



THE CITY OF NEW YORK
LAW DEPARTMENT

MURIEL GOODE-TRUFANT
Corporation Counsel

100 CHURCH STREET
NEW YORK, NY 10007

Phone: (212) 356-0800
Fax: (212) 356-0809
mgoodetr@law.nyc.gov

August 13, 2025

Via Federal eRulemaking Portal (Regulations.gov)

Robert Foster
Acting General Counsel
Office of the General Counsel
United States Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: Comment on Notice Re: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” Docket No. AHRQ-2025-0002, Document No. 2025-13118, 90 Fed. Reg. 31232 (Jul. 14, 2025)

Dear Mr. Foster,

The City of New York (the “City”) submits this comment on the above-referenced notice of interpretation (the “Notice”) issued by the Department of Health and Human Services (“HHS”). The Notice would upend HHS’s longstanding interpretation of the definition of “Federal public benefit” for purposes of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”)¹, thereby restricting the ability of certain non-citizens to access numerous Federal programs that have never before been subject to such restrictions. The Notice fails to comply with the procedural requirements of the Administrative Procedure Act, and its conclusions are inconsistent with PRWORA. Moreover, the interpretation set forth in the notice would significantly disrupt the City’s ability to provide critical services that preserve public health and safety in the City. Accordingly, the City strongly urges HHS to withdraw the Notice and reinstate its prior interpretation.

I. Background

a. PRWORA

Congress enacted, and President Clinton signed, PRWORA in 1996 in an effort to reform the country’s welfare system. Title IV of PRWORA² limits the eligibility of non-citizens for Federal, State, and local public benefits, providing that “an alien who is not a qualified alien [...] is not eligible for any Federal public benefit.”³ 8 U.S.C. § 1611(c) defines the term “Federal public benefit” as follows:

(c) “Federal public benefit” defined.

¹ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

² Codified at 8 U.S.C. §§ 1601-1646.

³ 8 U.S.C. § 1611(a). The term “qualified alien” is defined in 8 U.S.C. § 1641 to include non-citizens with certain immigration statuses, as well as certain victims of domestic violence.

(c) “Federal public benefit” defined.

(1) Except as provided in paragraph (2), for purposes of this title the term “Federal public benefit” means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.⁴

b. The 1998 Notice

In 1998, HHS published a notice (the “1998 Notice”) in the Federal Register interpreting the term “Federal public benefit” as used in PRWORA.⁵ The 1998 Notice resolved certain ambiguities in 8 U.S.C. § 1611(c), providing guidance that State and local governments have relied on for the last 27 years, including:

- HHS interpreted the term “grant,” as used in subparagraph (A) of paragraph (1) of the definition, to refer to grants provided to individuals rather than “block grants” provided by the Federal government to State and local governments, relying on the canon of statutory interpretation *noscitur a sociis* to infer that the term “grant” should be construed to have a meaning related to the other types of benefits listed in subparagraph (A), which are given to individuals rather than to governments.⁶
- HHS interpreted the list of types of programs in subparagraph (B) of paragraph (1) of the definition to be broad, but not comprehensive, with certain types of benefits clearly excluded. For example, the 1998 Notice noted that the use of the term “postsecondary education” indicated that Congress specifically intended to exclude non-postsecondary education, including Head Start and elementary and secondary education.⁷

⁴ Certain programs are excluded from the definition of “Federal public benefit” under 8 U.S.C. § 1611(b).

⁵ See *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,”* 63 FR 41658 (1998).

⁶ *Id.* at 31659.

⁷ *Id.*

- HHS interpreted the language “provided to an individual, household, or family eligibility unit” in subparagraph (B) of paragraph (1) of the definition as a further limitation, citing the PRWORA Conference Report, which indicated that Congress understood that language to exclude certain programs from the definition of “Federal public benefit.” The 1998 Notice found that this language should be construed to limit the definition “to benefits that are (1) provided to an individual, household, or family, and (2) the individual, household, or family must, as a condition of receipt, meet certain criteria (e.g., a specified income level or residency) in order to be conferred the benefit, that is, they must be an ‘eligibility units.’ Such benefits do not include benefits that are generally targeted to communities or specified sectors of the population (e.g., people with particular physical conditions, such as a disability or disease; gender; general age groups, such as youth or elderly).” Specifically, the statute authorizing a certain benefits program must require recipients to meet certain eligibility criteria for that program to be a Federal public benefit.⁸

The 1998 Notice went on to list those HHS programs that provide Federal public benefits pursuant to this interpretation that are not otherwise exempt from the definition pursuant to PRWORA. It noted that, even if a program generally constitutes a Federal public benefit, certain benefits provided under that program may not be considered a Federal public benefit if those benefits do not go to “an individual, household, or family eligibility unit.”⁹

c. New York City’s Social Services System

New York City is the largest city in the United States, with a population of over 8.8 million.¹⁰ It is also one of the most diverse cities in the country, with 37.5 percent of residents having been born abroad and 48 percent speaking a language other than English at home.¹¹ The City’s government is vast, with over 300,000 employees working across dozens of agencies.¹²

The City has a long history of providing social services to people in need. As far back as the late 17th century, the City appropriated funds for the care of the poor, and by the mid-18th century, the City began to establish public institutions to provide shelter and other services to people in poverty.¹³ The City’s welfare system grew throughout the 19th and early 20th centuries, with City agencies and City-supported charitable organizations operating public hospitals, almshouses, and other institutions.¹⁴ These programs were further bolstered during the New Deal, when the Roosevelt Administration allocated federal funding to state and local governments to administer welfare benefits to help the nation recover from the Great Depression.¹⁵

⁸ *Id.* at 41659-60.

⁹ *Id.* at 41660.

¹⁰ U.S. Census Bureau, *Race (New York city, New York)*, Decennial Census, Table P1 (2020), <https://data.census.gov/table/DECENNIALPL2020.P1?g=160XX00US3651000>.

¹¹ U.S. Census Bureau, *Selected Social Characteristics in the United States (New York city, New York)*, American Community Survey 1-Year Estimates, Table DP02 (2022), <https://data.census.gov/table/ACSDP1Y2023.DP02?g=160XX00US3651000>.

¹² Christian Henrichson, *NYC Employee Headcount*, Citizens Budget Commission (Nov. 19, 2024), <https://cbcnyc.org/research/nyc-employee-headcount>.

¹³ See Rebecca Rankin, *Department of Public Welfare of the City of New York*, New York City Dep’t of Records and Information Services (1922), <https://www.archives.nyc/blog/2018/6/7/department-of-public-welfare-of-the-city-of-new-yorkrvices>.

¹⁴ *Id.*

¹⁵ See Hildy Dworkin, *Selected History and Evolution of the Human Resources Administration*, New York City Human Resources Administration, https://www.nyc.gov/assets/hra/downloads/pdf/about/history_of_welfare_and_hra.pdf (accessed Aug. 3, 2025).

The City and local charitable organizations have long provided services to immigrant communities. In the late 19th and early 20th centuries, over 20 million people immigrated to the United States through Ellis Island, and many of them settled in New York City.¹⁶ During this time, new immigrants regularly received medical care at no charge at the City’s public hospitals.¹⁷ In neighborhoods like the Lower East Side that were home to large immigrant communities, social workers established “settlement houses” to provide services, initially with private funding but eventually using City, State, and Federal funds.¹⁸

Today, the provision of social services is a core function of the City government. Health and social services roles represent the third-largest category of City employees, after only education and police.¹⁹ In Fiscal Year 2025, the City’s budget allocated over \$13 billion to the City Department of Social Services (“City DSS”) and billions more to other City agencies that provide social services, such as the Department of Health and Mental Hygiene and the Administration of Children’s Services.²⁰

d. The Notice

The Notice would upend virtually all of the key components of the 1998 Notice. The Notice announces a new, significantly broader interpretation of the term “Federal public benefit.” This new interpretation could require the application of immigration status eligibility criteria to over a dozen programs that have never been subject to such criteria in the nearly 30 years since PRWORA was enacted. The new interpretations in the notice include:

- HHS rejects the 1998 Notice’s finding that the term “grant,” as used in 8 U.S.C. § 1611(c)(1)(A), should be read to refer only to grants to individuals, instead asserting that the term includes block grants to state and local governments.²¹
- HHS rejects the 1998 Notice’s finding that the term “eligibility unit” limits the types of benefits listed in 8 U.S.C. § 1611(c)(1)(B) to those that are conditioned on eligibility criteria specified in the authorizing, instead asserting that the phrase means that the types of benefits listed in that subparagraph are “Federal public benefits” if they are “provided on either a per-individual, per-household, or per-‘family eligibility unit’ basis.”²²
- HHS rejects the 1998 Notice’s finding that, by explicitly identifying “postsecondary education,” 8 U.S.C. § 1611(c)(1)(B) excludes non-postsecondary education programs like Head Start, instead asserting that the term “other similar benefit” covers Head Start, which the Notice suggests is similar to welfare.²³

¹⁶ Pauline Toole, *The Entire Expense Should Be Borne by the Federal Government: A 1913 Report from the Commissioners of Accounts*, New York City Dep’t of Records and Information Services (Sept. 29, 2023), <https://www.archives.nyc/blog/2023/9/29/the-entire-expense-should-be-borne-by-the-federal-government-a-2013-report-from-the-commissioners-of-accounts>.

¹⁷ *Id.* (noting that City official sought reimbursement for these expenses by the Federal Government).

¹⁸ Ralph da Costa Nunez & Ethan G. Sribnick, *Settlement Houses in New York: From Past to Present*, Gotham Center for New York City History (Jul. 17, 2023), <https://www.gothamcenter.org/blog/settlement-houses-in-new-york-from-past-to-present>.

¹⁹ *See* Henrichson, *supra*.

²⁰ *See, e.g., Expense-Revenue-Contract Budget, Executive Budget Fiscal Year 2026* at 2E, New York City Mayor’s Office of Management & Budget (May 2025), <https://www.nyc.gov/assets/omb/downloads/pdf/exec25/erc5-25.pdf> (showing over \$13 billion in expenditures in Fiscal Year 2025 by the Department of Social Services, among others).

²¹ 90 FR at 31233-34.

²² *Id.* at 31234-35.

²³ *Id.* at 31235-36.

The Notice then lists 13 HHS programs that HHS has determined, based on its new interpretation, are now Federal public benefits. These include Head Start, substance abuse programs, and Community Services Block Grants, among others. The Notice clarifies that the list is not exhaustive and that other programs may also constitute Federal public benefits, to be announced in future program-specific guidance.²⁴

II. Impact of the Notice on the City

The new interpretation of the term “Federal public benefit” set forth in the Notice would disrupt the City’s ability to provide necessary services to New York City residents, affecting immigrant and non-immigrant communities alike. Unlike the Federal government, which controls the admission of individuals into the United States, the City has no say in the composition of its population. Citizens and non-citizens alike choose to call New York home, and the City must govern the population it has, including by providing services that help preserve the public’s health and safety. By rendering certain non-citizens ineligible for over a dozen new programs, the Notice would prevent the City from adequately managing its affairs. In addition, by forcing all recipients of these benefits to verify their immigration status, the Notice would impose additional burdens on U.S. citizens and non-citizens who are eligible for benefits, harming those very populations whom the Notice purports to help.

The City has no control over the immigration status of its inhabitants. Once an individual is present in the City, it is in the City’s interest to provide certain services, regardless of immigration status. For instance, several of the programs that the Notice would add to the list of Federal public benefits relate to mental health and substance abuse.²⁵ The City is facing well-documented, significant mental health challenges.²⁶ If the City were not able to provide mental health and substance abuse services to certain individuals based on their immigration status, people would be left struggling with mental illness and addiction on our streets, harming safety and quality of life not only for those individuals but for the City as a whole.

The Notice asserts, without evidence, that withholding of benefits from certain non-citizens would lead to “a corresponding increase in benefits for U.S. citizens and qualified aliens.”²⁷ In fact, the Notice would obstruct access to benefits for citizens, eligible non-citizens, and ineligible non-citizens alike. To enforce new eligibility requirements, the City would need to verify benefit recipients’ citizenship or immigration status. According to a 2024 survey conducted by the Brennan Center for Justice, more than 9 percent of U.S. citizens ages 18 or older (over 21 million people) did not have proof of citizenship readily available.²⁸ The Notice would prevent such eligible New Yorkers from accessing benefits and services. The City and other entities that provide benefits would have to take on significant administrative burdens to implement immigration status verification procedures on these new categories of benefits. Jurisdictions may find that it is no longer feasible to provide certain benefits at all if they must conduct onerous verifications for each recipient, resulting in all potential recipients losing out on benefits, regardless of immigration status.

Immigration status verification requirements can have a devastating impact on the ability of those most in need to access vital services. For instance, people experiencing homelessness are particularly likely to have difficulty

²⁴ *Id.* at 31237.

²⁵ *See* 90 FR at 31237 (listing Substance Use Prevention, Treatment, and Recovery Services Block Grant, Certified Community Behavioral Health Clinics, and Mental Health and Substance Use Disorder Treatment, Prevention, and Recovery Support Services Programs administered by the Substance Abuse and Mental Health Services Administration as among the programs that now fall within HHS’s interpretation of “Federal public benefit”).

²⁶ *See, e.g., The State of Mental Health of New Yorkers*, New York City Dep’t of Health and Mental Hygiene (May 2024), <https://www.nyc.gov/assets/doh/downloads/pdf/mh/state-of-mental-health-new-yorkers.pdf>.

²⁷ 90 FR at 31238.

²⁸ Kevin Morris & Cora Henry, *Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available*, Brennan Center for Justice (Jun. 11, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>.

obtaining identification.²⁹ Homeless people are also particularly likely to suffer from mental illness and substance abuse disorders.³⁰ If the City could not provide mental health or substance abuse treatment services without verification of immigration status, many homeless citizens and otherwise eligible non-citizens who lack identification would be unable to receive critical care.

The Notice would also affect U.S. citizens and eligible non-citizens who live in mixed-status households. As of 2019, 62% of NYC families include at least one immigrant member.³¹ Among them, 12% are mixed-status, meaning at least one person in the family is undocumented, while other members of the family are U.S. citizens or have other lawful statuses.³² Limiting the use of federal public benefits based on immigration status will stoke fear and confusion among mixed-status families and result in eligible New Yorkers losing access to services to which they are entitled. Research has borne out such a chilling effect: after the Federal Government adopted new rules altering the definition of “public charge” in 2018 and 2019, studies found that many immigrant families avoided seeking benefits for which they were eligible out of fear that using those benefits could affect their immigration status.³³

Examples of some of the City agencies and programs that would be affected by immigration status verification requirements follow. This list is not exhaustive.

a. Administration for Children’s Services

The New York City Administration for Children’s Services (“ACS”) is the City agency responsible for providing child welfare, juvenile justice, and family support services. Many of the most vulnerable and at-risk children and families in the City rely on ACS services to protect their health and safety. ACS has long partnered with the Federal Government to support the safety and well-being of children and families who come into contact with the child welfare system and seeks to continue that partnership.

The broader interpretation of “Federal public benefit” set forth in the Notice could endanger the City’s children and leave them more susceptible to child abuse and neglect. By preventing people with certain immigration statuses from accessing critical services, the new interpretation would leave families without the support they need to keep their children safe.

For example, Title IV-E Prevention Services help protect children and keep families together. New barriers to these programs would put children in harm’s way and lead to preventable foster care placements. In extreme cases, denial of services to certain immigrant families could put children at risk of sex trafficking and other forms of exploitation. All children deserve to live in a safe environment, and the imposition of immigration status eligibility requirements on programs like Title IV-E Prevention Services would interfere with ACS’s ability to protect New York City children from harm.

b. Department of Health and Mental Hygiene

²⁹ See, e.g., *Homelessness: Barriers to Obtaining ID and Assistance Provided to Help Gain Access*, U.S. Gov’t Accountability Office, GAO-24-105435 (Feb. 2024), <https://www.gao.gov/assets/d24105435.pdf>.

³⁰ See *Guide Overview: Expanding Access to and Use of Behavioral Health Services for People Experiencing Homelessness*, Substance Abuse and Mental Health Services Admin. Pub. No. PEP22-06-02-007 (Jan. 2023), <https://library.samhsa.gov/sites/default/files/pep22-06-02-007.pdf>.

³¹ *The Health of Immigrants in New York City* at 14, New York City Dep’t of Health and Mental Hygiene (March 2025), <https://www.nyc.gov/assets/doh/downloads/pdf/episrv/immigrant-health-2025.pdf>.

³² *Id.*

³³ See Hamutal Bernstein, et al., *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Benefits in 2019*, Urban Institute (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf.

The New York City Department of Health and Mental Hygiene (“DOHMH”) is the City agency charged with protecting and promoting the health of City residents. DOHMH does so through a range of programs and initiatives to prevent and respond to the spread of communicable disease, address chronic disease, prepare for and respond to public health emergencies, support residents’ mental health and wellness, redress health inequities, and more. DOHMH has longstanding, productive partnerships with HHS.

Partnerships for Early Diversion of Youth

DOHMH operates the Partnerships for Early Diversion of Youth (“PEDY”) program, which is funded by a \$1.645 million grant from the Substance Abuse and Mental Health Services Administration (“SAMHSA”) that was awarded in 2022 for a five-year duration. The PEDY program is a collaboration between DOHMH and partner organizations. SAMHSA designed the grant award to provide support to youths age 13-21 at risk of arrest and/or recidivism, regardless of immigration status.

Immigration status eligibility requirements would cause a chilling effect on youth participation in PEDY and run counter to the goals of the program. In addition, some program participants who are U.S. citizens or otherwise eligible non-citizens are likely to have difficulty obtaining or producing government-issued identification that would be required for an immigration status verification. The damage that an immigration status restriction would cause to PEDY would extend to individuals of all citizenship and immigration statuses and would reduce access to mental health support that youth need.

Health Center Program

DOHMH is also concerned about the designation of services offered by federally qualified health centers (“FQHCs”) that are funded through the Health Center Program as Federal public benefits. For decades, the Health Center Program has provided the infrastructure for community-based clinics to offer affordable primary care to people living in medically underserved areas. The program, as designed, is intended to serve as a universally accessible source of care. Program grantees are required to provide services to anyone within their service area, regardless of insurance status or ability to pay.

The Health Center Program’s impacts are far-reaching. In 2023, NYC-area FQHCs served over 1.3 million patients.³⁴ The City’s public health care system includes an expansive network of FQHCs. The City is also home to 31 other independently operated FQHC networks representing over 400 individual clinics.

Subjecting FQHC services to immigration status eligibility criteria would have devastating impacts on lower-income New Yorkers. A significant portion of FQHC patients – including lawfully present individuals such as survivors of human trafficking – would no longer be eligible to get services at their established primary care home. Continuity of care would be disrupted, and many patients would likely avoid the health care system altogether.

This change in interpretation would lead to a worsening of health outcomes and an increase in health care costs disproportionately borne by historically underserved communities. FQHCs as institutions would also suffer, potentially shrinking the number of clinics that are able to sustainably operate with diminishing revenue, and ultimately reducing access to care for those who remain eligible. The City could, in turn, incur additional costs for the provision of emergency medical care for individuals who were unable to obtain the preventative care they need, as emergency medical care remains exempt from the restrictions on State and local public benefits in PRWORA.³⁵

Title X

DOHMH partners with Title X-supported family planning providers and other healthcare organizations to facilitate, track and evaluate access to high quality and affordable maternal, reproductive, and sexual healthcare. If our partner clinics are not able to utilize Title X funding to cover family planning services for certain non-citizen New Yorkers, their patients will have higher out-of-pocket costs for family planning services as they try to seek care elsewhere; as a result, they would likely delay their visit or simply avoid getting the care they need.

Uninsured or underinsured individuals who are unable to go to a Title X-funded clinic because they are no longer eligible for Title X or who forgo care altogether because they believe they might be ineligible would have fewer options for

³⁴ HRSA Data Warehouse, Health Center Program Uniform Data System (UDS), New York Aggregated Health Center Data (2024).

³⁵ See 8 U.S.C. §§ 1611(b)(1)(A), 1621(b)(1).

contraception, sexually transmitted infection (“STI”) and human immunodeficiency virus (“HIV”) services, and other reproductive health care. They would not be able to turn to FQHCs because FQHCs are also impacted by the Notice, as described above.

Restricting access to Title X and other federal programs would weaken the health care safety net that New Yorkers rely on. Declining patient populations could lead to health care providers making hard decisions about service and staff reductions, or even clinic closures. This would erode access to care for millions of New Yorkers, even for U.S. citizens and non-citizens who are eligible for benefits, because the clinics and hospitals that do remain open could struggle to meet the increased demand in a timely manner, therefore delaying care and increasing costs for everyone.

c. Department of Social Services

The New York City Department of Social Services (“DSS”) is comprised of the Department of Homeless Services and the Human Resources Administration, and is the largest social services agency in the country. In addition to administering benefits programs like SNAP, Temporary Assistance, and Medicaid, DSS is also responsible for providing temporary emergency housing and street outreach to homeless individuals in New York City as well as connecting them to key programs such as rapid rehousing, mental health and substance use treatment, and other benefit programs to stabilize their lives and improve their health and safety. DSS has worked with the Federal Government and with sister agencies to address the needs of those who are homeless in New York City for decades.

The Notice classifies critical block grants and programs that fund community based mental health and substance use treatment as well as rapid rehousing programs as “Federal public benefits” and would require immigration verification of individuals to access those services. Subjecting homeless individuals to immigration verification requirements when they are seeking supportive services such as mental health and substance use treatment is unduly burdensome on this population. It is well documented that homeless individuals, many of whom are citizens or “qualified immigrants” often lack or are unable to access appropriate documentation to prove their status.³⁶ The result of implementation of these restrictions is predictable: fewer New York City residents will be able to access these services at all, not for lack of need or eligibility, but for failing to have the correct papers.

The larger impact on DSS and New York City as a whole is that with fewer people able to access mental health and substance use community based services, there will be larger numbers of homeless individuals who will only be able to receive emergency medical care to address their mental health or substance use issues, straining the resources of the City’s public hospitals, worsening the overall health of the homeless population, and destabilizing the lives of DSS clients. With less consistent treatment access, we can expect more incidents associated with untreated mental health and substance use on City streets.

d. New York City Public Schools

New York City Public Schools (“NYCPS”) ensures a free, full-day, high-quality pre-kindergarten (“pre-K”) seat for every four-year-old living in the city. Moreover, NYCPS makes full-day, high-quality “3-K” programs available in every school district, with every resident three-year-old eligible to apply. Head Start programming, including Early Head Start, has been critical to enabling NYCPS to meet this early childhood commitment to New York City families. Through its Head Start grant, NYCPS has historically offered more than 5,000 pre-K/3-K Head Start seats, and more than 125 infant/toddler Early Head Start seats, to families via contracts with delegate providers. Independent childcare providers offer thousands of additional Head Start seats in the City.

Head Start is designed to meet the school readiness needs of the City’s most vulnerable children, including a substantial number of immigrant children. If Head Start were subject to immigration status eligibility requirements, Head Start programs in New York City would not be able to meet their aim of reaching families most in need of early childhood education and services. Restricting Head Start eligibility would also cause damage to referrals,

³⁶ See *Homelessness: Barriers to Obtaining ID, supra*.

identification, and push-in service delivery for children in need of disability services, as guaranteed by the Individuals with Disabilities Education Act.

NYCPS provides elementary and secondary education to any children in the City, without regard to immigration status, in accordance with the longstanding Supreme Court precedent set forth in *Plyler v. Doe*.³⁷ If certain children are denied access to Head Start, they will be less likely to succeed in school, harming NYCPS's ability to provide a basic education to every child, as it is legally required to do. Restrictions on Head Start could have other devastating impacts on those children and families who lose access to early childhood education. Research has found that participation in Head Start is associated with a 93% reduction in a child's risk of entering foster care.³⁸ The imposition of immigration status eligibility requirements on Head Start could separate families and further burden the City's foster care system.

III. The Notice is Unlawful

a. The Notice Is Procedurally Invalid

The Notice violates the Administrative Procedure Act ("APA") because it did not undergo notice and comment and no exception to the notice-and-comment requirement applies. The APA requires agency rules to undergo notice and comment.³⁹ "Interpretative rules" are exempt from the notice-and-comment requirement.⁴⁰ However, interpretative rules merely "advise the public of the agency's construction of the statutes and rules which it administers" and "do not have the force and effect of law."⁴¹ The interpretative rule exception does not apply to a "substantive rule" that would "affect[] individual rights and obligations" and "may be binding or have the force of law."⁴²

The Notice would fundamentally change eligibility requirements for longstanding federally funded programs providing services to millions of people. The Notice itself asserts that "numerous unqualified aliens will no longer receive benefits under Federally funded programs due to this notice."⁴³ Because the Notice is not merely advisory and would have a far-reaching effect, it is a substantive rather than interpretative rule. Nonetheless, the Notice did not undergo the notice-and-comment procedures required by the APA. As a result, the Notice is procedurally invalid.

b. The Notice Is Arbitrary and Capricious

The Notice violates the APA because it is arbitrary and capricious. An agency action is arbitrary or capricious where it is not "reasonable and reasonably explained."⁴⁴ An agency must provide "a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made."⁴⁵

³⁷ 457 U.S. 202 (1982)

³⁸ Sacha Klein, Lauren Fries & Mary M. Emmons, *Early Care and Education Arrangements and Young Children's Risk of Foster Care Placement: Findings from a National Child Welfare Sample*, 83 Children and Youth Services Review 168-178 (Dec. 2017).

³⁹ 5 U.S.C. § 553.

⁴⁰ 5 U.S.C. § 553(b)(A).

⁴¹ *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (internal quotation omitted).

⁴² *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (internal quotation omitted).

⁴³ 90 FR at 31238.

⁴⁴ *Fed. Comm'n's Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

⁴⁵ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

An action is also arbitrary and capricious if the agency “failed to consider . . . important aspects of the problem before” it.⁴⁶ An agency must “pay[] attention to the advantages *and* the disadvantages” of its decision.⁴⁷ In addition, when an agency “rescinds a prior policy,” the agency must, at minimum, “consider the ‘alternatives’ that are within the ambit of the existing policy,” “assess whether there were reliance interests,” and “weigh any such interests against competing policy concerns.”⁴⁸

The Notice is arbitrary and capricious because it fails to provide a reasoned basis or explanation, and its stated reasoning is conclusory. HHS failed to consider the consequences of the Notice, including the potential disadvantages of its new interpretation of “Federal public benefit,” particularly the harmful impact on U.S. citizens and eligible non-citizens, the populations it purports to help.

The Notice further lacks any consideration of the practical difficulties that regulated entities like the City would face in verifying immigration status for the broad array of benefits that HHS now considers to be “Federal public benefits” with little notice.⁴⁹ For nearly thirty years, the City has carefully designed its programs to comply with HHS’s prior interpretation of “Federal public benefit.” The expansion of that interpretation would force the City to take on significant costs to perform verifications for a whole suite of benefits that were never subject to such eligibility requirements before. The City would have to implement procedures, develop appropriate tracking systems, and hire staff to conduct immigration status verifications for the thousands of recipients of benefits that would now be subject to these new requirements. All of this would take time and require additional funding. The Notice entirely fails to take into account these costs and important reliance interests, weigh such interests against competing policy concerns, and consider alternatives. As a result, the Notice violates the APA.

Finally, the Notice is arbitrary and capricious because it was issued almost simultaneously with evidently related actions by multiple other Federal agencies, but fails to consider the cumulative consequences of those actions. Within a week of the publication of the Notice in the Federal Register on July 14, 2025, the United States Department of Justice (“DOJ”) published a notice that eliminated a number of exceptions to the restrictions on receipt of Federal public benefits pursuant to 8 U.S.C. § 1611 and State and local public benefits pursuant to 8 U.S.C. § 1621;⁵⁰ the United States Department of Agriculture (“USDA”) published a notice interpreting the term “Federal public benefit” to include various USDA-administered programs that had not previously been subject to the restrictions in PRWORA;⁵¹ the United States Department of Education (“USED”) published a notice interpreting the term “Federal public benefit” to include USED-administered programs that had not previously been subject to the restrictions in PRWORA;⁵² and the United States Department of Labor (“DOL”) issued new guidance providing that the term “Federal public benefit” includes various programs administered by DOL that had not previously been subject to the

⁴⁶ *Dep’t of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 25 (2020) (citation omitted); *see also id.* at 30.

⁴⁷ *Michigan v. E.P.A.*, 576 U.S. 743, 753 (2015).

⁴⁸ *Regents*, 591 U.S. at 30, 33.

⁴⁹ The City notes that HHS also fails to discuss how the Notice will interact with other provisions regarding verification of immigration status, including 8 U.S.C. § 1642(d).

⁵⁰ *Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, U.S. Dep’t of Justice, A.G. Order No. 6335-2025, 90 FR 32023 (Jul. 16, 2025) (revoking *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, A.G. Order No. 2353-2025, 66 FR 3613 (Jan. 16, 2001)).

⁵¹ *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit”*, U.S. Dep’t of Agriculture, Doc. No. 2025-12691, 90 FR 30621 (Jul. 10, 2025).

⁵² *Clarification of Federal Public Benefits Under the Personal Responsibility and Work Opportunity Reconciliation Act*, U.S. Dep’t of Educ., Doc. No. 2025-12925, 90 FR 30896 (Jul. 11, 2025).

restrictions in PRWORA.⁵³ The cumulative effect of the notices, if they all take effect immediately as the agencies intend, could in fact be catastrophic for the health and safety of those who rely upon the affected programs, and for the broader populations of large municipalities such as New York City. Indeed, they appear intended to create a large cohort of individuals who live in these municipalities and are suddenly denied essential services, with health and safety consequences for all the residents of such municipalities.

Such health and safety consequences are certain to create substantial additional public health and safety costs to state and local governments. Executive Order 12866, which governs the Federal regulatory review process, directs agencies to “tak[e] into account [...] the costs of cumulative regulation” on, among others, “governmental entities.”⁵⁴ HHS failed entirely to consider the cumulative costs of the coordinated regulatory actions relating to PRWORA that HHS and four other Federal agencies undertook in the span of a week in mid-July 2025. Therefore, the Notice is arbitrary and capricious and violates the APA.

c. The Notice Is Contrary to Law

The Notice violates the APA because the interpretation set forth in the Notice is contrary to law. The Notice interprets the term “Federal public benefit” to apply to programs that Congress never intended be covered by the restrictions in 8 U.S.C. § 1611.

For instance, the Notice unlawfully interprets “Federal public benefit” to include programs that do not have specific eligibility criteria. PRWORA makes clear that “Federal public benefits” are limited to benefits that themselves require an application or impose eligibility requirements.⁵⁵ The Notice’s interpretation of “Federal public benefit” to extend to programs that are generally available to the public, regardless of immigration status, is contrary to both the text of PRWORA and the last 29 years of guidance and practice.

The Notice unlawfully extends the definition of “Federal public benefit” to include non-postsecondary education benefits such as Head Start, even though PRWORA provides that the term applies only to “postsecondary education” benefits.⁵⁶ That postsecondary education was specifically listed in the definition indicates that Congress intended to exclude non-postsecondary education benefits from the definition.

The Notice unlawfully interprets PRWORA to apply automatically to benefits funded by block grants to states and localities. PRWORA only restricts the eligibility of “an alien” for Federal public benefits.⁵⁷ A grant issued to a state or local government therefore does not *itself* trigger any of the Act’s prohibitions, because it is not provided to “an alien.” Such a grant only triggers PRWORA if it is in turn used by the state or local government to fund payments or assistance to aliens that *themselves* constitute “Federal public benefits” within the meaning of the statute. Because the notices include in the scope of “Federal public benefits” block grants that do not ultimately provide Federal public benefits to “an alien,” the notices contradict the plain text of PRWORA.

Finally, the Notice unlawfully includes within the definition of “Federal public benefit” programs that have superseding eligibility requirements provided for by statute. PRWORA does not apply where a statute imposes

⁵³ *Work Authorization Verification in Grant Programs Administered by the Employment and Training Administration*, U.S. Dep’t of Labor Employment and Training Admin., Training and Employment Guidance Letter No. 10-23, Change 2 (Jul. 10, 2025).

⁵⁴ *Regulatory Planning and Review*, E.O. 12866 § 1(b)(11) (Sept. 30, 1993).

⁵⁵ See 8 U.S.C. §§ 1611(c)(1)(A)-(B), 1642(a), (d).

⁵⁶ 8 U.S.C. § 1611(c)(1)(B).

⁵⁷ 8 U.S.C. § 1611(a).

eligibility requirements that are inconsistent with or supersede PRWORA.⁵⁸ The Notice is unlawful because it includes programs such as the Health Center Program that are covered by such statutes.⁵⁹

d. Impacts on Federalism

The Notice and related actions by DOJ, USDA, USED, and DOL described above would affect a vast array of City programs. The HHS, USDA, USED, and DOL notices would impose significant new requirements on programs that the City administers using Federal funds. The DOJ notice, which summarily eliminates a long list of categories of benefits exempt from the limitation on provision of State and local public benefits to certain non-citizens in 8 U.S.C. § 1621, also seeks to prevent the City from using its own funds to provide services to New Yorkers without regard for immigration status in place of those Federal programs newly identified as Federal public benefits.

Taken together, these actions constitute an unprecedented Federal intrusion into the ability of State and local governments to provide for the health and safety of their inhabitants, interfering with the police power reserved to the States and their political subdivisions under the federalist system that this nation's framers so carefully designed. By withholding Federal and non-federal benefits alike from millions of non-citizens who are not qualified to receive public benefits under PRWORA and hindering the provision of government services to millions more U.S. citizens and qualified non-citizens, these actions could create a humanitarian crisis among the City's population and, as noted above, inflict substantial operational and cost burdens upon State and local governments.

The provision of core essential services to all residents, whether by means of Federal, State or local funding, is critical to the City's ability to protect the health and safety of citizens and non-citizens alike. HHS and its sister Federal agencies should withdraw the Notice and the other related notices, because these notices cumulatively represent a reckless effort to deny such services to millions of people with no meaningful warning or transition and thereby precipitate a public health and safety crisis. The crisis will inevitably force local governments to address the catastrophic impact with their own limited resources. This effort improperly disrupts the balance of power between the Federal government and the States and their political subdivisions that was intended by the founders of the American republic.

IV. Conclusion

The City opposes HHS's new interpretation of the term "Federal public benefit" set forth in the Notice. The City has a strong interest in providing critical social services to all New Yorkers, regardless of their immigration status. The imposition of new eligibility requirements for programs like foster care placement prevention, Head Start, and substance abuse recovery services would have a far-reaching impact on the City's operations. Such a policy would not only prevent ineligible non-citizens from accessing services but would also make it more difficult for U.S. citizens and eligible non-citizens to receive important benefits. Further, the Notice violates the procedural requirements of the APA, is arbitrary and capricious, and is contrary to law. Therefore, the City urges HHS to rescind the Notice and restore the prior interpretation of "Federal public benefit" that the City has relied upon since 1998.

Sincerely,



Muriel Goode-Trufant

⁵⁸ See, e.g., *Oakley v. DeVos*, No. 20-CV-03215-YGR, 2020 WL 3268661, at *15 (N.D. Cal. June 17, 2020); *Noerand v. DeVos*, 474 F. Supp. 3d 394, 403 (D. Mass. 2020).

⁵⁹ See 42 U.S.C. § 254b(a)(1) (providing that public health centers must serve "a population that is medically underserved" by providing "health services . . . for *all* residents of the area served by the center" (emphasis added)).