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SUPPLEMENTARY INFORMATION:

I. Background

Title IV of PRWORA contains several references to the term "Federal means-tested public benefit[s]." The most significant of these references are found in Sections 403 and 421. Section 403 denies "Federal means-tested public benefit[s]" to aliens who entered the United States with a qualified alien status "on or after the date of the enactment of this Act" for 5 years beginning on the date of the aliens' entry into the United States. Section 421 provides that new sponsor-to-alien deeming rules apply to "any Federal means-tested public benefits program." In the absence of a statutory definition of "Federal means-tested public benefit", HHS is interpreting the term to include only benefits provided by means-tested, mandatory spending programs.

Early versions of PRWORA contained a definition of "Federal means-tested public benefit" that could have encompassed benefits provided by both discretionary spending programs and mandatory spending programs. (These early versions provided that, with certain exceptions, "the term 'Federal means-tested public benefit' meant a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit." 142 Cong. Rec. S8481 (daily ed. July 22, 1996).) During debate over the bill in the Senate, a member of the Senate raised a point of order pursuant to the Byrd Rule, and the definition was struck. The Senate Parliamentarian upheld the Byrd Rule objection, the Senate did not appeal the ruling, and PRWORA was ultimately enacted without defining the term.

PRWORA was subject to Section 313 of the Congressional Budget Act of 1974, also known as the "Byrd Rule," because it was enacted as a budget reconciliation bill. Under the Byrd Rule, a Senator may raise a point of order to strike or prevent the incorporation of "extraneous" material. A provision in a reconciliation bill will be considered "extraneous" and subject to a point of order if, among other things, "it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision." 2 U.S.C. § 644(b)(1)(D). The legislative history of PRWORA indicates that the Senate understood the significance of the Byrd Rule objection in terms of limiting the scope of the definition of "Federal means-tested public benefit" to mandatory spending programs, while leaving discretionary programs unaffected. *See* 142 Cong. Rec. at S9403 (daily ed. August 1, 1996) (statement of Senator Chafee); 142 Cong. Rec. at S9400 (statements of Senators Graham, Kennedy and Exon). Therefore, to the extent the definition of "Federal means-tested public benefit" included benefits provided by discretionary spending programs, it was subject to a Byrd Rule objection.

II. Interpretation

In light of the statutory language and legislative history, HHS is defining "Federal means-tested public benefit" to apply only to benefits provided by Federal means-tested, mandatory spending programs, and not to any discretionary spending programs or to any mandatory spending programs that are not means-tested. For purposes of this **Federal Register** notice, a program is considered "means-tested" if eligibility for the program's benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the eligibility unit seeking the benefit.

The following HHS programs are means-tested, mandatory spending programs: Medicaid, Temporary Assistance for Needy Families (TANF), Foster Care, Adoption Assistance, and part of the Child Care Development Block Grant. Foster Care and Adoption Assistance, however, are explicitly exempted from the term "Federal means-tested public benefit" under Section 403(c)(2)(F). The Child Care Development Block Grant program is unique in that it is funded from both mandatory and discretionary parts of the budget. Since the funds are operationally commingled at the state and local level, and since the mixed nature of the funding results in budgetary effects more closely akin to those of a discretionary spending program, we are treating Child Care as a discretionary spending program for purposes of interpreting "Federal means-tested public benefit." Therefore, the HHS programs that constitute "Federal means-tested public benefits" under PRWORA are Medicaid and TANF.

This interpretation pertains only to HHS and its benefit programs. Other Executive Branch agencies whose programs may be subject to PROWORA will make independent determinations about the scope of the term.

III. Comment Period and Effective Date

Although HHS is soliciting public comment on this interpretation, we believe that it is necessary to apply this interpretation to HHS programs immediately, prior to receipt and consideration of any comments.

PRWORA was enacted in August, 1996, and since that time HHS has received numerous inquiries regarding the application of the term "Federal means-tested public benefit." Additional delay will cause unnecessary or incorrect administrative actions by agencies or entities that administer our programs. We also believe it is possible that due to confusion about the application of the term "Federal means-tested public benefit" people may have been denied critical benefits and services who, according to the interpretation in this notice, are otherwise eligible. Without prompt issuance of this interpretation, state and local governments and other public and private benefit providers will remain confused over how to implement the requirements of Title IV of PRWORA. Finally, some states have indicated their intention to define the term "Federal means-tested public benefit" on their own if Federal guidance is not forthcoming soon. Independent interpretations by states will only compound the confusion on this issue since there is no certainty that each state will arrive at the same definition of the term. In sum, although we are providing a 60-day period for public comment, as indicated at the beginning of this notice, this interpretation is effective immediately.

IV. Economic Impact

The Department has analyzed the costs and benefits of this notice to determine whether it has a substantial economic effect on the economy as a whole, on states, or on small entities. The purpose of this analysis was to identify less burdensome or more beneficial alternatives and thereby to influence the requirements imposed by the notice.

PRWORA creates major economic effects, a large portion of which results from changes in the law relating to immigrants' eligibility for Federal benefits. We estimated the 1997–2002 Federal budget savings to Medicaid due to the immigrant restrictions would be $5.1 billion. There were no Federal budget savings estimated for TANF because, as a block grant, its spending levels were fixed regardless of caseload size. These Medicaid budget effects are essentially due to the eligibility restrictions contained in the statute.

This notice provides HHS' interpretation as to whether any other HHS programs are subject to the PRWORA requirements regarding immigrants' eligibility for "Federal means-tested" benefits, and thereby serves to prevent confusion among administering agencies, grantee agencies, benefit providers, and the public. This interpretation has no effect on overall spending levels for any discretionary-funded HHS programs. Nor does this interpretation create burdens or mandates on states or small entities.

As a result of the PRWORA eligibility restrictions, this notice is classified as economically "significant" under Executive Order 12866's criterion of an economic effect of more than $100 million. For the same reason, it is classified as a "major rule" for purposes of Congressional review under 5 U.S.C. § 801 et. seq., Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). And, for the same reasons noted in section III above, this notice is effective immediately under the exception procedures of § 808 of that statute because we have determined for good cause that delayed implementation is impractical and contrary to the public interest.

Dated: August 21, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97-22683 Filed 8-25-97; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of September 1997:

Name: Committee on the Agency for Health Care Policy and Research Health Insurance Plan Abstraction Data Base Project.

Date and Time: September 3, 1997, 10:00–12:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 500, Rockville, Md 20852.

This meeting will be closed to the public

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee recommendations to the Administrator, AHCPR, regarding the technical merit of the contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Health Insurance Plan Abstraction Data Base Project.

The purpose of this contract is to create a data base of health insurance benefits information. These data describe the health benefits included in health insurance policy booklets that are collected as part of the Medical Expenditure Panel Survey. In order to develop a uniform set of benefits data, policy booklets are read, reviewed for completeness, and information is abstracted into an electronic data base. To support this effort, the contract also provides support for programming the required software and for implementing a training component. The training component is needed to instruct personnel in a uniform set of standards to be applied during the abstraction of information from health insurance policy booklets.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of the contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposals that may be revealed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 USC (b)(c)(6), 41 CFR Section 101–6.1023 and Department procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Jessica Vistnes, Center for Cost and Financing Studies, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 500, Rockville, Maryland 20852, 301/594–1406.

Dated: August 20, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97-22620 Filed 8-25-97; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-22-97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1998 National Health Interview Survey, Basic Module (0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2000."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the second full year of data collection using the Basic Module on CAPI, and for implementation of the first "Topical Module" (or supplement), which is on Health People 2000 Objectives. Ad hoc Topical Modules on various health issues are provided for in the redesigned NHIS. This data collection, planned for January–December 1998, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. In processing the payment of health insurance claims by performing data entry of customer provided information and information relating to the cost of medical treatment, and by utilizing the customer's database to match membership and provider information to facilitate payment between the provider and the insurer, and in collection of financial and other data from hard copies and electronic images of airline tickets that is provided to customers for billing purposes, pursuant to § 225.28(b)(14) of the Board's Regulation Y. *See, Banc One Corporation*, 80 Fed. Res. Bull. 139 (1994).

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *BankAmerica Corporation*, San Francisco, California; to acquire all of the assets, and assume all of the liabilities of Robertson Stephens & Company Group ("Group"), and Robertson Stephen & Company, Inc. ("RS&Co., Inc."), and thereby engage worldwide in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open end investment companies *See J.P. Morgan & Co., Inc., Citicorp and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989); in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state members banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8) of the Board's Regulation Y; in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing securities brokerage services (including securities clearing and securities execution services on an exchange), alone and in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7) of the Board's Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a riskless principal to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer, pursuant to § 225.28(b)(76) of the Board's Regulation Y; in acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 and the rules of the Securities and Exchange Commission, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and in providing administrative and other services to investment companies, including open-end investment companies ("mutual funds"). *See Bankers Trust* 83 Fed. Res. Bull. ——— (Order dated July 21, 1997); *Barclays PLC*, 82 Fed. Res. Bull. 158 (1996); *Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996). BankAmerica would engage in these activities in accordance with the limitations and conditions previously established by the Board by regulation or order, with certain exceptions relating to the proposed provision of advisory and administrative services to mutual funds that are discussed in the notice. BankAmerica also intends to acquire certain offshore subsidiaries, companies engaged in providing services to Group and RS & Co. and its affiliates, and proprietary investments currently owned by Group and RS & Co. Inc.

Board of Governors of the Federal Reserve System, August 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–22601 Filed 8–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, September 2, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–22867 Filed 8–22–97; 3:44 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Means-Tested Public Benefit"

AGENCY: Office of the Secretary, HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period interprets the term "Federal means-tested public benefit[s]" as used in Title IV of the Personal Responsibility and work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, to include only mandatory spending programs of the Federal Government in which eligibility for the programs' benefits, or the amount of such benefits, or both, are determined on the basis of income or resources of the eligibility unit seeking the benefit. At HHS, the benefit programs that fall within this definition (and are not explicitly excepted from the definition by Section 403(c)) are Medicaid and Temporary Assistance for Needy Families (TANF).

DATES: *Effective Date:* This notice is effective on August 26, 1997.

COMMENT PERIOD: Written comments will be considered if we receive them at the appropriate address, as provided in the **ADDRESSES** section below, no later than 5 p.m. on October 27, 1997.

ADDRESSES: Mail comments (1 original and 3 copies) to the following address: Division of Economic Support for Families, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 404E, 200 Independence Ave., SW, Washington, DC 20201, Attention: David Nielsen.

FOR FURTHER INFORMATION CONTACT: David Nielsen, (202) 690–7148.

Copies of comments may be inspected at the above address. Inquiries regarding how a particular program is affected by this notice should be submitted to DHHS program staff responsible for managing the program at either the appropriate Regional Office, or Headquarters in Washington, DC. The above contact should be used only to submit general comments regarding the policy interpretation contained in this notice.

Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 25, 1997.

A closed meeting will be held on Thursday, August 28, 1997 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 28, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 21, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–22799 Filed 8–22–97; 1:00 p.m.]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Federal Means-Tested Public Benefits Paid by the Social Security Administration

AGENCY: Social Security Administration.

ACTION: Notice of Benefits Paid by the Social Security Administration Meeting the Definition of a "Federal Means-Tested Public Benefit".

SUMMARY: The Social Security Administration announces that, for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, the only benefits paid by the Social Security Administration which are "Federal means-tested public benefits" are supplemental security income payments made under title XVI of the Social Security Act. This notice pertains to the eligibility of aliens for certain government benefits during their first 5 years of entry with a specified immigrant status, to aliens who are lawfully admitted for permanent residence who can be credited with 40 qualifying quarters of coverage, and to the operation of alien-sponsor deeming rules.

FOR FURTHER INFORMATION CONTACT: Diane Blackman, Deputy Associate Commissioner, Office of Program Benefits Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–3571.

SUPPLEMENTARY INFORMATION:

Section 403 of title IV of the PRWORA, enacted August 22, 1996, provides that qualified aliens entering the United States on or after the date of enactment, are ineligible for "Federal means-tested public benefits" during the first 5 years they are qualified aliens, unless they fall within certain specified exceptions. In addition, sections 402 and 435 provide that aliens who are lawfully admitted for permanent residence are eligible for certain Federal benefits if they can be credited, individually and/or from a spouse or parent, with 40 qualifying quarters of coverage. However, qualifying quarters of coverage may not be credited for any quarter in which the individual received a "Federal means-tested public benefit" after December 31, 1996. Similarly, under section 412, aliens who are lawfully admitted for permanent residence are eligible for certain State public benefits if they can be credited with 40 qualifying quarters of coverage but only if they did not receive a "Federal means-tested public benefit" in that quarter after the foregoing date. Also, with respect to the operation of the alien-sponsor deeming rules described in section 421, receipt of "Federal means-tested public benefits" is a factor in determining the duration of the deeming period.

Prior to the enactment of PRWORA, early versions of the bill contained a definition of "Federal means-tested public benefit" that could have encompassed benefits provided by both discretionary spending programs and mandatory spending programs. (These early versions provided that, with certain exceptions, "the term 'Federal means-tested public benefit' meant a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit." 142 Cong. Rec. S8481 (daily ed. July 22, 1996).)

PRWORA was subject to section 313 of the Congressional Budget Act of 1974, also known as the "Byrd Rule," because it was enacted as a budget reconciliation bill. Under the Byrd Rule, a Senator may raise a point of order to strike or prevent the incorporation of "extraneous" material. A provision in a reconciliation bill will be considered "extraneous" and subject to a point of order if, among other things, "it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision." 2 U.S.C. § 644(b)(1)(D). The legislative history of PRWORA indicates that the Senate understood the significance of the Byrd Rule objection in terms of limiting the scope of the definition of "Federal means-tested public benefit" to mandatory spending programs, while leaving discretionary programs unaffected. *See* 142 Cong. Rec. at S9403 (daily ed. August 1, 1996) (statement of Senator Chafee); 142 Cong. Rec. at S9400 (statements of Senators Graham, Kennedy and Exon). Therefore, to the extent the definition of "Federal means-tested public benefit" included benefits provided by discretionary spending programs, it was potentially subject to a Byrd Rule objection and thus stricken from the legislation.

During Senate debate on PRWORA, a point of order was raised pursuant to the Byrd Rule. The Presiding Officer sustained the point of order, and the ruling was not appealed. The definition was stricken and PRWORA was ultimately enacted without the term "Federal means-tested public benefit" being defined. H.R. Conference Report No. 725, 104th Congress, 2nd session 381–82 (1996).

In light of the statutory language and legislative history, "Federal means-tested public benefit" applies only to benefits provided by Federal means-tested, mandatory spending programs.

The purpose of this notice is to announce which payments made by the Social Security Administration constitute a "Federal means-tested public benefit" as described above. The Social Security Administration announces that, of the programs it administers, only supplemental security income benefits under title XVI of the Social Security Act are "Federal means-tested public benefits" for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended.

Dated: August 18, 1997.

Glenna Donnelly,

Assistant Deputy Commissioner for Programs and Policy.

[FR Doc. 97-22697 Filed 8-25-97; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

[Public Notice No. 2593]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC-T); Study Groups B and D and Citel Ad-Hoc; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC-T) Study Groups B and D and CITEL AD-HOC have scheduled meetings to develop United States positions and contributions for upcoming ITU-T meetings dealing with standardization activities of the International Telecommunications Union and preparatory activity for CITEL PCC-I and COM/CITEL. These meetings will take place at the Department of State, at 2201 C Street, NW., Washington, DC beginning at 9:30 a.m. each day and are scheduled to meet all day. The ITAC-T Study Groups B and D dealing primarily with the upcoming meetings of ITU-T Study Groups 7, 8, and 4 will meet September 23 in Room 1207, and the preparatory activities for CITEL meetings will follow in the same room.

Study Groups B and D will meet on November 4, 1997 in Room 1406 to continue preparations for ITU-T Study Group 7 in December, 1997, and the meeting of ITU-T Study Group in January 1998, and the COM/CITEL meeting scheduled for December 1-5, 1997 in Montevideo, Uruguay. A more extensive agenda may be developed and distributed by fax or electronic mail to members prior to the announced meetings including the scheduling of appropriate Ad-Hoc meetings. Other matters within the purview of U.S. Study Group D as well as Ad-Hoc CITEL preparations may be raised.

Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Questions regarding the meeting may be addressed to Mr. Gary Fereno at (202) 647-0200.

Note: If you wish to attend please send a fax to (202) 647-7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, company/organization, and date of birth. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: August 15, 1997.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunications Standardization.

[FR Doc. 97-22583 Filed 8-25-97; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF STATE

[Public Notice No. 2591]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Wednesday, October 1, 1997, in Room 2415 U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to prepare for the 76th session of the IMO Legal Committee, which will be held October 13-17, 1997, in London, regarding the provision of financial security for seagoing vessels, compensation for pollution from ships' bunkers, a draft convention on wreck removal, the carriage by sea of radioactive materials, and other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substances Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views concerning the subjects of discussion, write to either Captain Malcolm J. Williams, Jr., or Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G-LMI), 2100 Second Street, S.W., Washington, D.C. 20593, or by telephone (202) 267-1527, telefax (202) 267-4496.

Dated: August 14, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97-22582 Filed 8-25-97; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF STATE

[Public Notice No. 2592]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea and Associated Bodies, Working Group on Stability and Load Lines and on Fishing Vessels Safety; Notice of Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9 a.m. on Thursday, September 18, 1997, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. This meeting will discuss the upcoming 41st Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on January 26-30, 1998, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO;
b. Progress of the Intersessional Correspondence Group on Load Lines issues;
c. Technical revisions to the Code on Intact Stability;
d. High Speed Craft Code revision;
e. Role of the human element, including shipboard loading and stability software; and
f. Safety aspects of ships engaged in a ballast water exchange.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G-MSE-2), Room 1308, 2100 Second Street, SW, Washington, DC 20593-0001 or by calling (202) 267-2988.

Dated: August 14, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97-22584 Filed 8-25-97; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

July 16, 1997

The Honorable Lamar Smith, Chairman
House Judiciary Subcommittee on Immigration
B-307B Rayburn House Office Building
Washington, D. C. 20515

Dear Chairman Smith:

As you requested, enclosed is a letter setting forth our interpretation of federal means-tested public benefit, a legal analyses from the Department of Justice, and colloquies from the Senate debate on the Personal Work and Responsibility and Opportunity Act.

We are continuing to work on the list of HHS discretionary means-tested public benefit programs and will send that to you shortly.

Please contact me if you have any further questions 202-690-6786.

Sincerely,

Irene B. Bueno
Deputy Assistant Secretary for Legislation
(Congressional Liaison)

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

THE GENERAL COUNSEL

November 22, 1996

TO: J. Davitt McAteer, General Counsel
Department of Labor

Copies of this letter are being sent simultaneously to:

Arthur Fried, General Counsel
Social Security Administration

James S. Gilliland, General Counsel
Department of Agriculture

Mary Lou Keener, General Counsel
Department of Veterans Affairs

Judith A. Winston, General Counsel
Department of Education

Harriet S. Rabb

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

November 21, 1996

The Honorable J. Davitt McAteer
Solicitor
U.S. Department of Labor
200 Constitution Avenue, NW
Room S2002
Washington, DC 20210

Dear Mr. McAteer:

Enclosed is an interpretation of the term "Federal means-tested public benefit," as that term is used in sections 403 and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The interpretation seems to us an appropriate reading of this undefined aspect of the statute. In addition, this reading of the term best balances our Departments' other statutory obligations with Congressional goals embodied in PRWORA.

Your Department may have programs that provide "Federal means-tested public benefits." Please let us know if the enclosed interpretation of that term is one in which you concur.

In summary, the interpretation explained in the memo is as follows: Section 403 of PRWORA denies qualified aliens who enter the United States on or after August 22, 1996, "any Federal means-tested public benefit" (with specified exceptions) for five years after entry. In addition, section 421 applies new immigrant deeming rules for all "Federal means-tested public benefit" programs. The legislation, however, does not define the term "Federal means-tested public benefit." A proposed definition of the term was deleted from the bill as a result of a Byrd Rule objection. For the reasons described in more detail in the enclosed memorandum, the term "Federal means-tested public benefit" program as used in PRWORA should be interpreted to exclude discretionary programs.

Please contact Harriet Rabb at your earliest convenience but in any event, no later than Wednesday, November 27, to let us know if you concur with the enclosed interpretation. If you have any questions about the analysis set forth in this opinion, please contact Harriet Rabb (202-690-7741) or her Deputy, Anna Durand (202-690-6318).

Sincerely,

Harriet S. Rabb
General Counsel
U.S. Department of Health and
Human Services

Nelson A. Diaz
General Counsel
U.S. Department of Housing
and Urban Development

Enclosure

DEFINITION OF "FEDERAL MEANS-TESTED PUBLIC BENEFIT"

The following is a legal analysis of the meaning of the term "Federal means-tested public benefit" as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (PRWORA). Both the statutory language and legislative history are unclear on the meaning of this term, and, therefore, the statute is susceptible to various interpretations. As explained below, however, sound legal and policy considerations support a conclusion that the term is limited to means-tested mandatory spending programs.

Section 403 of PRWORA denies qualified aliens[1] who entered the United States after the its enactment "any Federal means-tested public benefit" (with specified exceptions) for five years after entry. Also, the new deeming rules in section 421 of PRWORA apply to "any Federal means-tested public benefits" program as provided in section 403. Although the statute does not define the term "Federal means-tested public benefit," the legislative history proffers a definition and clarifies the effect of the five-year eligibility ban on future immigrants and the new deeming rules.

The legislative history of PRWORA indicates that a definition of the term "Federal means-tested public benefit" was eliminated from the bill in compliance with the Byrd Rule. 142 Cong. Rec. S.9400, 9403 (daily ed. Aug. 1, 1996). The conference report sets forth the definition of "Federal means-tested public benefit" that was stricken from the bill:

> a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.

The conference report states that "[i]t is the intent of the conferees that this definition be presumed to be in place for purposes of this title." In addition, portions of the Senate debate in the Congressional Record on August 1 suggest that some Senators viewed the reach of Section 403 as covering a variety of means-tested programs. <u>See e.g.</u>, <u>id.</u> at S9377 (statement of Sen.

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[1] "Qualified alien" is defined in section 431 of PRWORA to include: (1) aliens lawfully admitted for permanent residence; (2) asylees; (3) refugees; (4) parolees; (5) aliens whose deportation is being withheld under section 243(d) of the Immigration and Nationality Act (INA); and (6) aliens granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

Dodd (bars legal immigrants' access to "most Federal programs", citing Mayor Guiliani)); id. at S9395 (statement of Sen. Inouye, "all Federal means-tested programs"). This definition, however, was struck by the Byrd Rule. Thus, to accept the definition contained in the conference report and the other remarks cited in this paragraph at face value would be to ignore the Byrd Rule and its application to this situation. Moreover, the conference report, the application of the Byrd Rule, and the legislative history may be given harmonious effect by interpreting "Federal means-tested programs" as described below.

Congress adopted the Byrd Rule, codified as Section 313 of the Congressional Budget Act, 2 U.S.C. § 644, "to address growing concerns that it was being forced to consider nonbudgetary (and potentially controversial) matters under the expedited reconciliation procedures rather than under its regular procedures." S. Rep. No. 103-297, 103rd Cong., 2nd Sess. (1994). It thus protects the reconciliation process by allowing the Senate to strike, by raising a point of order, certain "extraneous provisions." The Byrd Rule may be waived by a three-fifths vote in the Senate.

A provision will be considered "extraneous" if, among other criteria, it does not produce a change in outlays or revenues or it produces changes in outlays or revenues that are merely incidental to the nonbudgetary components of the provision. In the case of sections 403 and 421, the Senate invoked the Byrd Rule on the grounds that the definition would have included non-mandatory spending programs, i.e., programs that would not change outlays or revenues. The Parliamentarian upheld the Byrd Rule, the definition was deleted, and no attempt was made to waive it.

Senator Chafee stated on the Senate floor the significance of striking the definition:

> According to the Parliamentarian, that inclusion caused the definition to violate Section 313(b)(1)(D) of the Byrd Rule, which prevents reconciliation legislation from extending its scope to items that provide merely incidental deficit reduction, that is, discretionary programs.
>
> Therefore, when the bill was considered in conference, I understand that there was an intentional effort to ensure this provision complied with the Byrd Rule by omitting the definition of that particular term.
>
> In other words, then, the term "Federal means-tested public benefit" . . . does not refer to discretionary programs. I would assume that programs such as funding for community health centers, as well as the maternal and child health block grant, would not be impacted.

142 Cong. Rec. S9,403 (daily ed. August 1, 1996). See also 142 Cong. Rec. at S9400 ("[I]t is clear that this bill should not be used to make changes in discretionary programs, and those who look to interpret the action of the Congress should take this into account." (statement of Sen. Exon). (emphasis added)). See id. at S9400 (statement of Senators Graham, Kennedy, and Exon), S9403 (statement of Senators Graham and Chafee).[2] If one focuses on this language in the Senate debate alone, it appears that the Senate was directly admonishing the administering departments to confine the reach of Section 403 to mandatory programs and to avoid any changes in the eligibility provisions of discretionary programs.

In order to accommodate both the language in the conference report and the effect of the Byrd Rule objection, the term "Federal means-tested public benefit" should be interpreted to include (1) only those Federal mandatory spending programs of the Federal Government in which (2) the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit.

While this seems to be the best accommodation of the various pieces of legislative history, other objections to this interpretation are possible. For example, the "exceptions" in Section 403(c)(2) suggest that "Federal means-tested public benefit" may encompass discretionary programs because some programs that are discretionary programs (because their funding levels are determined by appropriations) are included in the excepted list (programs under the Elementary and Secondary Education and Head Start, for example). It could be argued that these exceptions would be unnecessary if the term was confined to mandatory programs. On the other hand, read literally, Section 403(c)(2) does not state that the programs listed there are Federal means-tested public benefits; rather, this section merely clarifies that certain types of Federal assistance or benefits are not subject to the five-year ban. Moreover, it is likely that no one thought to conform the exceptions in section 403(c)(2) to the narrowed definition of "Federal means-tested public benefit" programs after the Byrd Rule was invoked.

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[2] The exchange between Senators Graham and Kennedy is particularly focused. "SENATOR GRAHAM . . . [W]ould the Senator agree that, when the Senate struck those sections as violating the Byrd rule, the Senate's intent was to prevent the denial of services [under] . . . the maternal and child health block grant, social services block grant, community health centers and migrant health centers? . . . SENATOR KENNEDY: Yes." 142 Cong. Rec. S9400 (daily ed. Aug. 1, 1996).

Even if we were to conclude that we could not find the interpretation set forth above to be a complete explanation of the statutory language and legislative history, the affected departments should hesitate to apply the term "Federal means-tested public benefit" broadly in a manner that would deny qualified aliens more benefits than Congress may have clearly intended. The denial of benefits under these circumstances should be on a firmer basis than the ambiguous statutory language and legislative history surrounding this issue.[3]

Given the foregoing analysis, we recommend that, for purposes of this legislation, the term "Federal means-tested public benefit" programs should be interpreted to include only those Federal mandatory spending programs of the Federal Government in which eligibility for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or family unit.

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[3] See Carter v. Derwinski, 987 F.2d 611, 615 (9th Cir. 1993) (courts may insist on a clear statement of congressional intention before interpreting a statute "in a way that compromises especially weighty values.").

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

January 14, 1997

MEMORANDUM FOR HARRIET S. RABB
GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

From: Dawn Johnsen
Acting Assistant Attorney General

Randolph D. Moss RDM
Deputy Assistant Attorney General

Re: Applicability of Limitations on Availability of "Federal Means-Tested Public Benefits" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

You have requested the views of the Office of Legal Counsel regarding a construction, proffered by the Departments of Health and Human Services ("HHS") and Housing and Urban Development ("HUD"), of the scope of the phrase "federal means-tested public benefit[s]" contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA" or "Act").[1] In particular, HHS and HUD have concluded that this phrase is best construed to apply only to mandatory (and not discretionary) spending programs.[2] Both departments have determined that this construction of the PRA "best balances [their] other statutory obligations with Congressional goals embodied in the [PRA]."[3] We further understand that the Departments of Agriculture,

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

[2] See Letter to Christopher H. Schroeder, Acting Assistant Attorney General, Office of Legal Counsel, from Harriet S. Rabb, General Counsel, Department of Health and Human Services (Dec. 13, 1996) ("Rabb Request").

[3] See, e.g., Letter to Arthur Fried, General Counsel, Social Security Administration, from Harriet S. Rabb, General Counsel, Department of Health and Human Services, and Nelson A. Diaz, General Counsel, Department of Housing and Urban Development (Nov. 21, 1996) ("Rabb/Diaz Letter").

Education, Labor and Veterans Affairs and the Social Security Administration all concur in, or defer to, the HHS and HUD proffered interpretation of the PRA.[4]

As explained more fully below, we believe that the proffered interpretation is a permissible construction of the statute. The PRA was enacted as a budget reconciliation bill, and, accordingly, must be construed against the backdrop of the Congressional Budget Act of 1974 ("CBA").[5] Under the CBA, budget reconciliation legislation is subject to expedited procedures in both the Senate and the House. To counterbalance these expedited procedures, the CBA permits a member of the Senate to raise a point of order against any material included in the legislation that is extraneous to the budget reconciliation process. Here, through application of this procedure, a broad definition of the phrase "federal means-tested public benefit" was struck from early versions of the bill that ultimately became the PRA. Significantly, the broad definition was struck because it reached discretionary spending programs, which, in this context, lay beyond the proper scope of the reconciliation process.

In light of this history, and the absence of a sufficiently clear indication that Congress intended, notwithstanding the CBA, to reach discretionary spending programs, we conclude that the meaning of the phrase "federal means-tested public benefit" is, at the very least, ambiguous. We further conclude that the HHS/HUD proffered definition is a reasonable construction of the statute, that the agency interpretation is entitled to judicial deference, and that, accordingly, the proffered definition should govern.

DISCUSSION

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. at 2260, imposes various restrictions on aliens' eligibility for public benefits in the United States. A number of provisions in title IV establish restrictions with respect to aliens' receipt of "federal means-tested public benefit[s]." These restrictions fall into three general categories: (1) provisions that deny "federal means-tested public benefit[s]" to qualified aliens for the first five years after their entry into the United States;[6] (2) provisions that require certain groups of aliens who seek federal and state public benefits to prove that they can be credited with 40 qualifying quarters of work under title II of the Social Security Act ("SSA") and have not received any "federal means-tested public benefit" during any of

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[4] Rabb Request at 1. Since receiving your letter of December 13, 1996, we have received oral advice from your office that the Social Security Administration concurs in the proffered definition

[5] Pub. L. No. 93-344, 88 Stat. 297 (1974) (codified as amended in scattered sections of 2 U.S.C.).

[6] See § 403(a) & (c)

those quarters;[7] and (3) provisions that establish and define sponsor-to-alien deeming rules to be applied to aliens seeking "federal means-tested public benefit[s]."[8]

The PRA contains no statutory definition of the phrase "federal means-tested public benefit." HHS and HUD, however, have concluded that the restrictions on federal means-tested public benefits contained in title IV should apply only to mandatory spending programs, i.e. programs for which funding is not subject to a definite appropriation.[9] Under this construction of the Act, for example, newly arrived qualified aliens would be ineligible for benefits under mandatory programs for the first five years after their arrival in this country, but they would remain eligible for benefits under discretionary spending programs. The rationale of HHS and HUD for this approach is that "affected departments should hesitate to apply the term 'federal means-tested public benefit' broadly in a manner that would deny qualified aliens more benefits than Congress may have clearly intended." Rabb/Diaz Letter, attachment at 4. HHS and HUD assert that "this reading of the term best balances our Departments' other statutory obligations with Congressional goals embodied in [the PRA]," Rabb/Diaz Letter at 1, and that "sound legal and policy considerations support a conclusion that the term is limited to means-tested mandatory spending programs." Rabb/Diaz Letter, attachment at 1.

In evaluating the construction proposed by HHS and HUD, we are guided by the Supreme Court's landmark opinion, Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), which explains the proper approach for reviewing the construction of statutes by the agencies that administer them. The first step in the Chevron analysis is to determine "whether Congress has directly spoken to the precise question at issue." 467 U.S. at 842. If congressional meaning, as discerned through "traditional tools of statutory construction," id. at 843 n.9, is clear, then no further inquiry is necessary, for the "unambiguously expressed intent of Congress" must control. Id. at 843. See also United States v. Alaska, 503 U.S. 569, 575 (1992). If the statute is silent or ambiguous with respect to the issue posed, then, under the second step in the Chevron analysis, the questions become whether Congress has implicitly or explicitly delegated to the agency the authority to resolve the ambiguity and, if so, whether "the agency's answer is based on a permissible construction of the statute." Chevron, 467 U.S. at 843. See also Alaska, 503 U.S. at 575.

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[7] See §§ 402(a)(2)(B)(ii)(II), 402(b)(2)(B)(ii)(II), 412(b)(2)(B)(ii), 435.

[8] See § 421(a), (b)(2)(B), (c), (d).

[9] While we have not been provided with a comprehensive list of which programs would be subject to these title IV restrictions under the HHS/HUD interpretation, we understand that Medicaid, food stamps, Supplemental Security Income ("SSI"), and Temporary Assistance for Needy Families ("TANF") are included within the mandatory category.

I. Chevron Step I

The starting point in determining whether "Congress had an intention on the precise question at issue," Chevron, 467 U.S. at 843 n.9, is, of course, the language of the statute itself. See Kaiser Aluminum v. Bonjorno, 494 U.S. 827, 835 (1990); Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). Ordinarily, if the terms of the statute are plain, they control and that is the end of the matter. See Chevron, 467 U.S. at 843; Holly Farms Corp. v. NLRB, 116 S. Ct. 1396, 1401 (1996).

At the same time, it is well-established that a provision in one Act of Congress should be read in conjunction with other relevant statutory provisions and not in isolation. See Jett v. Dallas Indep. School Dist., 491 U.S. 701, 712-13, 722-36 (1989); id. at 738-39 (Scalia, J., concurring in part and concurring in the judgment); see also Gustafson v. Alloyd Co., 115 S. Ct. 1061, 1067 (1995). Thus, courts regularly construe statutory language in light of both other provisions of the same law and relevant provisions from other laws. See, e.g., Quackenbush v. Allstate Ins. Co., 116 S. Ct. 1712, 1718 (1996); Sullivan v. Everhart, 494 U.S. 83, 92 (1990); cf. Sullivan v. Finkelstein, 496 U.S. 617, 632 (1990) (Scalia, J., concurring) (meaning of later enacted statute may affect interpretation of "previously enacted statute, since statutes in pari materia should be interpreted harmoniously"). The fact that different statutory provisions may employ similar terms in varying contexts, for example, may give insight as to the meaning of the term in the particular context that is under review. See Medtronic, Inc. v. Lohr, 116 S. Ct. 2240, 2251-52 (1996) (plurality opinion). Similarly, the possibility that the adoption of a seemingly plain statutory meaning may cause a direct conflict with a different statutory provision, even if in a different law, may trigger application of the presumption against repeals by implication. See Watt v. Alaska, 451 U.S. 259, 266 (1981); FAA v. Robertson, 422 U.S. 255, 263 (1975); Silver v. New York Stock Exchange, 373 U.S. 341, 357 (1963). Moreover, courts commonly rely upon a general interpretive statute, the Dictionary Act, 1 U.S.C. § 1, in construing specific statutory language that, but for the otherwise-codified definitional provision, might suggest a different meaning. See Rowland v. California Men's Colony, 506 U.S. 194, 199-200, 209-10 (1993); id. at 212-13, 222 (Thomas, J., dissenting); Wilson v. Omaha Indian Tribe, 442 U.S. 653, 666 (1979); United States v. A & P Trucking Co., 358 U.S. 121, 123 (1958).

The general rule that the meaning of particular statutory provisions should be determined with reference to the broader legislative landscape provides significant guidance here. As reconciliation legislation, the PRA must be interpreted in the context of both the Congressional Budget Act of 1974, which establishes general rules that govern the enactment of budget reconciliation measures, and congressional actions taken pursuant to that statutory regime. Just as courts, when considering a term that has been defined in the Dictionary Act, read that term in light of the Dictionary Act definition, so too, here, the rules set forth in the CBA provide important guidance in discerning the meaning of the relevant provisions of the PRA.

A.

The PRA was brought to the floor of the Senate as a reconciliation bill, and as such was subject to the special rules that govern the reconciliation process set forth in section 313 of the CBA. See 2 U.S.C. § 644; Robert Keith & Edward Davis, The Senate's "Byrd Rule" Against Extraneous Matter in Reconciliation Measures 1-2 (Congressional Research Service 1995). Section 313 serves to facilitate the expedited consideration of reconciliation legislation by providing a mechanism for restricting the content of such legislation to provisions that are material to the reconciliation process. See Allen Schick, The Federal Budget: Politics, Policy, Process 82-86 (1995). Over time, these subject matter restrictions have become known as the "Byrd rule," after Senator Robert Byrd of West Virginia, their principal proponent. The basic purpose of the Byrd rule is twofold: to protect the effectiveness of the reconciliation process by excluding extraneous material that has no significant budgetary effect, and to preserve the deliberative character of the Senate by exempting from expedited consideration all legislative matters that should properly be debated under regular procedures.[10]

Section 313 establishes the general framework that governs the nation's budgeting process and shapes the content of the legislation that Congress enacts through the reconciliation process. Indeed, the Byrd rule has been deemed sufficiently important to the fashioning of the nation's budget that it is not merely an internal rule of Senate procedure but, as we have noted, a statute duly passed by both houses of Congress and signed by the President. The meaning of a particular provision of reconciliation legislation, therefore, such as the phrase "federal means-tested public benefit" in the PRA, must be construed in light of congressional actions taken pursuant to the CBA.

[10] The Byrd rule was adopted in 1986, following years of struggle on the Senate floor over the inclusion of extraneous provisions in budget reconciliation legislation. Originally enacted as section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (1986), it was, in 1990, incorporated as section 313 of the Congressional Budget Act of 1974. See Budget Enforcement Act of 1990, enacted as Title XIII of Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 13214(b)(1), 104 Stat. 1388, 1388-622 (1990). As Senator Byrd explained in introducing the amendment that ultimately bore his name:

> Mr. President, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. . . . Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including mater[i]al not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process

131 Cong. Rec. 28,968 (1985).

Specifically, the CBA provides:

> When the Senate is considering a reconciliation bill or a reconciliation resolution . . . upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) of this section shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

Pub. L. No. 93-344, title III, § 313 (codified at 2 U.S.C. § 644(a)). Section 313(b)(1) outlines six categories of "extraneous" provisions, the most significant of which, for purposes of this analysis, is (b)(1)(D), which states that a provision shall be considered extraneous "if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision." 2 U.S.C. § 644(b)(1)(D). The rule, as set forth in section 313, is enforced by a Senator raising a point of order against some provision or provisions of the bill, on the ground that that provision deals with subject matters extraneous to the legislation.

The PRA's original definition of "federal means-tested public benefit," contained in both the Senate and House bills, encompassed an expansive range of benefit and assistance programs and did not distinguish between those that were mandatory and those that were discretionary. When the Senate bill reached the floor, Senator Exon invoked the Byrd rule to raise an omnibus point of order against a number of provisions of the legislation, including the definition of "federal means-tested public benefit." 142 Cong. Rec. S8423-24 (daily ed. July 22, 1996). His objection to this provision was based upon section 313(b)(1)(C) of the CBA, i.e. the provision was not within the Finance Committee's jurisdiction. Id. at S8424.

The Parliamentarian upheld Senator Exon's Byrd rule objection on the grounds that the provision was outside the Finance Committee's jurisdiction and that, to the extent the definition encompassed discretionary programs, its impact on the budget was "merely incidental."[11] Rules determining eligibility for discretionary program benefits within a

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[11] The Parliamentarian upheld the objection on the basis of both sections 313(b)(1)(C) (not within Finance Committee's jurisdiction) and 313(b)(1)(D) (prohibition against policy changes with "merely incidental" budgetary impact). See 142 Cong. Rec. S9400 (daily ed. Aug. 1, 1996) (statement of Senator Graham during consideration of conference report on H.R. 3734); see also id. at S9403 (statement of Senator Chafee). Although Senator Exon's specific objection to the definition, as itemized in his list, was jurisdictional only, he raised that objection in an omnibus point of order based generally upon section 313(b)(1), which permitted the Parliamentarian to consider any basis under (b)(1) for upholding the objection. In any event, in this case it ultimately makes no difference to the analysis whether Senator Exon's objection was sustained on jurisdictional grounds alone or on both grounds because any jurisdictional objection under section 313 is based upon the fact that the Senate committee considering a reconciliation bill would only have jurisdiction over mandatory programs. See Schick, The Federal Budget 83 (1995) (under current practice, "reconciliation instructions are

reconciliation bill have no direct effect on the budget. Rather, reducing the size of a discretionary program is accomplished by Congress reducing the appropriation for the program, which the proposed definition of "federal means-tested public benefit" did not do. By contrast, so-called entitlement, or mandatory, programs, generally operate under indefinite appropriations; the size of the program is not determined based on a fixed appropriation, but rather on expenditures incurred for all eligible program participants. Thus expenditures under mandatory programs can be directly reduced by restricting eligibility and thereby reducing the number of people receiving benefits.

The ruling sustaining Senator Exon's objection was not appealed by any other Senator. As a result, the definition of "federal means-tested public benefit" was struck from the Senate bill. Moreover, the House acceded to the Senate deletion and agreed to remove its own expansive definition of the term "federal means-tested public benefit" in conference. The conference committee acknowledged the deletion of the definition under the Byrd rule. 142 Cong. Rec. H8927 (daily ed. July 30, 1996).

This legislative record provides strong evidence that the phrase "federal means-tested public benefits," as used in the PRA, should be construed to reach only mandatory (and not discretionary) spending programs. In keeping with section 313, a Byrd rule objection was made and sustained, a definition was dropped from the bill in response to the objection, and the House acceded to the Senate version of the bill in light of the Byrd rule objection. To ignore these events in determining the meaning of the phrase "federal means-tested public benefit" would be to disregard the purpose and language of section 313 itself, which serves to facilitate the budgeting process by providing a mechanism by which the scope of reconciliation legislation may be contained.[12]

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given only to committees that have jurisdiction over revenues or direct (mandatory) spending programs"). Thus, the underlying reasoning for objections under (b)(1)(C) and (b)(1)(D) is the same.

[12] Some language in one appellate decision might be read to suggest that courts should distinguish between procedural and substantive legislative motivations in inferring congressional intent. See Elizabeth Blackwell Health Ctr. for Women v. Knoll, 61 F.3d 170, 180 (3d Cir. 1995), cert. denied, 116 S. Ct. 816 (1996). The appellees in Elizabeth Blackwell Health Center argued that Congress, by using a rule of House parliamentary procedure to eliminate a provision in the 1994 Hyde Amendment requiring victims of rape or incest to report the crime to the police prior to seeking publicly funded abortions, intended to prohibit state statutes imposing such reporting requirements. The Third Circuit rejected that argument stating that, "[a]t most, the rejection [of the provision] is a sign that Congress did not wish to mandate reporting requirements on the states," and that Congress' rejection of mandatory reporting requirement "on procedural grounds provides no basis for any inference regarding Congress' views about the substantive provisions of the legislation." 61 F.3d at 180. Unlike here, the procedural objection made in Elizabeth Blackwell Health Center did not in any way suggest that Congress intended the specific interpretation offered in that case. The procedural objection raised to the reporting provision was based upon a House rule of parliamentary procedure that prohibited attempts to "legislate" on an appropriations bill. Id. at 174. The basis for this objection bore no relationship to the substantive interpretation appellees urged. In contrast, here the definition proffered by HHS and HUD is based upon a budgetary distinction between mandatory and discretionary programs, precisely the same basis upon which Senator Exon's Byrd rule objection was made.

B.

Several aspects of the text and legislative history of the PRA, when viewed in isolation, arguably support a broad interpretation of "federal means-tested public benefit" that would include discretionary programs. Ultimately, however, we find little evidence that Congress, in passing the final version of the bill, intended to reintroduce the very definition that had been struck through the operation of section 313 of the CBA. What evidence does exist is at best ambiguous, and thus, in our view, does not foreclose HHS and HUD, two of the agencies charged with administering the Act, from construing the PRA in the manner that they propose.

As previously noted, the PRA, as enacted, contains no definition of the phrase "federal means-tested public benefit." Had Congress intended for this phrase to include discretionary spending programs, over the sustained objection of a member of the Senate, it could have reinserted the deleted definition or similar language in the final version. Indeed, the conference committee did reintroduce a number of other provisions that also had been struck from the Senate bill through Senator Exon's omnibus Byrd rule objection, and Congress ultimately voted to retain these provisions in the final version of the PRA. See § 816 (caretaker exemption; originally § 1126 of S. 1956); § 838 (expedited coupon service; originally § 1148 of S. 1956); § 850 (waiver authority; originally § 1159 of S. 1956); § 729(d) (WIC program/drug abuse; originally § 1259(d)(1) of S. 1956); § 912 (abstinence education; originally § 2909 of S. 1956); compare with S. 1956 (July 16, 1996 and July 24, 1996 versions). The decision of the conference not to reintroduce the deleted definition of "federal means-tested public benefit" leaves the PRA without the most obvious textual guidance that Congress might have provided had it wished to adopt the previously stricken definition.

The PRA does, however, define the related phrase "federal public benefit" broadly, and in a manner that appears to draw no distinction between mandatory and discretionary programs.[13] The phrase "means tested," moreover, though not defined in the statute, is defined in the dictionary.[14] It could be argued that these two phrases combine to produce a

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[13] Section 401(c)(1) defines "federal public benefit" as.

> (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.

[14] The dictionary defines "means test" as "any examination of the financial state of a person as a condition precedent to receiving social insurance, public assistance benefits, or other payments from public funds." Webster's Third New International Dictionary 1399 (3d ed. 1986). See also Random House Dictionary of the English Language 1192 (2d ed. 1987) ("means test" is "an investigation into the financial position of a person

phrase that is sufficiently plain to make clear that, in enacting the bill, Congress effectively overruled the prior Byrd rule deletions.

Although not entirely without force, we find this argument inconclusive. First, even assuming that the phrases "federal public benefit" and "means-tested" are free of ambiguity, the proposition that combining plain terms necessarily results in an equally plain phrase is not at all self-evident.[15] See, e.g., Smiley v. Citibank, 116 S. Ct. 1730, 1736 (1996). It is not clear, therefore, that, even ignoring the deletion of the broad definition pursuant to the CBA, the bill's final language is so free from ambiguity as to be deemed plain.

More important, as we have explained, the PRA was enacted as reconciliation legislation, and thus can be understood only in light of the special rules that Congress set forth in the CBA and the congressional action taken pursuant to those rules. Therefore, the critical question is not whether the phrase "federal means-tested public benefit" is plain when read in isolation, but rather whether the phrase reveals that Congress intended to incorporate the definition that the Senate had deleted, with the House's acquiescence, as a consequence of its compliance with the budgetary rules established by section 313. The PRA's definition of "federal public benefit" does not reveal such an intention. That same definition was already in the bill at the time Senator Exon raised his point of order objecting to the definition of "federal means-tested public benefit." Its inclusion in the final bill, therefore, cannot reasonably be viewed as a rejoinder to Senator Exon's objection.

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applying for aid from public funds") Despite this definition, precisely what constitutes a "means test" in the context of federal programs that distribute benefits on the basis of need is not clear. Some federal programs look to both an applicant's income and his or her resources to determine eligibility. See, e.g., Medicaid program, 42 U.S.C. §§ 1396-1396v; Supplemental Security Income program, 42 U.S.C. §§ 1381-1381a; Food Stamp program, 7 U.S.C. §§ 2011-2032. Others look only to income without any inquiry into resources. See, e.g., National School Lunch program, 42 U.S.C. §§ 1751-1769h; Women, Infants & Children program, 42 U.S.C. § 1786. Still others presume need on the basis of area of residence, enrollment in another welfare program, or some other factor. See, e.g., Indian health services, 42 C.F.R. § 36.12 (eligibility based upon area of residence); Commodity Supplemental Food Program, 7 U.S.C. § 612c note (eligibility based upon enrollment in another government benefit program for low-income persons); Chapter 1 migrant education program, 20 U.S.C. § 6398 (presumption of need for migrant children).

[15] An unrelated provision of the PRA itself hints at the ambiguity of the phrase "federal means-tested public benefit." Section 911 of the PRA ensures that individuals whose benefits have been reduced because of an act of fraud by the individual may not receive increased benefits under "any other means-tested welfare or public assistance program for which Federal funds are appropriated" as a result of such reduction. The provision then defines the phrase "means-tested welfare or public assistance program for which Federal funds are appropriated" to include "the food stamp program . . . . any program of public or assisted housing under title I of the United States Housing Act of 1937 . . . , and any state program funded under part A of title IV of the Social Security Act." The provision does not state whether these programs are intended to be exhaustive or exemplary, but, in any event, the fact that Congress concluded that it was necessary to provide a definition of some sort suggests that Congress did not believe that the meaning of the defined phrase was plain.

Moreover, even apart from the operation of section 313, it is a well-settled canon of interpretation that "where the final version of a statute deletes language contained in an earlier draft, [it may be presumed] that the earlier draft is inconsistent with ultimate congressional intentions." In re Town & Country Home Nursing Servs., Inc., 963 F.2d 1146, 1153 (9th Cir. 1991); see also Russello v. United States, 464 U.S. 16, 23-24 (1983); Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 200 (1974) (Congress' deletion of provision "strongly militates against a judgment that Congress intended a result that it expressly declined to enact"); cf. INS v. Cardoza-Fonseca, 480 U.S. 421, 442-43 (1987) ("'Few principles of statutory construction are more compelling than the proposition that Congress does not intend sub silentio to enact statutory language that it has earlier discarded in favor of other language.'") (citations omitted). That canon surely applies with particular force in a context such as this, in which the deletion occurs by reason of an independent congressional statute that governs the nation's budgeting process.

A second textual argument that could be made in support of a broader definition arises from the list of exceptions to "federal means-tested public benefit" programs in section 403(c)(2) of the PRA. The inclusion of some discretionary programs in this list of exceptions would be unnecessary unless the term itself included such programs. As an initial matter, we note that the logic of this argument proves too much, particularly in light of other drafting flaws that appear in the Act. The same provision that excepts certain discretionary programs from the limitation on eligibility for "federal means-tested public benefits," for example, also excepts certain programs specified by the Attorney General that are not conditioned on "the individual recipient's income or resources." § 403(c)(2)(G). The view that Congress would not have excepted a program that was not otherwise covered would erroneously suggest that "means-tested" must be a more expansive term than the phrase "condition[ed] . . . on the individual recipient's income or resources."

More to the point, the list of exceptions included in section 403(c)(2) is quite plausibly understood as an inconsistency resulting from the proper operation of the Byrd rule itself. The remedy provided in section 313 is a blunt instrument offering a basis for striking extraneous material in a reconciliation bill, but no mechanism for re-drafting remaining legislative provisions to conform them to the legislation as revised by application of the Byrd rule. Indeed, there was no careful mark-up of the bill following the deletion of the definition of "federal means-tested public benefit," where inconsistent provisions might have been brought into conformity.[16]

[16] Similar inconsistencies appear in other provisions of the PRA as a result of Byrd rule deletions. For example, the family cap provision of S. 1956, see § 103 of July 16 version of S. 1956 (establishing new section 408(a)(2) of TANF program), was deleted through a Byrd rule objection. The conference report notes this deletion and the provision does not appear in the final version of the PRA 142 Cong. Rec. H8903 (daily ed. July 30, 1996). Nevertheless, a reference to the family cap provision remains, in § 103 of the PRA (establishing new § 402(a)(7) of title IV of the SSA), which permits states to waive program requirements in cases of domestic violence.

Moreover, it is unlikely that members of Congress would have seen the list of exceptions as obviously inconsistent with the PRA as revised by application of the Byrd rule. The categorization of particular programs as mandatory or discretionary is not at all obvious, and it is likely that many, if not most, members did not know precisely which programs fell into which category.[17] In addition, the list of exceptions can be seen as Congress' attempt to safeguard certain programs from any definitional skirmishes and ensure their exception.[18]

We are also unpersuaded that the legislative history of the PRA supports the conclusion that Congress intended to enact extraneous material through the reconciliation process over the sustained objection of a member of the Senate. Although noting that the definition of "federal means-tested public benefit" was deleted from the bill through operation of section 313, the conferees' report on the PRA nonetheless asserts that "it is the intent of the conferees that [the deleted] definition be presumed to be in place for purposes of this title." 142 Cong. Rec. H8927 (daily ed. July 30, 1996). We believe that this statement in the conferees' report cannot be taken as controlling.

As noted above, "'[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend sub silentio to enact statutory language that it has earlier discarded in favor of other language.'" Cardoza-Fonseca, 480 U.S. at 442-43 (citations omitted). Here, this rule cannot plausibly give way to contrary legislative history. Both houses of Congress deleted the definition of "federal means-tested public benefit": the Senate did so on the basis of the CBA, and the House acceded to the Senate. A conference committee cannot essentially overrule those decisions by including contrary language in its report. To permit this to occur not only would run counter to the canon against construing a statute to include terms that Congress had earlier discarded, id., but, even more fundamentally, would undermine the rules that were established with such care in section 313, which permit a Senator to object to extraneous material that the conference might include in the legislation itself, but provide no mechanism for correcting the conference's

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[17] In fact, during Senate consideration of the conference version of the bill, Senator Graham confirmed, for himself and for any other members that might not have analyzed the list of excepted programs, that the post-conference version of the bill was consistent with the Senate's earlier Byrd rule objections, defining "federal means-tested public benefit" as applicable only to mandatory programs. See infra note 20.

[18] As a result, we do not believe it to be significant that the final version of the PRA also included exceptions for two discretionary programs that did not appear in the Senate version of the PRA from which the broad definition of "federal means-tested public benefit" had been deleted. Specifically, the Head Start and Job Training programs were only included in the House's final list of exempted programs, and not the Senate's, even though they do appear in the final version of § 403(c)(2). The inclusion of these two additional exceptions does not change our conclusion because there is no reason to believe that the inclusion of exceptions for these particular discretionary programs, more than the exceptions for the other discretionary programs, was intended to do more than safeguard them from further definitional disagreements. In any event, the inclusion in the final bill of two additional discretionary programs seems to us a most oblique means for Congress to reinsert a definition of "federal means-tested public benefit" that had previously been struck.

explanatory statement.[19] Finally, subsequent Senate colloquy -- admittedly an insubstantial grounding for legislative intent if standing alone -- confirms the understanding that a definition that would have extended the term to encompass discretionary programs was deleted because it was outside the subject matter scope of the reconciliation process.[20]

We thus conclude that the legislative record provides strong support for the proffered construction of the PRA and that the inconsistencies noted above, while giving rise to some

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[19] Section 313 permits a Byrd rule objection to be made at various points throughout the legislative process, including after the bill has been reported out of conference. 2 U.S.C. § 644(c). Thus, the statute allows for the possibility that Congress might attempt to reinsert a deleted provision into a bill during conference, and provides the Senate with the opportunity to renew its Byrd rule objection if it insists upon the deletion. However, because a Byrd rule objection can be raised only against legislative language, not against explanatory statements in the conference report, see § 644(a), allowing a conference report statement to act as the equivalent of legislative language effectively abolishes the statutory mechanism established to ensure the integrity of the Byrd rule process.

[20] Specifically, in the debate over the conference report on the Senate floor, Senator Graham sought to confirm the exact scope of the term "federal means-tested public benefit." After reviewing the history of the Byrd rule objection and the Parliamentarian's ruling, Senator Graham engaged Senator Kennedy in the following colloquy:

> Mr. Graham: . . . [W]ould the Senator agree that, when the Senate struck these sections as violating the Byrd rule, the Senate's intent was to prevent the denial of services in appropriated programs such as those that provide services to victims of domestic violence and child abuse, the maternal and child health block grant, social services block grant, community health centers and migrant health centers? . . .
>
> Mr. Kennedy: Yes. Under the Byrd rule, the budget reconciliation process cannot be used to change discretionary spending programs. Only mandatory spending is affected.

142 Cong. Rec. S9400 (daily ed. Aug. 1, 1996).

Senator Graham subsequently asked Senator Exon, who was one of the Senate conferees on the bill, whether "the version of the bill recommended in this conference report is consistent with this understanding." Id. Senator Exon confirmed that it was. Later during the debate, Senator Graham raised this issue again with another conferee, Senator Chafee:

> Mr. Graham: I wonder if my colleague could address one point on this bill. I notice that the term "Federal means-tested public benefit" was defined in previous versions of the bill. However, in this conference report no definition is provided.
>
> Mr. Chafee: . . . [W]hen the bill was considered in conference, I understand that there was an intentional effort to ensure this provision complied with [the] Byrd rule by omitting the definition of that particular term.
>
> In other words, then, the term "Federal means-tested public benefit" -- if it is to be in compliance with the Byrd rule -- does not refer to discretionary programs . . .

Id. at S9403.

ambiguity, are insufficient to rebut the evidence that Congress intended to reach only mandatory spending programs. We, accordingly, turn to the second step of the Chevron inquiry.

II. Chevron Step II

Under the second step of the Chevron analysis, two questions arise. First, it is necessary to determine whether Congress intended for agencies or courts to resolve the ambiguity that Congress, either intentionally or inadvertently, failed to resolve. See Adams Fruit Co. v. Barrett, 494 U.S. 638, 649 (1990) ("[a] precondition to deference under Chevron is a congressional delegation of administrative authority"); see also Johnson v. United States R.R. Retirement Bd., 969 F.2d 1082, 1088 (D.C. Cir. 1992) ("If agencies are simply interpreting a statute, but have not been granted the power to 'administer' it, the principle of deference applies with less force."), cert. denied, 507 U.S. 1029 (1993). Second, if Congress intended for agencies to resolve the ambiguity, then it is necessary to determine whether the proposed agency interpretation is "permissible." Chevron, 467 U.S. at 843.[21] If Congress intended for the agencies to resolve the interpretive ambiguity, and the agency resolution is permissible, then the agency construction is binding.[22] See id.

A.

Congress need not expressly authorize agencies to construe ambiguous statutory terms in order for courts to be bound by agency constructions. In Chevron itself, for example, the Court deferred to an Environmental Protection Agency ("EPA") construction of the Clean Air Act, even though no statutory language expressly empowered that agency to impose a binding interpretation of the term "stationary source." The Court simply inferred that Congress must have intended for the EPA, as the agency entrusted with administering the Clean Air Act, to resolve the policy choices that inhere in the interpretation of ambiguous statutory language. See Chevron, 467 U.S. at 843. The Court explained that this inference was reasonable because agencies generally possess superior expertise and greater political accountability than courts. See id. at 865-66.

On the other hand, Congress may impliedly authorize courts to interpret a particular statutory provision, even though an agency has been generally charged with administering the

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[21] Although the Court stated in Cardoza-Fonseca that Chevron-deference does not apply to pure questions of law, such as the one at issue here, it has subsequently retreated from this position. Our memorandum proceeds on the assumption that Chevron applies to such questions. Cardoza-Fonseca, 480 U.S. at 454-55 (Scalia, J., concurring).

[22] Even if Congress has not entrusted the interpretative function to an agency, courts should still give careful consideration to agency constructions that are based on expertise and to which they have consistently adhered. See, e.g., Atchison, Topeka and Santa Fe Ry. v. Pena, 44 F.3d 437, 445 (7th Cir. 1994) (Easterbrook, J., concurring), aff'd sub nom, Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe Ry., 116 S. Ct. 595 (1996).

statute as a whole. In Adams Fruit Co., for example, the Court refused to defer to the Department of Labor's resolution of the question whether exclusivity provisions in state worker compensation laws trumped a federal private right of action under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 ("Worker Protection Act"). Even though the Department was responsible for administering the Worker Protection Act generally, the Court concluded that Congress intended for the judiciary, not the agency, to construe the contours of the private right of action that the Worker Protection Act created. See Adams Fruit Co., 494 U.S. at 649. The Court based that conclusion primarily on the fact that the Department was not required to interpret the private right of action provisions as an incident of its general administration of the Worker Protection Act, as those provisions established a parallel and independent enforcement mechanism. See id. at 649-50.

In our view, the delegation question presented here is more analogous to Chevron than to Adams Fruit Co. Although the PRA does not expressly delegate general administrative authority to HHS, HUD, or, for that matter, to any other particular agency, the PRA effectively amends the statutes that establish the assistance programs over which HHS, HUD and other federal agencies have already been delegated administrative authority. Because those agencies possess general administrative authority to interpret eligibility criteria set forth in statutes enacted prior to the PRA, we believe it to be a fair inference that Congress intended for the changes effected by the PRA to be administered in the same manner.

In an analogous context, the Third Circuit deferred to HHS' construction of the Hyde Amendment, even though, as the dissent in that case pointed out, the Hyde Amendment does not expressly delegate administrative authority to any agency. Compare Elizabeth Blackwell Health Ctr. for Women, 61 F.3d at 182, with id. at 196 (Nygaard, J., dissenting). The court concluded that HHS' authority to administer the Medicaid statute necessarily included the authority to construe legislation that amended the Medicaid statute's eligibility requirements. Id. at 182; see also Fort Wayne Community Schools v. Fort Wayne Educ. Ass'n, 977 F.2d 358, 365 (7th Cir. 1992) (deferring to Postal Service's construction of a criminal statute on the ground that it was "intimately connected" to the purposes of the statute that Postal Service was charged with administering), cert. denied, 510 U.S. 826 (1993); Associated Third Class Mail Users v. United States Postal Serv., 600 F.2d 824, 826 n.5 (D.C. Cir.), cert. denied, 444 U.S. 837 (1979) (same).

The case for deference is even stronger here, moreover, because the PRA not only amends the eligibility requirements for the programs that these agencies administer, but also expressly assigns these agencies the responsibility of informing the public of the changes in those eligibility requirements that the PRA effects. Section 404(a) of the PRA requires federal agencies that administer assistance programs to provide the public with information about how the PRA changes the eligibility requirements for those programs.[23] This assignment, we believe, impliedly delegates to these agencies the authority to resolve the meaning of the phrase "federal means-tested public benefit": agencies must first interpret the meaning of the term "federal means-tested public benefit" in order to comply with section 404(a)'s mandate to inform the public of the PRA's impact on eligibility requirements. Only by determining whether that term applies to both mandatory and discretionary assistance programs (among other questions of application) will agencies be able to determine who is eligible for the programs that they already administer pursuant to separate statutory delegations. Section 404(a)'s notification requirement serves a useful function, moreover, only to the extent that the agencies are able to provide accurate information about the eligibility changes that the PRA mandates. If courts are free to reject reasonable agency interpretations of that term, then agencies will be forced to risk providing inaccurate eligibility information or to refrain from providing complete eligibility information altogether. Because neither result seems consistent with the purpose behind section 404(a), it is proper to infer that Congress intended for the agencies to provide the authoritative construction of the term "federal means-tested public benefit" when it assigned them the notification task set forth in section 404(a).

In light of the agencies' statutorily assigned responsibilities, the agencies cannot fairly be viewed as "trying to 'bootstrap' [themselves] into an area in which [they have] no jurisdiction" in seeking deference for their construction of the term "federal means-tested public benefit." Wagner Seed Co. v. Bush, 946 F.2d 918, 923 (D.C. Cir. 1991), cert. denied, 503 U.S. 970 (1992) (citation omitted). Rather, they are offering an interpretation that results from the "intimate connection" between the purposes of the statutes that the agencies already administer and those of the PRA generally, Fort Wayne Community Schools, 977 F.2d at 365, and that arises in connection with the "special duty" that section 404(a) of the PRA assigns them. See FLRA v. Department of Treasury, 884 F.2d 1446, 1451 (D.C. Cir. 1989), cert. denied, 493 U.S. 1055 (1990).

We are aware of those cases that assert that courts should not defer to statutes that are "general" in nature or that are subject to interpretation by more than one agency. See, e.g., Johnson v. United States R.R. Retirement Bd., 969 F.2d at 1088 (citing cases). We do not believe that this rule of construction should apply here. The rule has been invoked primarily in cases in which agencies seek Chevron deference for their construction of statutes that have been expressly entrusted to other agencies for administration, see id.; Cheney R.R. v. Railroad Retirement Bd., 50 F.3d 1071, 1073-74 (D.C. Cir. 1995), that are designed to ensure that agencies remain publicly accountable or proceed in a fair manner, see, e.g., Professional Reactor Operator Soc'y v. United States Nuclear Regulatory Comm'n, 939 F.2d 1047, 1051 (D.C. Cir. 1991); see Air North Am. v. Department of Transp., 937 F.2d 1427, 1436 (9th Cir. 1991), or that are not intimately connected to the mission of the agency that

[23] "Each Federal agency that administers a program to which section 401, 402, or 403 applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this subtitle." 110 Stat. at 2267.

seeks deference. See, e.g., Professional Airways Sys. Specialists v. FLRA, 809 F.2d 855, 857 n.6 (D.C. Cir. 1987). The results in these cases are, therefore, best explained as particular applications of the justifiable presumption that Congress does not intend for courts to be bound by agency constructions that are beyond agency expertise, see, e.g., Colorado Nurses Ass'n v. FLRA, 851 F.2d 1486, 1488 (D.C. Cir. 1988), or that concern provisions that are designed to ensure agencies proceed in a fair and accountable manner, see Air North Am. v. Department of Transp., 937 F.2d at 1436. These cases do not establish, in our view, a general presumption in favor of judicial resolution of all statutory ambiguities that confront more than a single agency.

Indeed, Chevron's emphasis on the greater political accountability of agencies counsels against a rule of construction that would afford judges the last word on the meaning of any statute that does not authorize a single agency to administer it. See Chevron, 467 U.S. at 865-66. Where, as here, a statute assigns a group of agencies a particular task that is related to the duties that the agencies already have been assigned by their governing statutes, Congress may be presumed to have intended for these agencies to resolve any ambiguities that may arise. That the PRA does not assign any particular agency primary interpretive responsibility does not change the analysis. Congress may have intended for the courts to resolve the meaning of the term "federal means-tested public benefit" in the event of unresolved interpretive conflicts among the agencies identified by section 404. There is no reason to suppose, however, that Congress intended for unelected judges to countermand a unanimous resolution of the policy question by the agencies closest to it. Cf. American Fed'n of Gov't Employees v. FLRA, 2 F.3d 6, 10 (2d Cir. 1993) ("[W]hen two agencies, each examining statutes they are charged with administering, agree as to the interplay of the statutes, there is no more reason to mistrust their congruent resolutions than there is to mistrust action taken by a single agency[.]"); see also Salleh v. Christopher, 85 F.3d 689 (D.C. Cir. 1996) (suggesting that joint agency interpretations may deserve deference); cf. Lieberman v. FTC, 771 F.2d 32, 37 (2d Cir. 1985) (declining to defer to joint agency construction but noting that Congress may delegate "dual lawmaking authority"). So long as the agencies identified by section 404(a) concur in their interpretation of the term "federal means-tested public benefit," therefore, we believe that courts would be bound to accord that interpretation Chevron deference.

Finally, we do not believe that the deference that the agencies receive under Chevron should turn on whether their construction of the term "federal means-tested public benefit" would be deemed an "interpretative" or "legislative" rule under the Administrative Procedure Act. We agree with those courts that have concluded that Chevron deference turns solely on whether the agency's interpretation may fairly be understood to be one for which Congress intended judicial deference to apply, see, e.g., Elizabeth Blackwell Health Ctr. for Women, 61 F.3d at 182; id., at 190-96 (Nygaard J., dissenting) (reviewing conflicting caselaw); Kelley v. EPA, 15 F.3d 1100, 1108 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 900 (1995); see generally Robert A. Anthony, Which Agency Interpretations Should Bind Citizens and the Courts?, 7 Yale J. on Reg. 1 (1990), and not on whether the proposed construction is there will no longer be any mechanism for guaranteeing a national safety net for our poorest families.

I am concerned that the work requirements in the bill can not be met. States that do not meet employment goals will lose part of their block grants. Penalties would rise from 5 percent in the first year to 21 percent in the ninth year. The Congressional Budget Office has already reported that most States will be unable to meet the work requirements. This legislation lacks the necessary commitment or resources to help people move from poverty to meaningful employment. It does not provide any specific funding for States to help people find or train themselves for better-paying jobs. Rather than moving people off welfare and onto work, this bill emphasizes cutting off welfare.

While I support reform that promotes personal responsibility and community initiatives, I cannot support legislation which undermines the national safety net and reduces resources for hungry families.

Mr. GRAHAM. Mr. President, during consideration of the Senate reconciliation bill, two definitions regarding immigrants, section 2403(c)(1), and in section 2423, section 213(A)(f)(2), were stricken because they contained material that was not under the jurisdiction of the Finance Committee. Specifically the definitions denied all means-tested benefits to immigrants including benefits subject to appropriations.

The Parliamentarian also agreed that the provisions violated another section of the Byrd rule, section 313(b)(1)(D). Section 313(b)(1)(D) prohibits language in a reconciliation bill or conference report if the deficit reduction is merely incidental to the larger policy changes contained within the provision. The Parliamentarian agreed that since the reconciliation process is confined to mandatory spending, expanding the scope of provisions to include benefits provided by discretionary spending was a violation of the Byrd rule.

The conferees were certainly notified about these rulings and the offending provisions were not included in the conference report.

Moreover, would the Senator agree that, when the Senate struck these sections as violating the Byrd rule, the Senate's intent was to prevent the denial of services in appropriated programs such as those that provide services to victims of domestic violence and child abuse, the maternal and child health block grant, social services block grant, community health centers and migrant health centers? Does the Senator agree that recipients of appropriated funds are not forced to conduct checks on citizenship and immigration status when providing community services?

Mr. KENNEDY. Yes. Under the Byrd rule, the budget reconciliation process cannot be used to change discretionary spending programs. Only mandatory spending is affected.

Mr. GRAHAM. Is this consistent with the understanding of the Senator from Nebraska as well?

Mr. EXON. Yes. As ranking minority member of the Budget Committee, I have been concerned to ensure that the budget reconciliation process is limited to affecting mandatory spending and is not misused to achieve other objectives. Budget reconciliation's departure from ordinary Senate rules of debate must be carefully limited to its original and proper purpose. Our colleagues on the other side of the aisle shared this view when they agreed to strike the offending provisions from the Senate bill.

Mr. GRAHAM. Would the Senator agree that the version of the bill recommended in this conference report is consistent with this understanding?

Mr. EXON. Yes. These provisions stayed out of the bill in conference, as the conferees sought to avoid another challenge on the Senate floor that these provisions violated the Byrd rule. This manifests our intent to keep this bill within the proper parameters of budget reconciliation.

Mr. President, changes in discretionary programs on a reconciliation bill, such as the ones mentioned by the Senator from Florida and the Senator from Massachusetts, result in no direct budgetary savings and are therefore extraneous under the Byrd rule.

During floor consideration of this legislation, we struck section 2403(c)(1), and in section 2423, section 213(A)(f)(2) because they contained material that was not under the jurisdiction of the Finance Committee, namely many discretionary programs, because they violated section 313(b)(1)(C) of the Budget Act. These provisions also provide no budgetary savings, and violating the intent of section 313(b)(1)(A) of the Budget Act, but because they were cleverly embedded in language which did provide direct budgetary savings, it was difficult to fully enforce the Byrd rule. Nonetheless, it is clear that this bill should not be used to make changes in discretionary programs, and those who look to interpret the action of the Congress should take this into account.

Mr. President, the purpose of the Byrd rule is to prevent reconciliation bills from being loaded up with provisions, such as these, that have no budgetary impact. This is important because reconciliation bills move in the Senate under special rules which limit amendment and time for debate. Without the protections provided by the Byrd rule, it would be far too easy to take advantage of the privileged nature of reconciliation to enact controversial items without proper consideration in the Senate. Allowing reconciliation to be used in this manner fundamentally undermines the basic nature of the Senate's rules which protect the voice of the minority and damages the Senate as an institution.

For this reason, I feel it is important to bring these provisions to the attention of the Senate, and I thank the Senators for their efforts.

Mr. LEVIN. Mr. President, today, the Senate will reach a milestone in the long and sometimes twisting journey of welfare reform legislation. The Senate will pass this bill, as the House of Representatives did yesterday. The President has told the Nation that he will sign it, and soon it will become law. I will vote in favor of this bill because it is a step toward ending the present system which simply does not work and replacing it with a system which requires and rewards work. I wish, however, that we had before us a reform bill which I could wholeheartedly, without reservation, endorse and support. I would greatly prefer a bill, for example, like the work first legislation which contained a Federal safety net for children and which I cosponsored with Senator DASCHLE and many of my colleagues or even like the bipartisan Biden-Specter approach which I voted for in the Senate.

The bill before us is an improvement over the legislation which I opposed last year and which the President vetoed because, among other things, it provides more support for child care, retains needed child protection programs and services, includes my amendment strengthening the work requirement, does not block grant food stamp assistance, requires a greater maintenance of effort from the States, and doubles the contingency fund to help States in times of economic downturn. However, it contains a number of serious flaws. That is why it is a milestone and not a final destination. It will need repairs. As the President has indicated, there are aspects of this legislation which the Congress will be required to revisit. And beyond that, I believe that this kind of sweeping reform involves an element of risk. Although our efforts are directed toward improving the system, recognizing within the welfare system the principle of the value of work, assuring the protection of children and reasserting the responsibility of absent parents to their children, we cannot possibly be sure that all the effects of such sweeping reform will be those intended. For that reason, the Congress must remain vigilant in its oversight and monitoring of the impacts of this legislation. We must stand ready to address negative impacts. If critics are fully correct and there is a large increase in the numbers of American children who find themselves impoverished, we must stand ready to remedy quickly the defects in this bill.

For a number of years, I have been working toward reform of the welfare system. The existing system has failed. It does not serve families and children well. It does not serve the American taxpayer well. It was created to meet the needs of families in hard times. Unfortunately, for far too many, what was intended as a safety net has too often become a way of life, a cycle of dependency. It is wrong to allow such a system to continue.

that from the day they receive their first check, the clock will be ticking. Society is fulfilling an obligations to help them get back on their feet, and they in turn are obligated to make every effort to receive job training or education and to find employment. The employment of parents will enrich their children not only financially, but morally as well. In watching their parents benefit from educational opportunities and engage in gainful employment, children may embrace a valuable work ethic and eventually be better able to free themselves from the cycle of poverty and welfare dependence in which they are currently entrapped. States will also have an incentive to help beneficiaries find work. Welfare offices should become employment offices as States strive to move recipients into the work force in order to earn a performance bonus from the Federal Government.

The conference bill also holds the hope of protecting children and reducing welfare spending by attacking the problem of unmarried teen parenthood. Welfare will no longer encourage the proliferation of single and uneducated parents by automatically and unconditionally underwriting the mothers who bear children out of wedlock. Children born out of wedlock are shown by studies to be three times more likely to be on welfare as adults than their peers. By implementing this bill, however, the Federal Government will require States to combat this problem and hopefully prevent it in a number of ways. First, paternity must be established for all children born out of wedlock at birth as a condition for receiving assistance, and fathers will be required to pay child support and set a good example for their children by engaging in either private sector or community service jobs. Mothers must live with an adult parent or relative or in an adult-supervised, strictly run Second Chance Home where they can learn skills necessary to the proper management and care of a child and household. A further condition of receiving assistance is a commitment to educational advancement. Young mothers must stay in a school or training program as a condition of continuing to receive welfare checks.

This welfare reform bill will additionally work to prevent a new generation from entering into the cycle of early parenthood and welfare dependence by making it a national goal to lower teen pregnancy rates. It establishes a national campaign that will assure the creation of teen pregnancy prevention programs in at least 25 percent of American communities by 1997. It includes two amendments which I authored with the intent of combating this problem. One will require the Justice Department as well as the States to crack down on what studies show is a class of older men—many of them predatory—who father the children of young girls in the majority of teen pregnancy cases. The second amendment requires States to reserve a portion of their social service block grant funds for programs and services that educate young people about the consequences of premarital pregnancy. As we reduce the number of teens who become pregnant, we will be increasing the number of children who are able to enjoy a childhood without deprevation.

There are other aspects of this legislation which have been framed with the protection of children in mind. For example, minor children continue to receive Medicaid even if their parents lose coverage as a penalty for not getting off of welfare into job training and work. Families can also be eligible for transitional Medicaid coverage as they move from welfare to work. These provisions are vital as many parents currently refrain from finding jobs and moving off welfare for fear of losing the medical coverage for their children that welfare provides.

Mr. President, this bill provides a significant improvement over the Senate-passed bill in allowing States to provide needy children of parents who go off of welfare with vouchers through the title XXblock grant. The legislation also answers the all-important question of who will care for the children as their mothers and fathers move into the world of education and work. We have designated $13.8 billion—a substantial increase—to be spent just on child care over the next 6 years, and we have retained child care health and safety standards. Moveover, we will not penalize mothers with children under the next 6 years, and we have retained child care health and safety standards. Moreover, we will not penalize mothers with children under the age of 6 who do not accept employment because they cannot find or afford child care. I would have preferred the retention of the Senate provision in this regard which allowed the mothers of children age 6 to 11 who cannot find adequate, affordable child care to stay home with them without penalty.

Mr. President, this is a good bill—a giant step forward from the welfare status quo—but it is no more perfect than any other bill that has passed the Senate on a big, complicated problem. I am especially concerned by the food stamp provision which is a real break with what was agreed to in the Senate-passed bill. It limits the receipt of food stamps by jobless individuals who do not have children to 3 months out of a 3-year period and allows no hardship exemptions. This is far harsher than the Senate provision which allowed jobless individuals to receive food stamps for 6 months out of each year as well as a 20-percent hardship exemption. Food stamps are also now cut for households receiving energy assistance, a proposal not included in the Senate bill. The conference report also cuts the cap on the shelter deduction by $42 and takes away food stamps for more families with children who pay over half their income for housing. And I remain very concerned about the ban on food stamps, Medicaid, and other assistance for legal immigrants; it has no good place in a welfare-to-work bill.

As the President has urged, we must keep these issues in mind for repair in the future even as we recognize that this legislation is definitely an improvement in the current welfare program. In voting for this bill, we will realize an historic opportunity to meet President Clinton's call to "end welfare as we know it." We will have also proven to the American people that the Federal Government is capable of bringing about change through bipartisan cooperation.

This is not the end of welfare reform but it is the largest step forward we have taken to improve the way America cares for its poor, and tries to make real for them the dreams of equal opportunity, which is the driving impulse of our history.

I thank the Chair and yield the floor.

Mr. GRAHAM. I wonder if my colleague could address one point on this bill. I notice that the term "Federal means-tested public benefit" was defined in previous versions of the bill. However, in this conference report, no definition is provided.

Mr. CHAFEE. It is my understanding that the Parliamentarian noted that the previous definitions of "Federal means-tested public benefit" were broad enough to include discretionary spending. According to the Parliamentarian, that inclusion caused the definition to violate Section 313(b)(1)(D) of the Byrd rule, which prevents reconciliation legislation from extending its scope to items that provide merely incidental deficit reduction, that is, discretionary programs.

Therefore, when the bill was considered in conference, I understand that there was an intentional effort to ensure this provision complied with Byrd rule by omitting the definition of that particular term.

In other words, then, the term "Federal means-tested public benefit"—if it is to be in compliance with the Byrd rule—does not refer to discretionary programs. I would assume that programs such as funding for community health centers, as well as the maternal and child health block grant, would not be impacted.

Mr. GRAHAM. I thank the Senator for clarifying that point.

Mr. DOMENICI. Mr. President, I believe our last Senator, other than the leader and myself, is Senator THURMOND, and he would like 8 minutes. We have plenty of time, so I give him 8 minutes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the conference report to H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This legislation reforms welfare to emphasize fundamental American values. It rewards work and self reliance, promotes personal responsibility, and renews a sense of hope

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

July 21, 1997

The Honorable Lamar Smith, Chairman
House Judiciary Subcommittee on Immigration
B-307B Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Smith:

As you requested, attached is a list of HHS discretionary funded programs in which eligibility for benefits is conditioned on recipients income and/or resources.

Please contact me if you have any further questions.

Sincerely,

Irene B. Bueno
Deputy Assistant Secretary for Legislation
(Congressional Liaison)

Enclosure

HHS DISCRETIONARY FUNDED PROGRAMS IN WHICH ELIGIBILITY FOR BENEFITS IS CONDITIONED ON RECIPIENT'S INCOME AND/OR RESOURCES
(Some Programs May Be Exempted Specifically From Section 403 of PRWORA)[1]

HRSA
Aids Drug Assistance Program (ADAP)

ACF
Community Services Block Grant Program
Job Opportunities for Low-Income Individuals Program
ORR Programs
-- Refugee Cash Assistance
-- Refugee Medical Assistance
Low Income Home Energy Assistance Program
Residential Energy Assistance Challenge Grants

"Special Circumstance" Programs
Head Start (90 percent of enrollees must meet income eligibility criteria, 10 percent do not need to meet income criteria)
-- Migrant Head Start
-- Comprehensive Child Development Centers
Child Care (while recipients must meet income eligibility criteria, the program is funded with both discretionary appropriations and mandatory spending)

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[1]. For example, benefits under the Head Start Act are specifically exempted under section 403(c)(2)(J), and therefore Migrant Head Start and Comprehensive Child Development Centers are specifically exempted from the definition of "Federal means-tested public benefits" since they are authorized under the "Head Start Act". In addition, programs may also be exempted if they provide public health assistance for immunizations, are authorized under titles III, VII, and VIII of the Public Health Service Act, or are in-kind services necessary for the protection of life or safety (Attorney General exception--section 403(c)(2)(G)).