Who Benefits?

Considerations for Education Leaders regarding Immigrants' Access to "Public Benefits"

Mario Cardona & Dan Gordon | September 9, 2025 (*updated September 12, 2025*)

The Trump Administration's immigration policies reflect a goal of restricting both legal and unauthorized immigration through heightened enforcement,[1] narrowed access to federal benefits and humanitarian protections,[2] and increased military, state, and local involvement in immigration control.[3] The expansiveness of these efforts carries significant consequences for all learners, from those in Head Start classrooms to college auditoriums. The cumulative effect may fundamentally alter the conditions under which students learn—posing particular challenges not only in communities with large immigrant populations but also communities of color and those who do not have a ready ability to verify their immigration status.

The Administration recently took significant action to further narrow immigrants' access to federal benefits, including some that have been available to children and students for decades. In early July, the Administration announced new federal interpretations by five agencies of what constitutes a federal "public benefit" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, sometimes referred to as "the 1996 welfare law").[4]

The purpose of the brief is to inform education leaders working across systems (from early childhood through higher education) about:

- ➢ changes in the interpretation of what constitutes a "federal public benefit" under PRWORA,
- ➢ how these recent interpretations depart from prior agency guidance,
- ➢ the legal and practical challenges in implementing the Administration's new interpretations, and
- ➢ recommendations for systems leaders as they seek to continue to provide programs and services to children, students, and families under rapidly changing legal and policy contexts.

Education leaders should, of course, comply with binding federal law, including all applicable statutes and legal precedents. However, they should avoid rushing to implement these reinterpretations, which are the subject of active litigation described in the text box below.[5]

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[1] Protecting the American People Against Invasion, Exec. Order No. 14159 (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/.

[2] Ending Taxpayer Subsidization of Open Borders, Exec. Order No. 14218 (Feb. 19, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/ending-taxpayer-subsidization-of-open-borders/.

[3] Declaring a National Emergency at the Southern Border of the United States, Proclamation No. 10886 (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/.

[4] The five agencies (with hyperlinks to their new guidance statements) include the U.S. Departments of Education, Health & Human Services, Justice, Labor, and Agriculture.

[5] Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided in this brief is not legal advice and its receipt does not constitute an attorney-client relationship. Given the pace of action, this brief could be outdated quickly; the information is now current as of 10:00 a.m. ET. on September 12th.

On July 21, 2025, twenty-one state attorneys general filed a lawsuit in a Rhode Island federal court challenging the reinterpretations of "federal public benefits" by HHS, USED, and DOL and the restrictions conveyed in DOJ's new order.

***9/10/25 Update**: The court issued a preliminary injunction halting any enforcement of the four agencies' reinterpretations while the lawsuit proceeds to a final resolution. Note that the injunction applies only to the plaintiffs' states, although it is possible the Administration may extend it further.*

***9/12/25 Update**: In a separate lawsuit brought by a group of parent groups and state Head Start Associations challenging a variety of Administration actions regarding the Head Start program, a federal judge in Washington issued a preliminary injunction that also halts any enforcement of HHS's reinterpretation of Head Start eligibility. Note that this injunction applies nationwide but is limited to the Head Start context. Still, the order makes clear that the HHS directive cannot be enforced against any Head Start program, or any child or family participating in Head Start.*

I. PRWORA & Agency Interpretations Prior to 2025

Background

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),[6] signed into law by President Bill Clinton in 1996, marked a significant overhaul of U.S. welfare policy. Among other changes, the law replaced the long-standing Aid to Families with Dependent Children (AFDC) program, an entitlement that had provided cash assistance to low-income families since 1935, with the Temporary Assistance for Needy Families (TANF) block grant.[7]

Additionally, PRWORA established that only U.S. citizens and "qualified aliens" could be eligible for any "Federal public benefit," subject to limited exceptions.[8] "Qualified aliens" are defined as lawful permanent residents, refugees, asylees, individuals paroled into the U.S. for at least one year, those granted withholding of deportation or removal, Cuban/Haitian entrants, Amerasian immigrants, certain individuals and children who have experienced domestic violence, and survivors of severe trafficking.[9]

In addition to unauthorized immigrants, certain lawfully present immigrant noncitizens are also excluded from the definition of "qualified alien" under PRWORA, including individuals (i) with Temporary Protected Status, (ii) paroled into the U.S. for periods of less than one year, (iii) with a nonimmigrant visa (including survivors of serious crimes with a U visa, persons with a work or student visa, and others), or (iv) granted Deferred Enforced Departure or deferred action, including Deferred Action for Childhood Arrivals (DACA) recipients.[10] (This brief refers to all of these excluded individuals collectively as "affected children and students.")

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[6] 8 U.S.C. §§ 1611 *et seq*.

[7] Gene Falk, *Temporary Assistance for Needy Families (TANF) Block Grant: A Primer*, Cong. Res. Serv., R-48413. https://www.congress.gov/crs-product/R48413.

[8] 8 U.S.C. §§ 1611, 1612.

[9] 8 U.S.C. § 1641(b).

[10] *What New Federal Notices Mean for Immigrants' Program Eligibility*, National Immigration Law Center (July 23, 2025), https://www.nilc.org/articles/what-new-federal-notices-mean-for-immigrants-program-eligibility/.

PRWORA's Definition of "Federal Public Benefit" and Exceptions

Under PRWORA, a federal public benefit is defined, subject to certain exceptions, as any:

- "grant, contract, loan, professional license, or commercial license" provided by a federal agency or with federal funds; and
- "any retirement, welfare, health, disability, public or assisted housing, post-secondary 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."[11]

Importantly, Congress limited the statute's reach in certain respects, including the following three:

Rule of Construction for Plyler v. Doe: PRWORA states that nothing in the statute "may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe*."[12] This rule of construction makes clear that, despite the limitations PRWORA imposes on access to federally-funded benefits, Congress did not disturb the holding from *Plyler*, which established that denying undocumented children access to free, public elementary and secondary education would constitute a violation of the Equal Protection Clause of the U.S. Constitution.[13]

Exception Relating to School Breakfast and Lunch: Despite PRWORA including "food assistance" in the definition of a "federal public benefit," the statute provides that "an individual who is eligible to receive free public education benefits under State or local law *shall not be ineligible* to receive benefits provided under the school lunch program under the Richard B. Russell National School Lunch Act … or the school breakfast program … on the basis of citizenship, alienage, or immigration status."[14] Because all K-12 students continue to have access to public education under *Plyler* regardless of their immigration status, no reinterpretation of PRWORA can impact students' ability to continue to receive school breakfast and lunch.

Nonprofit Exemption from Verification: PRWORA exempts nonprofit organizations from any obligation to verify the immigration status of people to whom they deliver a "federal public benefit." Specifically, the statute says that "a nonprofit charitable organization in providing any Federal public benefit … is *not required* under [PRWORA] to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits."[15] Thus, the federal government cannot require nor compel nonprofit agencies that provide federal public benefits to verify beneficiaries' immigration status. The statute's plain language indicates that those nonprofits who are merely involved in the delivery, or provision, of federal public benefits qualify for this exemption—even if they are not federal grantees themselves.

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[11] 8 U.S.C. § 1611(c)(1).

[12] 8 U.S.C. § 1643(a)(2).

[13] 457 U.S. 202, 230 (1982).

[14] 8 U.S.C. § 1615(a) (emphasis added).

[15] 8 U.S.C. § 1642(d) (emphasis added).

These provisions collectively establish that while PRWORA imposed significant restrictions on federal benefits eligibility, it simultaneously created important safeguards to protect children's access to education and basic nutrition, and it preserved the operational independence of nonprofit organizations involved in delivering federal benefits. Understanding these exemptions is crucial for system leaders and service providers working to ensure that vulnerable populations, particularly children, continue to receive essential services.

Prior Agency Interpretations of PRWORA

Soon after PRWORA's enactment, federal agencies issued clarifying guidance and statements to guide implementation. These included documents issued by the U.S. Departments of Education (USED), Health & Human Services (HHS), Justice (DOJ), and Labor (DOL).

U.S. Department of Education: In 1997, USED distributed a "Dear Colleague Letter" explaining which of its programs fell within PRWORA's definition of a federal public benefit.[16] Subject to a few exceptions, the agency stated that "assistance provided under federally funded preschool, elementary, and secondary education programs administered by the U.S. Department of Education does not involve 'federal public benefits,' as defined in … PRWORA." Part of the agency's reasoning was that—outside of postsecondary benefits (described as offered primarily in the form of direct financial assistance to students), which is explicitly included in the statute's definition of a "federal public benefit"—assistance made available in the context of a grant, loan, or contract is not made to an individual, household, or family eligibility unit. Instead, funds that generally remain in the control of an "agency, institution or organization" are not part of what Congress sought to exclude "certain aliens" from accessing. To illustrate this, USED offered the example of a local school district reimbursing another school district, service provider, or private school for services rendered to students. In those instances, payments are made between entities; no loans, contracts, or grants are provided directly to students.

USED's 1997 guidance also highlighted the intent of Congress in limiting PRWORA's restrictions with respect to K-12 education. In its Conference Report, Congress made clear that it was "the intent of the conferees that … Title I Part A of the Elementary and Secondary Education Act would not be affected by [the definition of a Federal public benefit] because the benefit is not provided to an individual, household or family eligibility unit."[17] The agency then applied the same reasoning from the conferees to other programs it administered. USED also explained that other USED programs apart from postsecondary education were neither listed in the PRWORA definition nor similar to those listed in it.

U.S. Department of Health & Human Services: In 1998, HHS issued guidance on what constituted a **"**federal public benefit" in the context of PRWORA as applied to its programs.[18] This guidance identified certain programs that meet the definition of a "federal public benefit," including TANF, IV-E foster care, the Child Care & Development Fund (the term of art that refers to mandatory and discretionary funds subject to the Child Care & Development Block Grant Act (CCDBG)), and the Social Services Block Grant, among others.

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[16] U.S. Dep't of Educ., Dear Colleague Letter: PRWORA Implementation (Nov. 4, 1997), https://www.ed.gov/media/document/1997-prwora-dcl-110417.pdf.

[17] H.R. Conf. Rep. No. 104–725 at 380 (1996).

[18] 63 Fed. Reg. 41,658 (Aug. 4, 1998), https://www.govinfo.gov/content/pkg/FR-1998-08-04/pdf/98-20491.pdf.

Importantly, this 1998 interpretation clarified that non-postsecondary education programs, such as Head Start, do *not* fall within the statutory definition of "Federal public benefits" under PRWORA. The agency reasoned that while PRWORA's definition of such benefits "is broad, it is not comprehensive and clearly excludes certain categories from the definition. For example, by explicitly identifying 'postsecondary education' the statute excludes non-postsecondary education programs, such as Head Start and elementary and secondary education." The agency further explained that programs that constitute a benefit to the *community* (not to an individual, household, or family, as required by the definition of a "federal public benefit") fall outside the statute's immigrant eligibility restrictions.

U.S. Department of Justice: Under PRWORA, the Attorney General is authorized to specify programs that provide in-kind, non-cash emergency services for the protection of life or safety, which would be exempt from the definition of a "federal public benefit."[19] In 2001, DOJ issued an order specifying which programs fell within this exception.[20] First, the DOJ order noted that PRWORA did not affect anyone's access to "police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services." It also identified numerous other programs that would be recognized as necessary for the protection of life or safety and therefore excepted from the public benefits restrictions. These included crisis counseling, child protection services, short-term shelter or housing assistance for the homeless (including runaway or abandoned children), and activities designed to protect the life and safety of "workers, children, and youth."

U.S. Department of Labor: In 2024, DOL issued a letter to state workforce agencies and other recipients of funds under the Employment and Training Administration.[21] The agency stated grantees could provide certain basic, individualized services without verifying work authorization, including immigration status. These services included basic skills education (including English language instruction) and high school equivalency programs.

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Taken together, the consistent view of these federal administering agencies over nearly three decades was that, outside of those activities, programs, and benefits specifically included in PRWORA's definition of "federal public benefit," most education and social services programs were *not* subject to the statute's eligibility restrictions. This approach has allowed learners to benefit from most federal education programs (outside of federal financial assistance for postsecondary education) without regard to their or their family's immigration status.

[19] 8 U.S.C. § 1611(b)(1)(D). The full definition explains that the following are exempt from the definition of "federal public benefits": those activities that (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. *Id*.

[20] 66 Fed. Reg. 3,614 (Jan. 16, 2001), https://www.govinfo.gov/content/pkg/FR-2001-01-16/html/01-1158.htm.

[21] U.S. Dep't of Labor, Emp. & Training Admin., Training and Employment Guidance Letter No. 10-23: Reducing Administrative Barriers to Improve Customer Experience in Grant Programs Administered by the Employment and Training Administration (Feb. 21, 2024), https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-23/TEGL%2010-23.pdf.

II. Trump Administration's 2025 Reinterpretations of PRWORA

In mid-July, however, the Trump Administration announced a series of new federal agency interpretations and statements concerning what constitutes a "federal public benefit" subject to restrictions under PRWORA. The Administration's actions seek to broaden the list of federal benefits that only U.S. citizens and "qualified aliens" can access, thus *excluding* undocumented individuals as well as those in the country under temporary protected status or who are part of DACA, among other categories that are not encompassed by PRWORA's narrow definition of "qualified aliens."

The policy announcements are described by the Administration as part of how they are implementing President Trump's Executive Order "Ending Taxpayer Subsidization of Open Borders."[22] The Order directed federal agencies to identify all federal funded *programs* that permit those outside of PRWORA's strict eligibility definition from obtaining either cash or non-cash benefits.

The following five agencies announced new policy interpretations and statements: USED, HHS, DOJ, DOL, and the U.S. Department of Agriculture (USDA). Among the programs newly restricted by the Administration that affect children and students are Head Start, postsecondary career and technical education (CTE), and dual enrollment.

U.S. Department of Education: In a departure from its 1997 guidance, USED stated that it was issuing an interpretive rule that will restrict access to educational benefits that are fully or partially funded by federal grants, such as CTE programs under the Carl D. Perkins Career and Technical Education Act (Perkins V) and adult education programs under Title II of the Adult Education and Family Literacy Act (AEFLA) of the Workforce Innovation and Opportunity Act (WIOA).[23]

- For postsecondary students and adult learners, this means that affected students would no longer be eligible for any Perkins- or AEFLA-funded programs.

- For elementary and secondary students, however, USED reaffirmed that affected students would still be able to access all aspects of a "basic public education" as guaranteed by the Supreme Court's 1982 decision in *Plyler v. Doe*.

USED's new rule thus does not, for the most part, affect high school CTE programs provided "in secondary school settings." It does mean, however, that USED no longer considers affected secondary students to be eligible for federally funded "dual enrollment and other similar early college programs that provide opportunities to earn college level credits while participating in a secondary education program."

The new rule also implies that *older* affected students may be ineligible to participate in any high school CTE programs, regardless of where they take place: "[Perkins-funded programs], when provided to *minors* in the secondary school setting, are basic public education benefits that are protected under *Plyler*" (emphasis added). But USED does not explicitly address this question.

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[22] Exec. Order No. 14,218, 90 Fed. Reg. 10,581 (Feb. 25, 2025). https://www.whitehouse.gov/presidential-actions/2025/02/ending-taxpayer-subsidization-of-open-borders/.

[23] 90 Fed. Reg. 30,896 (July 11, 2025), https://www.federalregister.gov/documents/2025/07/11/2025-12925/clarification-of-federal-public-benefits-under-the-personal-responsibility-and-work-opportunity.

U.S. Department of Health & Human Services: In its guidance, HHS reinterpreted a "federal public benefit" to include Head Start and twelve other programs as federal public benefits subject to PRWORA's immigration restrictions.[24] As stated above, HHS's guidance in 1998 excluded Head Start, classifying it as an early childhood education program that benefits the community rather than individuals, households, or families. The current HHS justifies this new shift in part by citing the Supreme Court's *Loper Bright Enterprises v. Raimondo* ruling and a return to the "plain-language definition" of "Federal public benefit," aiming to reverse "outdated exclusions."[25] Further, HHS noted that "welfare" was included in the public benefits definition, as were other similar benefits, and asserted that Head Start was "similar" to welfare.

This is a significant change for Head Start, which has included all children since its inception 60 years ago. HHS acknowledges in its notice that nonprofits are exempt from verifying immigration status—nonprofit organizations account for 70% of all Head Start providers. Despite this exemption, HHS's guidance encourages (without requiring) nonprofits to align with its new interpretation. HHS communicated that guidance on verification and individual program rules was forthcoming, but as of the publication of this brief, grantees do not have more information on how to proceed.

U.S. Department of Agriculture: USDA did not issue clarifying guidance subsequent to the passage of PRWORA in 1996, so the USDA's new 2025 interpretation of a "federal public benefit" does not supersede any prior guidance from the agency as is the case with the other agencies.[26] USDA's interpretation carries implications for nutrition assistance programs for affected children and students. The USDA notice clarifies certain programs are included as "public benefits" in its reinterpretation—such as the Child and Adult Care Food Program (CACFP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and Summer Electronic Benefits Transfer (EBT)—which typically have *not* required immigration status for determining eligibility. However, the USDA notice highlights the existing exception in PRWORA ensuring that eligibility for school lunch and breakfast programs is not based on citizenship, alienage, or immigration status for students eligible for free public education under state or local law. The guidance also reaffirms that, aside from the exemptions for school lunch and breakfast, PRWORA shall not "prohibit or require a State to provide to an individual who is not a citizen or a qualified alien" access to listed programs (despite their being "federal public benefits"). This means that states have the choice to offer or restrict certain nutrition benefits, such as WIC, based on PRWORA's immigration restrictions.

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[24] 90 Fed. Reg. 31,232 (July 14, 2025), https://www.federalregister.gov/documents/2025/07/14/2025-13118/personal-responsibility-and-work-opportunity-reconciliation-act-of-1996-prwora-interpretation-of. Other newly identified programs include: Title X Family Planning Program; Title IV-E Educational and Training Voucher Program; Community Services Block Grant (CSBG); Health Center Program; Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant; Projects for Assistance in Transition from Homelessness Grant Program; Certified Community Behavioral Health Clinics; Mental Health and Substance Use Disorder Treatment, Prevention, and Recovery Support Services Programs administered by the Substance Abuse and Mental Health Services Administration; Title IV-E Prevention Services Program; Title IV-E Kinship Guardianship Assistance Program; and Health Workforce Programs. Note that HHS requested comment from the public, indicating that the agency is likely to release final guidance after considering comments submitted in August 2025.

[25] *Id.* (citing 603 U.S. 369 (2024)).

[26] 90 Fed. Reg. 30,621 (July 10, 2025), https://www.federalregister.gov/documents/2025/07/10/2025-12691/personal-responsibility-and-work-opportunity-reconciliation-act-of-1996-prwora-interpretation-of.

U.S. Department of Justice: DOJ's new order withdrew its 2001 order that identified which programs "necessary to protect life and safety" were exempt from the immigration restrictions of PRWORA.[27] The Attorney General stated that DOJ has chosen not to specify any exemptions beyond those in the statute. However, the Attorney General also states that DOJ "do[es] not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other similar services. See 8 U.S.C. 1611(c), 1621(c). As a result, I need not specify and am not specifying any such services as being excepted from the Act."

U.S. Department of Labor: In its new guidance letter, DOL confirmed the rescission of its 2024 guidance letter and clarified that it views all participant-level services funded through Employment and Training Assistance funding as "federal public benefits" under PRWORA.[28] The agency explained that "all grantees must verify work authorization for individuals who otherwise meet participant eligibility requirements prior to delivering participant-level services." Among those, DOL stated that youth programs that provide secondary-level education services, including assistance in obtaining a high-school equivalency, do constitute "federal public benefits." DOL's letter did not address PRWORA's exemption for nonprofits nor its carve-out of "basic public education" rights under *Plyler*.

III. Issues with the Administration's PRWORA Reinterpretations

While the courts will ultimately determine the legality of the Administration's PRWORA reinterpretations and statements, there are several immediately apparent issues that raise important legal and practical concerns for anyone providing "federal public benefits" to affected children and students.

Plyler v. Doe Limits the Collection of K-12 Student Immigration Status Data

The agencies' reinterpretations—especially USED's—may lead some education systems or institutions to consider collecting K-12 students' immigration status as part of verifying eligibility for the expanded list of "federal public benefits." But doing so may violate the law.

As stated above, *Plyler* held that states cannot bar students from a free, public elementary and secondary education on the basis of immigration status. A 2012 federal appeals court decision held that even collecting or reporting a student's immigration status would likely violate *Plyler* as it could lead to a chilling effect on students' enrollment and thus their equal access to education.

In *Hispanic Interest Coalition of Alabama (HICA) v. Bentley*, the 11th Circuit Court of Appeals considered provisions of an immigration law passed by the Alabama legislature that would, among other things, require public schools to verify and collect immigration status of K-12 students during enrollment.[29] The purported purpose of the requirement was to collect data about the costs incurred by districts to educate undocumented students to help with forecasting and planning.

[27] A.G. Order No. 6335-2025 (July 16, 2025), https://www.govinfo.gov/content/pkg/FR-2025-07-16/pdf/2025-13318.pdf.

[28] U.S. Dep't of Labor, Emp. & Training Admin., Training and Employment Guidance Letter No. 10-23: Work Authorization Verification in Grant Programs Administered by the Employment and Training Administration (July 10, 2025), https://www.dol.gov/agencies/eta/advisories/tegl-10-23-change-2.

[29] 691 F.3d 1236 (11th Cir. 2012) *reh'g en banc denied*.

The court determined that the disclosure of students' immigration status would impose "obstacles to the ability of an undocumented child to obtain an education" as it would "deter this population from enrolling in and attending school because … these children are subject to deportation, and removal proceedings can be instituted upon the federal government being informed of their undocumented status."[30] Further, any claims by the state that it would safeguard the privacy of student data was belied by the fact that federal statutes prohibit state and local governments from creating laws or policies that limit communication with the Department of Homeland Security about immigration status or citizenship.[31]

The 11th Circuit ultimately determined that collecting and reporting student data would substantially burden the rights secured by *Plyler*.

The concerns present in *HICA v. Bentley* are magnified in the context of the reinterpretations put forward by the Trump Administration in July. Some of the educational benefits the Administration intends to restrict access to, such as certain CTE and dual enrollment courses, may have the spillover effect of chilling students' and families' willingness to access public K-12 education. This would directly threaten the protections provided by the Supreme Court in *Plyler*. Exacerbating the chilling effects is that these PRWORA reinterpretations arrive in the context of the Administration's focus on immigration enforcement; students and families will reasonably fear that the Administration will seek to gain access to any information they provide during enrollment for the purposes of conducting immigration enforcement on students and/or their families.[32]

The PRWORA Reinterpretations May Conflict with Other Federal Laws

The reinterpretations advanced by the Administration may also violate existing statutory provisions that relate to eligibility for services. For instance, the HHS notice states that the agency's new interpretation takes effect immediately. However, the Head Start statute states that children already deemed eligible for Head Start remain eligible through the *succeeding* program year.[33] Accordingly, children already in Head Start should remain eligible for the current program year (i.e., the 2024-2025 program year) and the next program year (i.e., the 2025-2026 program year), despite HHS's reinterpretation stating that the exclusion of Head Start goes into "immediate" effect. Additionally, HHS has not provided any guidance regarding the locus of eligibility for its reinterpretation as it relates to Head Start (i.e., whether the focus for eligibility purposes is the child or the family).

[30] *Id*. at 1247 (internal quotations and citations removed).

[31] *Id*. at 1247-48 (citing 8 U.S.C. §§ 1373, 1644). Section 1373 states: "a Federal, State, or local government entity or official may not prohibit, *or in any way restrict*, any government entity or official from sending to, or receiving from, the Immigration Naturalization Service information regarding citizenship or immigration status, lawful or unlawful, of any individual" (emphasis added).

[32] *See* Exec. Order No. 14,218, 90 Fed. Reg. 10,581 (Feb. 25, 2025) ("Agencies shall refer any improper receipt or use of Federal benefits to the Department of Justice and the Department of Homeland Security for appropriate action.").

[33] 42 U.S.C. § 9840(a)(1)(B)(v) ("[A] child who has been determined to meet the eligibility criteria described in this subparagraph and who is participating in a Head Start program in a program year shall be considered to continue to meet the eligibility criteria through the end of the succeeding program year.").

Further, neither the USED and HHS reinterpretations address potential complications with the Paperwork Reduction Act, which manages information the federal government collects from the public, including how to ensure that any collection does not present an undue burden.[34]

Practical Considerations Could Impact All Learners Including U.S. Citizens

Students who are eligible because they are citizens or "qualified aliens" under PRWORA may in practice be shut out from programs if they are unable to access the necessary verification documents. This would present an acute barrier to those who are most vulnerable and may not have ready access to documents, including students experiencing homelessness and children in foster care. It will also place new burdens on families who may not have the time or resources to visit administrative offices, or consult with service providers on the appropriate documentation.

Further, given the expansive nature of these reinterpretations, service providers would need to create new systems for verifying immigration status, adding compliance and administrative burden without any additional resources. Further, staff would need to collect and verify documentation from children, students, and families, taking valuable time away from providing services to all participants.

IV. Recommendations for System Leaders and Service Providers

As system leaders and service providers balance how best to serve affected children and students during this period of rapid change, we offer the following set of recommendations:

Monitor Legal Developments and Consult Counsel [UPDATED 9/10/25]: As noted above, the reinterpretations are the subject of active litigation, and a district court issued a preliminary injunction on 9/10/25 halting any enforcement of the reinterpretations by USED, DOJ, HHS, and DOL in the 20 plaintiffs' states and Washington, D.C. Another federal judge has issued a separate and *nationwide* injunction halting any enforcement in the Head Start context. System leaders and service providers should monitor these lawsuits, any updates to enforcement timelines, and any other litigation that arises. The Administration may move forward with enforcement in the non-plaintiff states beyond Head Start, extend the pause on enforcement to all states, and/or appeal the courts' decisions. Consulting counsel regularly will help leaders and providers navigate this uncertain time.

Await Further Guidance and Avoid Acting Precipitously: There are a number of open questions associated with these recent reinterpretations, including tensions with existing legal precedent and interactions with federal statutes around eligibility. For instance, HHS did not clarify how verification of immigration status will be implemented, leaving unanswered questions related to Head Start. Will the locus of eligibility be the child or the family? Will the verification requirements extend to public school systems with Head Start programs that do not collect immigration information as a general matter and owing to *Plyler*? Further, system leaders and service providers should consider the cost of creating what might be costly and burdensome systems for verifying immigration status if stays of enforcement remain in place or if the courts determine that the reinterpretations are unlawful.

[34] 44 U.S.C. §§ 3501 et seq.

Review Closely all Certification Documents from Federal Agencies: Federal agencies typically ask grantees to certify that they, and their subgrantees, are compliant with all federal laws and regulations. Recently, administering agencies have also indicated that they will be ensuring that federal grantees' activities are consistent with administration policy. Thus, agencies may seek to require federal grantees to certify compliance with their new reinterpretations of PRWORA, despite stays of enforcement that may be in place. Grantees should closely read these certifications prior to execution and consult counsel. It is possible that if a grantee signs a certification and is providing services in a manner inconsistent with the Administration's reinterpretations of PRWORA, the government may use that as a justification to terminate a grant or contract. It may also give rise to penalties under the False Claims Act, which allows the government under some circumstances to assess fines if a grantee knowingly submits false claims to the federal government for payment. Importantly, the Administration has not yet indicated what potential liability a grantee could face for providing a benefit to an individual who is not a citizen or qualified alien. Federal grantees should consult counsel in their review and execution of all documentation received by the federal government as a part of the grantmaking process.

Understand the Exemptions under PRWORA: The Administration affirmed across its notices that nonprofit organizations cannot be compelled to verify immigration status if they are involved in the *provision* of "federal public benefits." The plain language of the statute does not indicate that nonprofits must be federal grantees, or subgrantees, to benefit from this exemption. Even assuming that the Administration's expansive reading of what constitutes a "federal public benefit" holds, nonprofits that provide those benefits cannot be compelled to verify immigration status. While HHS, for example, has strongly encouraged that these entities verify immigration status, it cannot force nonprofits to do so.

The other exceptions described above also must be understood and leveraged appropriately. This means avoiding taking any action that might undermine students' rights to public education under *Plyler* or to school meals under the Richard B. Russell National School Lunch Act. As with the above, system leaders and service providers should consult counsel regarding their understanding of these limitations on PRWORA's reach.

Explore Avenues to Maintain Continuity: System leaders could examine whether non-federal funding alternatives exist if federal funding is no longer available to support certain immigrant communities. Pursuing this avenue is not without risk, particularly considering the Administration's overall priority on denying public benefits from undocumented people, including via recent lawsuits from DOJ against states that offer in-state tuition for undocumented college students. Private resources may be available and counsel can help identify whether state- and local-funding options are available for this use.

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The convergence of activity to limit immigration through aggressive enforcement, the erosion of longstanding protections, and the restriction of access to federal public benefits carries deep implications for children, educators, and school communities. These shifts demand vigilance on the part of school and systems leaders and service providers, and may result in deep shifts in the ways that immigrant communities are supported in the short- and long-term.