutes established alien eligibility rules for [particular types of federal benefits](#). PRWORA imposed the overarching “qualified alien” restriction but did not expressly repeal the more specific, pre-existing eligibility rules.

For example, the Federal Unemployment Tax Act (FUTA) governs most forms of [unemployment insurance](#). Since 1977, FUTA has contained [immigration-related provisions](#) that generally render aliens ineligible only if they lack authorization to work in the United States. Many non-qualified aliens, including DACA recipients and TPS holders, may possess [work authorization](#). PRWORA did not expressly repeal the FUTA provisions, but it did list “unemployment benefits” in its definition of “federal public benefits” (making non-qualified aliens ineligible for such benefits under § 1611(a) when they are federally funded or provided by federal agencies.) Does the “notwithstanding” clause in § 1611 [override](#) FUTA and render non-qualified aliens with work authorization ineligible for federally funded unemployment insurance? Or does FUTA, as the more specific statute, continue to govern the eligibility of aliens for the unemployment insurance programs that it authorizes? The Department of Labor (DOL) [stated in 1998](#) that PRWORA governed the federally funded benefits, but since then it does not appear to have taken up the issue. In practice, state labor agencies [do not seem](#) to apply the PRWORA rules when delivering federally funded benefits during periods of high unemployment.

Similar confusion exists about whether PRWORA overrides pre-existing eligibility rules in the [Higher Education Act](#) (HEA) and the [Housing and Community Development Act](#). The U.S. Court of Appeals for

the Ninth Circuit, for instance, has [left open](#) the question whether PRWORA displaces alien eligibility rules for federal student aid programs in § 484 of the HEA. The uncertain interplay between PRWORA and alien eligibility rules for specified housing programs in Section 214 of the Housing and Community Development Act has led to [calls for clarification](#) on Capitol Hill.

New Interpretive Difficulty: Prospective Application of PRWORA to the CARES Act

After Congress enacted the CARES Act, this confusion shifted to the *prospective* application of the “notwithstanding” clause—in other words, its application to new benefit laws. Some commentators expressed [doubts](#) about whether PRWORA barred non-qualified aliens from receiving FPUC and PUA (two of the new unemployment benefits). And some universities [questioned](#) whether PRWORA barred them from using HEERF funds to provide emergency financial aid grants to students who are DACA recipients. This latter issue came to the fore when the Department of Education (ED) took the position in guidance—first issued in [April](#), and since reiterated in [May](#) and in a June 2020 [interim final rule](#)—that DACA recipients and some other categories of aliens are not eligible for the grants. Two lawsuits have ensued. Federal district courts have thus far reached conflicting decisions in these cases about whether PRWORA restricts the funds. A court in California [held](#) in a preliminary ruling that PRWORA likely does not apply to HEERF and blocked ED from taking action inconsistent with that ruling against California community colleges while the case continues. In contrast, a court in Washington State [held](#) at summary judgment (a more advanced stage of the litigation) that PRWORA restricts the HEERF grants. These cases remain ongoing. (ED also argues in the guidance and the lawsuits that the immigration-related restrictions in § 484 of the HEA apply to the HEERF grants, even though the HEERF program does not fall under the HEA. Both courts rejected the HEA argument in preliminary rulings, leaving the PRWORA issue to take on heightened importance.)

The salient issue in the cases, at least with respect to PRWORA, is whether the CARES Act overrides PRWORA by implication or otherwise overcomes its restrictions. Some ([but not all](#)) jurists might agree that the HEERF grants to students constitute “federal public benefits” within the plain language of the [PRWORA definition](#). The definition encompasses federally funded “grants” and also federally funded “postsecondary education” benefits. As the Department of Justice has [explained](#), the definition encompasses these types of federally funded benefits even when a non-federal entity, using monies received from the federal government, delivers the benefits to individuals. But the conclusion that HEERF grants are “federal public benefits,” even if correct, does not settle the question of whether PRWORA restricts eligibility for the grants. Congress can override PRWORA’s application to a particular benefit in new legislation and has [done so in the past](#). While the CARES Act does not address PRWORA or alien eligibility expressly, it allocates HEERF funds to institutions based on their [enrollment of full-time students](#), without excluding any students from the calculation based on immigration status. The CARES Act also places some [restrictions](#) on how institutions may use the funds, but does not specify any immigration-related restrictions.

Do these CARES Act provisions establish that Congress did not intend PRWORA to restrict the HEERF grants? Courts generally disfavor interpreting statutes to repeal earlier statutes by implication, unless “[the earlier and later statutes are irreconcilable](#).” Thus, a central question for the courts in these cases is whether the HEERF provisions in the CARES Act can co-exist with PRWORA—whether, for example, the allocation of funds to an institution based on the enrollment of some non-qualified alien students is “irreconcilable” with a prohibition on such students receiving grants paid out from the funds.

Alternatively, leaving aside the question of an implied repeal, one might argue that PRWORA’s “notwithstanding” clause simply has [limited power](#) to constrain later statutes, especially when the later statute is more specific than PRWORA and pursues an objective much different than PRWORA’s. Under

this view, the CARES Act need not repeal PRWORA to make HEERF grants available to non-qualified aliens, because the CARES Act responds to an “unprecedented national emergency” (to use the words of the California court) and does not fall within the range of laws that Congress intended to be governed by PRWORA’s notwithstanding clause. This argument relies on Ninth Circuit precedent for the proposition that “the phrase ‘notwithstanding any other law’ is not always construed literally.”

The district courts are breaking new ground on these questions. There is little existing authority on PRWORA’s prospective application to new federal programs or, more specifically, on what kind of language or legislative context suffices to render the “qualified alien” rule inapplicable absent express repeal. The California court *reasoned* in its preliminary ruling that the HEERF grants are not “federal public benefits” and also that language in the CARES Act, particularly the funding allocation formula, indicates that Congress did not intend to disqualify students based on immigration status. This CARES Act language “take[s] priority” over PRWORA, the court concluded. The Washington court, in contrast, held that the HEERF grants are federal public benefits and that the CARES Act *does not demonstrate* a sufficiently clear congressional intent to override PRWORA, meaning that the qualified alien restriction applies to the grants.

Litigation does not appear to have arisen over PRWORA’s applicability to other CARES Act benefits, but more potential issues lurk. The labor agency in the Commonwealth for the Northern Mariana Islands has *taken the position* that PRWORA bars non-qualified aliens from receiving PUA and FPUC. Thus far, this position appears to be an outlier; there is no indication that other U.S. jurisdictions have followed suit. With respect to business loans funded by the Paycheck Protection Program, the Small Business Administration (SBA) has not said whether PRWORA applies, yet SBA guidance imposes a “qualified alien” requirement on federally funded disaster loans for alien-owned business entities. Even if these mostly dormant PRWORA issues do not flare up before CARES Act benefits lapse, they could re-emerge under any new stimulus legislation that Congress might enact during the pandemic.

Considerations for Congress

For Congress, probably the most important thing to know about the legal principles that address whether PRWORA’s “notwithstanding” clause governs new benefit types, such as those in the CARES Act, is that the principles do not deliver clear answers. It is possible that the HEERF litigation will clarify the principles. In the meantime, if Congress wants to know with certainty whether PRWORA will govern alien eligibility for new benefits at the time of enactment, it could (1) address PRWORA expressly in the new legislation; (2) establish clear rules for alien eligibility in the new legislation that conflict irreconcilably with PRWORA; or (3) both. An example of the third, combined approach is the *Children’s Health Insurance Program Reauthorization Act of 2009*, which expressly overrides PRWORA to allow states to provide Medicaid coverage to some pregnant women and children who are “lawfully residing” in the United States (even if they are not “qualified aliens”). An example of the second, implied approach is the Affordable Care Act of 2010, which does not override PRWORA expressly but does extend eligibility to “lawfully present” aliens, a *more expansive* category than “qualified aliens” under PRWORA. If Congress takes neither approach and instead remains silent about alien eligibility when creating new benefits, agencies and courts will likely hash out whether PRWORA applies. The outcome of this process is difficult to predict and may not align with congressional intent.

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