

2 Welfare Reform and Immigrants

A Policy Review

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President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) into law in August 1996. This landmark law ended the sixty-year guarantee of a safety net for poor children and families by transforming the federal entitlement of Aid to Families with Dependent Children (AFDC) into a state-run, block-grant program, Temporary Assistance to Needy Families (TANF). PRWORA (also referred to as the Welfare Reform Act) tied receipt of benefits to work, established time limits for federally funded benefits, and created incentives for states to reduce their caseloads. It also greatly reduced or eliminated federal eligibility for legal immigrants during their first five years of U.S. residence.

On September 30, 2002, PRWORA expired. With the heavy load of congressional business in the fall of 2002, Congress did not meet the deadline for making the decisions necessary to reauthorize the law. At this writing, Congress has extended the law several times at current funding levels. Thus, the debates about revising the provisions of the law will also be extended until Congress can agree on a bill.

One of the most contentious debates leading up to the reauthorization of PRWORA regards access to public assistance benefits for noncitizens. The law as originally passed denied federal welfare benefits to most legal immigrants during their first five years of U.S. residence and placed other restrictions on legal immigrants' eligibility for benefits. These restrictions included rendering legal immigrants already in the United States ("preenactment" immigrants) and recipients of benefits immediately ineligible for most federally funded

programs. In addition, immigrants entering the United States to reside after the date of the passage of PRWORA (“postenactment” immigrants) are ineligible for federally funded benefits during their first five years of residence. It is entirely up to state and local governments to decide whether they will use their own funding to cover immigrants who are ineligible for federal programs. In the years since the implementation of the law, Congress has made several important federal restorations for noncitizens in the Food Stamp and Supplemental Security Income Programs but noncitizen eligibility rules for TANF and Medicaid remain as they were legislated by PRWORA. However, because the law has expired and must be reauthorized, the possibility for future changes in the eligibility of noncitizens is in the hands of federal policymakers. As they continue to hash over issues of welfare eligibility, Congress will debate how to balance fairness with necessary budget considerations. This chapter details the changes in immigrant eligibility for welfare benefits, situates the changes in a broad political and social context, and addresses future policy concerns.

THE CONTEXT OF WELFARE REFORM

PRWORA restricted immigrant eligibility in all federally funded assistance programs. Prior to its enactment, legal immigrants residing in the United States by and large had access equal to citizens with regard to public assistance benefits. The new citizenship criterion elevates the importance of formal citizenship in a way that is inconsistent with both previous U.S. policy and international standards. Most liberal industrialized democracies make presumptively permanent residents eligible for the same benefits as citizens (Aleinikoff and Klusmeyer 2002; Fix and Laglagaron 2001).

In the United States, previous policy permitted access to welfare benefits for immigrant residents after five years of residence. Although some immigrants were required to have a sponsor sign an affidavit of support in the past, these contracts were found by some courts not to be legally enforceable and thus were generally considered a moral rather than a legal obligation. PRWORA stipulated that sponsors must accept this now legally enforceable responsibility until their charge becomes a U.S. citizen or has worked forty quarters.

In addition to citizenship status, timing of arrival in the United States is another critical marker of eligibility. Although immigrants who were already in the United States when PRWORA was passed are

Notes on Noncitizen Benefit Eligibility under PRWORA

Pre-enactment Immigrants: Immigrants lawfully residing in the United States on or before August 22, 1996, the enactment date of the PRWORA. States were given the option to use federal funds for preenactment immigrants for most programs and mandated to provide SSI and food stamps for certain categories of immigrants such as children, the disabled, and the elderly.

Post-enactment Immigrants: Immigrants who arrive legally in the United States after August 22, 1996. Most postenactment immigrants are ineligible for federal means-tested programs for five years with a state option after that. Postenactment immigrants remain ineligible for SSI and food stamps until they naturalize.

Qualified Immigrants: Lawful permanent residents, refugees/asylees (defined below), persons paroled into the United States for at least one year, battered spouses and children, those given either the forty quarters or military exemptions (defined below).

- **Refugees/Asylees:** Those admitted for humanitarian reasons from abroad under the U.S. Refugee Act of 1980, persons admitted as asylees, persons with deportation/removal withheld, Cuban entrants, Amerasians.
- **Forty Quarters Exemption:** Legal permanent residents who have worked at least forty qualifying quarters as defined by the Social Security Act are exempted from certain bars on eligibility. No credit is given for quarters worked after December 31, 1996, if the immigrant received a federal means-tested benefit in that quarter. Credit is also given for work performed by their parent (before the immigrant reaches age eighteen) or their spouse during the marriage (unless the marriage ended in divorce or annulment).
- **Military Exemption:** Noncitizens are exempt from bars on eligibility if they are or were (1) on active duty (currently); (2) honorably discharged; (3) the spouse, not remarried surviving spouse, and unmarried dependent child of a veteran or active-duty service member; or (4) a Filipino war veteran who fought under U.S. command in World War II.

Unqualified Immigrants: An immigrant not falling within the qualified immigrant group. This group includes undocumented immigrants, asylum applicants, immigrants formerly considered "permanently residing under color of law" (PRUCOL) as well as those with temporary status such as students and tourists.

at this writing—more than five years after passage—again eligible for federally funded benefits, immigrants arriving after the date of the passage of the law are ineligible for federal benefits in their first five years in the United States. When Congress reauthorizes the welfare law, noncitizens who arrived prior to PRWORA will already have five

TABLE 2.1
Noncitizen Benefit Eligibility under PRWORA

Qualified Immigrants arriving on or before August 22, 1996 (preenactment)						
		SSI¹	Food Stamps	Medicaid	TANF²	State/Local Public Benefits
Qualified Immigrants		Eligible ³	Eligible ³	State option	State option	State option
Exempted Groups	With 40 quarters of work	Eligible	Eligible	Eligible	Eligible	Eligible
	Military personnel and their families	Eligible	Eligible	Eligible	Eligible	Eligible
	Refugees/Asylees	Eligible for first 7 years	Eligible	Eligible for first 7 years; state option afterward	Eligible for first 5 years; state option afterward	Eligible for first 5 years; state option afterward
Qualified Immigrants arriving after August 22, 1996 (postenactment)						
		SSI	Food Stamps	Medicaid	TANF	State/Local Public Benefits
Qualified Immigrants		Ineligible	Barred for first 5 years (except children and persons receiving disability benefits)	Barred for first 5 years; state option afterward	Barred for first 5 years; state option afterward	State option
Exempted Groups	With 40 quarters of work	Barred for first 5 years; eligible afterward	Barred for first 5 years;	Barred for first 5 years	Barred for first 5 years	Eligible
	Military personnel and their families	Eligible	Eligible	Eligible	Eligible	Eligible
	Refugees/Asylees	Eligible for first 7 years	Eligible for first 7 years	Eligible for first 7 years; state option afterward	Eligible for first 5 years; state option afterward	Eligible for first 5 years; state option afterward
Unqualified Immigrants						
		SSI	Food Stamps	Medicaid	TANF	State/Local Public Benefits
Unqualified Immigrants		Ineligible ^{4,5}	Ineligible ⁵	Eligible for emergency services only ⁴	Ineligible	Ineligible ⁶

Notes:

¹ SSI = Supplemental Security Income² TANF = Temporary Assistance for Needy Families³ Qualified immigrants receiving SSI on August 22, 1996, are eligible. All qualified immigrants

(continued)

years of residency and therefore eligibility restrictions will no longer apply. However, all immigrants arriving after the enactment date will be barred from federal funding—in five-year increments—unless Congress changes the law (see Table 2.1 for a summary review of the current eligibility criteria).

The new lines of stratification between citizens and noncitizens have both material and symbolic meaning. When welfare reform was debated prior to the passage of PRWORA, policymakers were motivated by the immense savings that would be had by excluding noncitizens from participation in all federal means-tested benefits. The welfare law was projected to save the federal government \$54.1 billion over six years. The largest savings—\$23.8 billion or 44 percent of the net savings—was to come from slashing benefits to legal permanent residents (green card holders). Legal immigrants, including those who were participating in the programs at the time the law became effective, became ineligible for most federally funded programs.

From the immigrant point of view, the passage of PRWORA and the anti-immigrant debates leading up to its enactment signaled a formalized complaint against immigrants. This exclusion—government sponsored—hastened a climate of confusion and fear within immigrant communities that had sweeping effects on immigrant behavior, including the use of benefits as well as migration and naturalization.

THE DEVELOPMENT AND PASSAGE OF PRWORA

Political interest in conserving federal dollars by restricting noncitizen access to benefits developed during the early 1990s among Republicans and evolved to bipartisan support by the mid-1990s. The

lawfully residing in the United States on August 22, 1996, who are or become disabled are also eligible. All other qualified immigrants are ineligible unless exempted.

⁴ Immigrants formerly considered “permanently residing under color of law” (PRUCOL) who were receiving SSI on August 22, 1996, are eligible for SSI and for Medicaid in states where Medicaid eligibility is linked to SSI eligibility.

⁵ Native Americans born in Canada and certain other tribal members born outside the United States are eligible. For the Food Stamp Program, Hmong and Lao tribe members (and their spouses and children) are eligible.

⁶ States may provide state and local public benefits to unqualified immigrants only if they pass a law after August 22, 1996.

Source: Adapted from Wendy Zimmerman and Karen Tumlin. 1999. *Patchwork Policies: State Assistance for Immigrants under Welfare Reform*. Washington, DC: Urban Institute.

developments that led to targeting immigrants for savings had its roots in events in California, including a growing belief that immigrants used more in social services than local governments could pay for, an economic recession that hit the state particularly hard, and the blurring of the distinction between undocumented immigrants and legal immigrants (Singer 2001).

By the fall of 1994, when the congressional Republicans introduced their *Contract with America*, California was coming out of the recession and, more importantly, the public sentiment had—to a measurable extent—embraced the prevailing anti-immigrant rhetoric. The success of the ballot measure, Proposition 187, that proposed denying virtually all medical and social services to undocumented immigrants, passed with 59 percent of the vote. Although Proposition 187 itself was challenged in court and eventually was put to rest through court mediation, the enthusiasm for the proposal was so strong that congressional Republicans proposed eliminating the use of most benefits to all noncitizens regardless of legal status.

In addition to PRWORA, there were two other laws that were passed in the same year that illustrated the mounting political concern over immigrants. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) passed in September 1996 included provisions for strengthened border enforcement and measures to remove criminal and other deportable aliens. The 1996 Antiterrorism and Effective Death Penalty Act (April 1996) expedited procedures for the removal of “alien terrorists” and provided for changes in criminal alien procedures such as authorizing state and local law enforcement officials to arrest and detain certain illegal aliens, and providing access to confidential immigration and naturalization files through court order.

Together these three legislative measures put the government seal of approval on a wave of widespread anti-immigrant feeling. For their part, immigrants had to confront their precarious place in American society. Many immigrants felt vulnerable, including those who had never participated in U.S. welfare programs. Immigrants perceived that the incentive structure associated with naturalization had changed and a rush in applications for U.S. citizenship followed (Gilbertson and Singer 2003; Singer and Gilbertson 2000).

PRWORA'S IMMIGRANT PROVISIONS

As passed, PRWORA excluded noncitizen participation in all federal means-tested benefits: TANF, food stamps, Supplemental Security Income (SSI), Medicaid, and State Children's Health Insurance Pro-

gram. With the exception of refugees and asylees, legal permanent residents with forty quarters of work, and those in the military, all other noncitizens were barred from participation in the above-listed need-based programs. Prior to PRWORA, states were not permitted to restrict access to *federal* programs on the basis of citizenship status. Post-PRWORA, they were required to do so, however, as part of the move toward devolving fiscal responsibility from the federal government, states were given the option to use federal funds for preenactment immigrants for TANF and Medicaid. Most states now offer safety net coverage for preenactment legal immigrants, however, those who entered after the date of the passage of the Welfare Reform Act are ineligible for federal benefits until five years after their arrival in the United States.

The complex eligibility rules have created a fragmented scheme of eligibility for noncitizens (see Table 2.1). To be sure, one of the consequences of the changes to the system has been chronic confusion among immigrants and their advocates about who is actually eligible. In addition to reduced eligibility for most federally funded programs, PRWORA imposed new proof of citizenship requirements for federal public benefits and it introduced greater complexity in compliance for those families that maintain eligibility through new program rules. As noted earlier, PROWRA also increased the responsibility of immigrants who sponsor family members for immigration, by making the long-required affidavit of support legally binding and enforceable and by raising the income sponsorship bar to 125 percent of the federally defined poverty level. The law also formalized the blanket ineligibility of undocumented immigrants for virtually all social services in the United States, although their U.S.-born citizen children remain eligible for programs for which they are qualified.

POST-PRWORA RESTORATIONS

Even as he was signing the bill into law, President Clinton acknowledged PRWORA was unfair to immigrants and promised to work toward restoring benefits to immigrants. Various legislative efforts have incrementally restored some benefits to noncitizens, although most of the exclusionary conditions of the law still stand. Two important, but limited, restorations occurred during the Clinton administration:

- The Balanced Budget Act of 1997 (BBA) restored SSI payments to most legal immigrants who were residing in the United States before August 1996. The BBA also clarified that as long as an individual was receiving SSI, he or she remained eligible for Medicaid.

- The Agricultural Research, Extension, and Education Act of 1998 restored eligibility for food stamps to immigrant children, elderly immigrants, and disabled immigrants who resided in the United States prior to the date of the passage of the 1996 act. The law also extended the refugee exemption from the food stamp bar from five to seven years.

Most recently, under the Bush administration, the Farm Security and Rural Investment Act of 2002 reinstated access to food stamps for legal immigrants who have lived in the United States for at least five years, as well as for immigrant children without requiring the residency criteria be met. It also effectively restores food stamps to refugees.

STATE AND LOCAL RESPONSE

The incremental restorations still do not restore most federally funded benefits to legal immigrants, for example, TANF and Medicaid. The fallout of the 1996 law was strongly felt by state and local authorities. States had to decide whether they should continue to use federal funding to provide TANF and Medicaid to eligible legal immigrants who had arrived before the act took effect. They also were faced with the decision of whether to create state-funded programs for immigrants who were no longer eligible for federally funded benefits.

Moreover, the law explicitly limited state and local governments' authority to provide any benefits to undocumented immigrants. Doing so meant they had to enact a state law after August 22, 1996, that "affirmatively provides for such eligibility." In other words, state governments must declare that they are making a choice to provide benefits to undocumented immigrants.

In response to these provisions, all fifty states extended access to TANF benefits to legal noncitizens who arrived before the 1996 act took effect. Every state except for Wyoming also extended preenactment noncitizen access to Medicaid. It is not surprising that states largely took this pragmatic move because they can use federal funding for preenactment immigrants. Most states took a similar approach for postenactment immigrants with five years of U.S. residence. However, five states, including Texas, still exclude this group from TANF and seven states exclude this group from Medicaid.

As for state-funded programs, twenty-three states, including California and New York, have created their own TANF programs for some or all of the legal immigrants who are ineligible for federal TANF during the five-year bar. On top of that, several states have

provided state-funded health care or food stamp benefits to at least some immigrants who are no longer eligible for federal benefits (Fremstad 2002).

Another way local areas have adapted to the new reality of paying for the benefits of noncitizens has been to encourage the naturalization of eligible immigrants. For example, just after the 1996 act took effect, New York City and California's Santa Clara County both set up programs to encourage naturalization and assist immigrants with the process of becoming a U.S. citizen. Community-based organizations (CBOs) also responded to the welfare legislation by turning their attention to assisting immigrants through the naturalization process by sponsoring citizenship drives, helping immigrants fill out paperwork, offering citizenship classes, and providing legal assistance (Singer and Gilbertson 2000). CBOs also provided more basic services and goods such as low-cost health care, food assistance, childcare services, and job readiness workshops (Cordero-Guzman and Navarro 2000). For immigrants U.S. citizenship ensures access to entitlement. From the state and local perspective, immigrants who naturalize move into a status that makes them eligible for federally funded programs, thus shifting the fiscal burden back to the federal sources of funding for social welfare benefits.

Many immigrants, who had not previously naturalized, responded to the community-level push toward naturalization. Applications for U.S. citizenship skyrocketed in the latter 1990s, peaking in 1997 with 1.4 million applications. The surge in applications, however, corresponded with several other programs that also coincidentally affected the naturalization rate, for instance, the large cohort of legalization recipients who became eligible for naturalization under the 1986 Immigration Reform and Control Act (IRCA), the 1992 Green Card Replacement Program, and the 1995 Citizenship USA Initiative, which also boosted naturalization applications. Combined, these factors overwhelmed the INS, resulting in a large backlog of unprocessed applications and lengthy waiting times in immigrant-heavy cities.

IMPLICATIONS OF DEVOLUTION AND FUTURE PROSPECTS

State and local governments are particularly concerned with the outcome of the welfare reauthorization process, because most states are facing a fiscal crisis of epic proportions (National Governor's Association and Association of State Budget Officers 2002). In the late 1990s and into 2001, high levels of economic activity amounted to unusually high revenue growth, which led to large state tax cuts. By

2002, forty-five states lost revenue; combined total state tax revenue was \$38 billion lower than it was in the previous year (Johnson 2002). The implications of revenue loss will no doubt be realized as a reduction in services provided by states as well as higher taxes. As a result, many low-income families, including immigrant families, will likely see a reduction or elimination of health insurance benefits or an increase in fees. Childcare subsidies will also likely be reduced. More programs are likely to face similar cuts in funding as the reality of closing budget gaps will mean reorganizing programs, laying off employees and raising fees for services. This may mean caseloads per eligibility worker will rise, possibly affecting customer service, especially immigrants with limited English proficiency that may need costly interpreter services. And municipalities can expect less state support; the impact at the city and county level where low-income immigrants reside may be large.

Faced with the difficulties of deciding on their spending priorities, states can use all the help they can get. One boost might come from the use of federal funds for benefits and services for postenactment immigrant families, which would make it easier for states to stretch their currently strapped budgets. The recent Farm Act, which restores food stamps to certain legal immigrants and refugees, is an example of such a boost. In addition, states use some TANF funds for cash assistance but most funds are used for services such as childcare and transportation, services designed to help people get and keep jobs.

In addition, immigrant rights advocates and their allies are particularly concerned for the well-being of children in immigrant families. Often, policies designed to maintain the welfare of children run counter to policies that treat immigrant families differently from native-born families. In the aftermath of PRWORA, national-level data show declines in social welfare program participation among citizens and noncitizens alike, however the declines were steeper for noncitizens.

A nationally representative study of U.S households showed that the children of immigrants (who may be either U.S. or foreign born), live in families that are poorer than those with only native-born members (Reardon-Anderson, Capps, and Fix 2002). At the same time this study showed that children of immigrants are also more likely to be in low-income families despite the fact that they are more likely to live in two parent families. In addition, among all low-income families, children of low-income immigrants are much more likely to live in families with full-time workers than children in families with all native-born members.

These results indicate that the health and well-being of children in immigrant families may be compromised because of the low wages

of immigrant workers, and not because of low employment levels or low marriage rates. Immigrants would benefit from the promotion of programs that augment low wages, such as the Earned Income Tax Credit, or those that increase skills, such as English-language and literacy programs (Reardon-Anderson, Capps, and Fix 2002).

To be sure, many immigrant-headed families have members with differing legal statuses. About three-quarters of all children living in immigrant-headed households are U.S. citizens (Capps 2001). There has been a demonstrated decline in benefit use by such families in the latter half of the 1990s, even though the children in these families are citizens, and thus qualified to receive benefits. Numerous studies have shown that confusion about eligibility among both caseworkers and immigrants has produced a dampening effect on enrollment and participation (see Chapters 4 through 12 in this book). Other research shows that parents do not enroll eligible children when the adults in the family are ineligible. At this writing, there is limited bipartisan support for providing health care coverage for children in these families.

DISCUSSION

The 1990s inflow of immigrants was unprecedented; more than eleven million additional immigrants were added to the population during the decade. Immigrants primarily come to the United States in search of a better life for themselves and their families. While many immigrants arrive with jobs or job prospects, others lack the skills needed to experience economic mobility on a scale that would put them solidly in the middle class. Indeed, labor force participation rates of foreign-born adult men exceeded those of their native-born counterparts in 2000, although rates for immigrant women trail behind their native-born counterparts as well as men. Both wages and participation are higher among immigrants who have lived in the United States for longer periods of time. Notably, men have higher rates of labor force participation if they are not U.S. citizens while the opposite is true for women (U.S. Census Bureau 2001).

Typically, job opportunities are better for low-skilled workers during times of economic growth. In the three-year period that immediately followed the enactment of PRWORA, the nation experienced remarkably fast economic growth and the demand for labor was high. Unemployment declined, earnings rose, and seven million people entered the labor force. Moreover, the employment of single mothers rose significantly during the same period (Lerman and Ratcliffe 2000). During economic downturns, low-skilled workers are the first to lose jobs.

As the economy slowed in 2001, the needs of low-income people, including immigrants, appeared to rise as indicated by a corresponding leveling of TANF caseloads (Center for Law and Social Policy 2002). At this writing, the unemployment rate is the highest it has been in the past decade.

Immigrants continue to confront barriers in accessing benefits to which they or their children are entitled. Leaving aside those who are not eligible due to PRWORA's rules, there are immigrants who are eligible for benefits but are not accessing them due in part to nonlegal barriers such as language impediments, confusion—especially about public charge—and fear of disclosing information to authorities. For example, a study of hardship among immigrant families showed that 37 percent of all children of immigrants live in families with food insecurity versus 27 percent of children of citizens (Capps 2001). This study's findings indicate the vulnerability of a population whose access to the social safety net has been diminished by the recent policy changes.

While cash assistance is helpful over the short run, stronger support programs are needed to move economically marginal immigrants into a less precarious status. In addition to childcare and job training support, English-language programs are essential for such mobility to occur. The law does not explicitly list English-language instruction as a work activity that counts toward state work participation rates (Fremstad 2002). However, reauthorization provides the opportunity for Congress to signal to state and local governments the value of developing programs that improve the language ability of low-income, limited English-proficient persons.

One of the most serious issues poor families in the United States will face in the coming decade is job loss due to a tightening labor market as a result of economic recession. On top of that, the events of the September 11, 2001, attacks and aftermath may push some immigrants quickly into precarious economic states, particularly in cities that had an abundance of service jobs, for example, in the hospitality sector. This leads to a new scenario in which many working poor immigrants who have limited mobility face uncertain work futures—important to consider as reauthorization approaches (and as many people reach their five-year time limits).

PRWORA hinged on the notion that welfare debates made a lot out of the value of mobility—moving people from dependence to self-sufficiency. The chapters in this volume make us think deeply about the logic of excluding working, low-income noncitizens from work supports such as health insurance and job training at this time. Congress should consider the ultimate goals of welfare reform as they make reauthorization decisions.

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