

Checking w/ HUD + FNS

Health. State & Local very ~~is~~ interested
Dif was unclear



Lauren Higgins <lhiggins@os.dhhs.gov>
09/17/99 08:48:11 AM

Please respond to lhiggins@os.dhhs.gov

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: Re: Hi Irene

Thanks. Ron was out yesterday and today, so the pressure is off a bit. .
'til next week. Is there any chance once you fd out you can call him. He
really wants to talk to someone who understands this better than me. His
number 225-1025.

Again, thanks for your help.

lauren

Original Text

From: <Irene_Bueno@opd.eop.gov>, on 9/16/99 7:34 PM:

Sorry this is taking so long but OMB thought there were some letters from
other agencies but I cannot find them and either can they. I will check one
more time with David and if not, I will need to call the agencies. I am
just really swamped this week but I will try to get back to you asap.

(Embedded

image moved Lauren Higgins <lhiggins@os.dhhs.gov>

to file: 09/15/99 03:11:02 PM

PIC10462.PCX)

Please respond to lhiggins@os.dhhs.gov

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: Re: Hi Irene

He said that Archer is considering doing something legislatively that would broaden our definition thus making more programs federal public benefits. SO Ron is trying to better understand what programs are out there that now are NOT Federal public benefits.

Thanks for your help.

Lauren

Original Text

From: <Irene_Bueno@opd.eop.gov>, on 9/15/99 3:09 PM:

I don't think any other agencies put out a notice but let me check with David Nielsen. Do you why is Ron asking?

(Embedded
image moved Lauren Higgins <lhiggins@os.dhhs.gov>
to file: 09/15/99 01:11:41 PM
PIC30413.PCX)

Please respond to lhiggins@os.dhhs.gov

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: Hi Irene

Irene

Ron Haskins has called asking if there is someone he can talk to to discuss which NON-HHS programs are NOT Federal Public Benefits under our definition. (i.e. programs qualified aliens would be eligible for).

Mary Bourdette was going to have me give him your name and number BUT I wanted to check with you first. Is this o.k. or is there soemone else you would like to have Ron talk to?

Can you let me know. Thanks

Lauren

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“FEDERAL PUBLIC BENEFIT” DEFINITION

Question: What is a “federal public benefit” program? How do I find out whether my program is required to verify citizenship and immigration status?

Answer:

- These new requirements are very complicated.
- The law specifies that the term “Federal public benefit” only applies to benefits provided to individual, household or family eligibility units.
- Based on statutory language, HHS has identified 31 programs which will be required to implement the verification procedures developed by the Department of Justice and printed in the *Federal Register* August 4, 1998.
- Over 95% of this Department’s budget is made up of programs which provide “Federal public benefits” including all major welfare and health programs as well as many others such as foster care, the Child Care Development Fund, and LIHEAP.
- However, it is possible that not all services funded by these program constitute “Federal public benefits” and therefore verification is not required for those services.
- The law specifies a number of exemptions from these new requirements, including services that are necessary to protect life or safety (the Attorney General’s order), certain services related to immunizations and communicable diseases, and services provided by nonprofit charitable organizations.
- In order to ascertain whether or not your program is required to verify, you should consult our Federal Register notice and the HHS agencies responsible for providing federal resources to your program.
- If your program is among those listed you should further consult the Department of Justice verification guidance to see if your program is in one of the exempted categories including the exemption for nonprofit charitable organizations.

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“Federal public benefit” DEFINITION IS TOO NARROW

Question: Why is the definition of “Federal public benefit” so narrow?

Answer:

- Our interpretation is consistent with the language of the statute.
- The law specifies that the term “Federal public benefit” only applies to benefits provided to individual, household, or family eligibility units.
- We have determined that an eligibility unit exists when there are eligibility criteria requiring that benefits or services be denied to those individuals, households, or families that do not meet these eligibility criteria.
- Our interpretation is also consistent with what we understand was the intent of Congress.
- While Congress clearly wanted to restrict federal benefits to illegal immigrants, it also did not want to impose new, costly, and burdensome bureaucratic procedures on every single program funded by federal appropriation.
- Under this definition, not only are major programs such as Medicare, Medicaid and TANF included as “Federal public benefits”, but also many others, such as child care, and home energy assistance, which have never before been required to verify the citizenship or immigration status of applicants.
- Finally, I don’t consider denying over 95% of HHS resources to non-qualified immigrants and requiring these programs to implement federally-mandated bureaucratic procedures to be a narrow interpretation of the law.
- As Secretary of HHS, I support efforts to reduce illegal immigration and I believe this policy is consistent with that goal.

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UNDERMINING CONGRESSIONAL INTENT

Question: Why are you undermining Congressional intent by providing services to illegal aliens?

Answer:

- The President and I remain firmly committed to implementing the welfare reforms enacted in 1996.
- That is why HHS is implementing this law denying “Federal public benefits” to non-qualified immigrants in a manner consistent with the actual statutory language as well as with the legislative history.
- Section 401 of PRWORA does not identify the specific benefits that should be treated as “Federal public benefits,” and the definition, standing alone, does not provide sufficient guidance for benefit providers to make that determination.
- Therefore, the Department and other Federal agencies that provide and/or fund the benefit programs must, in order to comply with the new verification requirements, interpret the term.
- Clearly, Congress did not intend to impose burdensome and costly, federally-mandated bureaucratic procedures on every entity receiving Federal dollars, nor did Congress intend for the general public health to be recklessly endangered.
- That is why Congress included a number of specific exemptions related to public health and nonprofit organizations, and also mandated new verification procedures for those federal programs that already have eligibility requirements.
- Given this statutory language and Congressional intent, we at HHS have carefully reviewed all of our benefit programs to identify those which have eligibility units and are not otherwise exempted from these verification procedures.

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HHS PROGRAMS NOT AFFECTED

Question: You said that certain HHS programs are “Federal public benefit” programs. Which HHS programs are not categorized as “Federal public benefits”? Doesn’t it exclude many programs Congress intended to deny to illegal aliens such as Health Clinics and Drug Treatment?

Answer:

- Over 95% of this Department’s resources are denied to undocumented immigrants.
- This percentage includes all major welfare programs and many others such as foster care, the Child Care Development Fund, and LIHEAP.
- Some HHS benefits and services, however, are not “Federal public benefits” and therefore are not subject to verification requirements.
- Most of these programs not subject to verification procedures provide public health services such as HIV Health Care Services, Tuberculosis Prevention and Education, Community Health Centers, Breast and Cervical Cancer Detection, and Vaccines for Children.
- Others provide community based services such as child abuse grants, elderly services, urban and rural economic development, community schools youth services, drug treatment, and disability protection and advocacy.
- I strongly believe our interpretation fully implements the law and is consistent with congressional intent.
- It also is in the best interest of public health and safety, and does not create unnecessary administrative burden on many small and local service providers.
- For a complete list of the programs which are required to verify immigrant and citizenship status because they are categorized as “Federal public benefits” please see our *Federal Register* notice which was published on **[insert date of publication]**.

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STATE AND LOCAL PUBLIC BENEFITS

Question: Can a state or local government require a program that does not provide a Federal public benefit to verify?

Answer:

- Our guidance is very clear on this issue.
- Services or benefits that are wholly funded by state or local governments may be “State or local public benefit(s)” as defined in section 411(c) of PRWORA, and therefore subject to state or local decisions within the parameters of that law.
- However, services or benefits that are wholly or partially funded with HHS resources must comply with the interpretation provided in our Notice.

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ROLE OF OTHER FEDERAL DEPARTMENTS AND AGENCIES

Question: Is HHS the only Department that has “Federal public benefit” programs? Is this definition of “Federal public benefits” being used by all Federal agencies?

Answer:

- We are only interpreting the term with respect to HHS programs.
- We defer to other Departments and Agencies with regard to identifying which of their programs may be “Federal public benefit” programs

Federal Public Benefit questions and answers

Q What did HHS do today with regard to federal public benefits?

A Under the new welfare law, Congress included a provision that nonqualified immigrants would not be eligible for certain federal programs named as federal public benefits. The statute also mandates that programs categorized as federal public benefits are required to verify the legal status of persons requesting and/or receiving services. Today, HHS provided the Congress, states and the public clarification on the definition of federal public benefits and which services meet the definition.

Q Which programs fit the definition?

A After careful consideration and extensive review of the statute, HHS has defined 31 programs that provide federal benefit programs and thus cannot be provided to nonqualified immigrants. States, local governments and agencies that provide those services are required to verify the legal status of persons and families. The HHS programs include Child Care, Low Income Home Energy Assistance Program (LIHEAP), Social Services Block Grant (SSBG or Title XX), Administration on Developmental Disabilities programs, Job Opportunities for Low Income people program, Residential Energy Assistance Challenge Option (REACH), Independent Living Program, Mental Health Clinical and AIDS Services-Related Training Grants, and Agency for Health Care Policy and Research Grants.

Q Why did it take you so long?

A The issues and legal definitions of benefit programs and immigrants are very complex. HHS undertook a very thorough and detailed review of the new and previous laws, conferred and worked closely with other federal agencies and consulted with experienced and knowledgeable experts. The clarification of these terms are important for the health and well-being of the entire country.

Q Some critics say that you went beyond the law to define federal public benefit too narrowly. Did you?

A No. In the department's deliberate and in-depth review, HHS stuck closely to the intent of the law to bar many federal benefit programs to nonqualified immigrants while protecting the safety of the entire public.

Q Why did you exclude public health programs when the statute cites health as a federal public benefit?

A We did not exclude all public health programs from the definition of federal public benefits. The statute excludes certain public health programs that are designed to preserve the general health and well-being of the country. HHS followed the law's intent to exclude most programs while ensuring the safety of the general public.

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PROGRAMS EXEMPTED FROM “FEDERAL PUBLIC BENEFIT”

Question: Didn't the law include exemptions for particular programs, and which HHS programs are included in those exemptions.

Answer:

- Yes, there are several exemptions in the law that are related to types of services or programs, types of providers, and types of immigrants.
- Our Federal Register guidance provides a fuller explanation of each type of exemption as it relates to our interpretation of “Federal public benefits”.
- But there are specific exemptions for emergency medical and disaster assistance, programs to combat communicable diseases, and community-based services specified by the Attorney General that are necessary to protect life and safety.
- There is also an exemption from verification procedures for all nonprofit charitable organizations, and exemptions for immigrants who are victims of domestic violence.
- At HHS, we have identified programs that provide Federal public benefits and are required to follow Department of Justice verification rules.

Background

See additional Q & As for explanation of other exemptions.

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CURRENT RECIPIENTS

Question: Do providers of “Federal public benefits” have to verify the immigration and citizenship status all current recipients?

Answer:

- The law stipulates that providers must verify the immigration and citizenship status of all people applying for “Federal public benefits” using procedures established by the Department of Justice.
- Clearly Congress wanted to avoid placing the immense administrative burden of verifying status when no application or eligibility determination processes were currently in place.
- Likewise Congress did not wish for providers to have to recertify current recipients outside of the normal redetermination processes in place for these agencies.
- In fact in a number of instances Congress specifically mandated recertifications when they wanted them to be done outside of normal operations.
- Therefore, providers do not have to recertify current recipients except as would normally occur for that benefit program.
- However, upon normal recertification and, of course, for all new applicants, verification of immigration and citizenship status must be completed for all “Federal public benefits.”

Sample Letter to Program Grantees for programs defined as “Federal public benefits”

DATE:

SUBJECT: Guidance on the Interpretation of "Federal Public Benefit"

Dear Program Grantee:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, restricts access to “Federal public benefits” to qualified aliens. Under PRWORA a “qualified alien” is (1) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (the “Act”); (2) an alien granted asylum under Section 208 of the Act; (3) a refugee admitted to the United States under Section 207 of the Act; (4) an alien paroled into the United States under Section 212(d)(5) of the Act for a period of at least one year; (5) an alien whose deportation is being withheld under Section 243(h) of the Act as in effect prior to April 1, 1997, or whose removal is being withheld under Section 241(b)(3) of the Act; (6) an alien granted conditional entry under Section 203(a)(7) of the Act as in effect prior to April 1, 1980; (7) an alien who is a Cuban Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; or (8) an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

In an August 4, 1998 Federal Register notice HHS identified 31 programs that provide “Federal public benefits” (see attached list of programs). With a number of important exceptions which are discussed below, these programs are required to verify immigration and citizenship status of applicants in order to ensure that only qualified aliens receive the programs’ benefits and services. The Department of Justice has released a “Proposed Rule on Verification of Eligibility for Public Benefits”. (See Federal Register, August 4, 1998)

[Insert name of program(s)] appears on the list. It has been determined that it does provide “Federal public benefits” as defined in Title IV of PRWORA and therefore is required to implement the new verification requirements promulgated by the Department of Justice.

While these programs do provide “Federal public benefits” this does not imply that all services provided under these programs are “Federal public benefits” and subject to verification requirements. Some services under these programs may not be provided to individual, household, or family eligibility units and therefore do not constitute “Federal public benefits” that are subject to verification requirements. For example, states or localities may use their Social Services Block Grant (SSBG) resources to fund drug prevention education in schools and since this service is not provided to an individual, household or family eligibility unit would not be considered a “Federal public benefit.”

Also, under section 432(d) of PRWORA (as amended by section 508 of the “Illegal Immigration and Immigrant Responsibility Act of 1996”), providers who are nonprofit charitable organizations are not required to determine, verify, or otherwise require proof of eligibility of

any applicant for benefits even if they are providers of “Federal public benefits” as identified in the *Federal Register* notice.

Providers should also be aware of important exemptions to the verification requirements established by PRWORA and clarified by the Department of Justice (62 Federal Register, November 17, 1997 and Federal Register, August 4, 1998). These exemptions include those for: the provision of in-kind, community based services which are necessary for the protection of life and safety; the provision of emergency medical care and certain other immunizations and treatments; and the protection of battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria. We encourage **[insert name of program(s)]** to review this guidance in order to understand these important exemptions.

If you need further clarification, please contact: **[Name of person in program office]**

Sincerely,

[Name and signature of the program director]

Sample Letter to Program Grantees for programs NOT defined as “Federal public benefits”

DATE:

SUBJECT: Guidance on the Interpretation of "Federal Public Benefit"

Dear Program Grantee:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, restricts access to “Federal public benefits” to qualified aliens. The statute defines a “qualified alien” as (1) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (the “Act”); (2) an alien granted asylum under Section 208 of the Act; (3) a refugee admitted to the United States under Section 207 of the Act; (4) an alien paroled into the United States under Section 212(d)(5) of the Act for a period of at least one year; (5) an alien whose deportation is being withheld under Section 243(h) of the Act as in effect prior to April 1, 1997, or whose removal is being withheld under Section 241(b)(3) of the Act; (6) an alien granted conditional entry under Section 203(a)(7) of the Act as in effect prior to April 1, 1980; (7) an alien who is a Cuban Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; or (8) an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

In an August 4, 1998 Federal Register notice HHS has identified 31 programs that provide “Federal public benefits” (see attached list of programs).

[Insert name of program(s)] is not on the list. It has been determined that it does not provide “Federal public benefits” as defined in Title IV of PRWORA and therefore is not required to implement new verification requirements promulgated by the Department of Justice which were published in the Federal Register on **[insert publication date]**. Noncitizens, regardless of their alien status, should not be banned from **[Insert name of program(s)]** based solely on their alien status unless such exclusion is already authorized by another statute.

If you need further clarification, please contact: **[Name of person in program office]**

Sincerely,

[Name and signature of the program director]

Non-exempted HHS Programs which provide “Federal public benefits”

Adoption Assistance,
Administration on Developmental Disabilities (ADD)--State Developmental Disabilities Councils (direct services only),
ADD--Special Projects (direct services only),
ADD--University Affiliated Programs (clinical disability assessment services only),
Adult Programs/Payments to Territories,
Agency for Health Care Policy and Research Dissertation Grants,
Child Care and Development Fund,
Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse,
Foster Care,
Health Profession Education and Training Assistance,
Independent Living Program,
Job Opportunities for Low Income Individuals (JOLI),
Low Income Home Energy Assistance Program (LIHEAP),
Medicare,
Medicaid (except assistance for an emergency medical condition),
Mental Health Clinical Training Grants,
Native Hawaiian Loan Program,
Refugee Cash Assistance,
Refugee Medical Assistance,
Refugee Preventive Health Services Program,
Refugee Social Services Formula Program,
Refugee Social Services Discretionary Program,
Refugee Targeted Assistance Formula Program,
Refugee Targeted Assistance Discretionary Program,
Refugee Unaccompanied Minors Program,
Refugee Voluntary Agency Matching Grant Program,
Repatriation Program,
Residential Energy Assistance Challenge Option (REACH),
Social Services Block Grant (SSBG),
State Child Health Insurance Program (CHIP), and
Temporary Assistance for Needy Families (TANF).

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NONPROFIT EXEMPTION

Question: How does the exemption for nonprofit charitable organizations work? What if such an organization is providing federal or state public benefits?

Answer:

- The law clearly states that under title IV of PRWORA nonprofit charitable organizations providing federal, state or local public benefits are not required to “determine, verify, or otherwise require proof of an applicant’s eligibility for benefits”.
- Therefore nonprofit charitable organizations are not required to carry out any of the procedures set forth in the INS verification guidelines.
- Furthermore, these nonprofit charitable organizations can not be penalized (through such means as cancellations of grants) for not verifying citizenship and immigration status.
- Congress clearly intended to exempt certain providers from having to apply these new administrative verification procedures.

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COMMUNICABLE DISEASE EXEMPTION

Question: What is the public health or communicable disease exemption?

Answer:

- The law clearly states that everyone, regardless of citizenship or immigration status, is eligible for immunizations and for the testing and treatment of communicable disease symptoms.
- Therefore, programs which provide services under this communicable disease exemption are not required to verify the citizenship or immigration status of any individual receiving such services.
- This exemption is one of several under welfare reform which Congress understood as necessary for the protection of public health and safety.

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BATTERED IMMIGRANT EXEMPTION

Question: How does the exemption for battered aliens work?

Answer:

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the PRWORA by recognizing that battered immigrants constitute a vulnerable population that may be harmed further by certain restrictions under welfare reform.
- The battered immigrant exemption makes non-qualified, battered immigrants, their children and in some cases their immigrant parents, eligible for “Federal means-tested public benefits” as well as “Federal public benefits.”
- This exemption also exempts sponsored battered immigrants from “deeming” requirements for a specified duration of time.
- Thus, when a sponsored battered immigrant applies for a “federal means-tested public benefit,” the income and resources of that immigrant’s sponsor will not be deemed available to the immigrant. Guidance on which programs are considered “federal means-tested public benefits” is forthcoming.

Question: Isn’t it possible that some aliens may attempt to fake battery to get benefits?

Answer:

- While it is difficult to predict how individuals will respond to this exemption, applicants must meet strict criteria in order to receive benefits under this exemption.
- In order for a battered immigrant to be considered eligible for “Federal public benefits,” the immigrant must not only document the existence of battery, but show there is a “substantial connection” between the battery and benefits sought.
- Also, the battered immigrant must reside separately from the batterer and have begun establishing her/his own legal residency under INS procedures.

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ATTORNEY GENERAL'S EXEMPTION

Question: What is the Attorney General's exemption and which programs meet it?

Answer:

- The law states that the Attorney General, in consultation with Federal agencies, has the authority to exempt certain benefits from the immigrant restrictions under welfare reform.
- Such benefits include those which deliver in-kind services that are necessary for the protection of life and safety and are not contingent on the income or resources of the recipient.
- In an Order published in the *Federal Register* on August 30, 1996, the Attorney General issued a specification of programs covered by this exemption.
- Providers who have specific questions as to whether they meet this, or any other, exemption should contact the federal program office responsible for administering the particular program.

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EMERGENCY MEDICAL EXEMPTION

Question: What is the medical emergency exemption?

Answer:

- The law states that everyone who otherwise meets the Medicaid eligibility requirements, regardless of citizenship or immigration status, is eligible for Medicaid services that are “necessary for the treatment of an emergency medical condition” other than services related to an organ transplant procedure.
- Thus, medical staff providing emergency Medicaid services are not required to verify the citizenship or immigration status of any patients receiving such services.
- This exemption is one of several under welfare reform which Congress understood as necessary for the protection of public health and safety.

Q Some advocates say that you will harm immigrants. How do you respond?

A We have followed the intent of the Congress which was to bar most federal benefit programs from persons who are not legally in this country. We have carefully considered the risks to the general public and immigrants to maintain access to some public health programs for well-being and safety of the nonqualified immigrant individual or family and the public at large.

Q Are programs verifying immigration status?

A The major health and welfare programs already verified immigration status but many others had no requirement to and did not verify as a matter of practice. And even for those who already did some verification, designation as a federal public benefit brings very specific stipulations about the way they verify. The Department of Justice has issued a guidance on verification procedures and release a proposed regulation on August 4th.

Q You define programs as federal public benefits, but then you exclude some of the services provided under the program. Why isn't the entire program considered a federal public benefit?

A The law stipulates that federal public benefits are only those benefits provided to an "individual, household or family eligibility unit". If a program on the list provides some services that are not directed at an eligibility unit, those services are not federal public benefits. An example would be states that use SSBG funds used for a public awareness campaign, or a school educational presentation, activities that can not be tied to a single eligibility unit. However, the services of that same program which are provided to individuals or families units would be benefits. Examples would be Child Care services funded by SSBG would constitute a federal public benefit because they are going directly to an individual unit.

Q Isn't this distinction an unnecessary administrative burden on the states and agencies?

A We are following the intent and direction of the Congress that most federal benefit programs should not be provided directly to individuals and families who are not legally in this country. States have experience in managing different federal funding streams and the distinctions between programs that serve persons directly and those aimed at the general public. We do not anticipate undue administrative hardships.

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NOT ENOUGH BENEFITS FOR CITIZENS

Question: Why are you allowing illegal aliens to continue to receive certain benefits when there is already limited access for citizens?

Answer:

- First of all, we are just implementing the law consistent with the statutory language and intent of Congress.
- The law imposes verification procedures on programs that provide benefits to individual, household, or family eligibility units.
- Over 95% of the benefits this Department provides are denied to undocumented aliens.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

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

AGENCY: Office of the Secretary, HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period interprets the term "Federal public benefit" as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193, and identifies the HHS programs that provide such benefits under this interpretation. According to section 401 of PRWORA, aliens who are not "qualified aliens" are not eligible for any "Federal public benefit," unless the "Federal public benefit" falls within a specified exception. A "Federal public benefit" includes "any grant, contract, loan, professional license, or commercial license" provided to an individual, and also "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." Under section 432, providers of a non-exempt "Federal public benefit" must verify that a person applying for the benefit is a qualified alien and is eligible to receive the benefit.

The HHS programs that provide "Federal public benefits" and are not otherwise excluded from the definition by the exceptions provided in section 401(b) are:

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)—State Developmental Disabilities Councils (direct services only)
- ADD—Special Projects (direct services only)
- ADD—University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research
- Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty
- Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare

- Medicaid (except assistance for an emergency medical condition)
- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)

While all of these programs provide "Federal public benefits" this does not mean that all benefits or services provided under these programs are "Federal public benefits." As discussed in sections II and III below, some benefits or services under these programs may not be provided to an "individual, household, or family eligibility unit" and, therefore, do not constitute "Federal public benefits" as defined by PRWORA.

DATES: Effective Date: This notice is effective on August 4, 1998.

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 5, 1998.

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: Colleen Curtin Rathgeb.

FOR FURTHER INFORMATION CONTACT: Colleen Curtin Rathgeb, (202) 401-6639.

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, D.C. The above contact should be used only to submit general comments regarding the policy interpretation contained in this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 401 of PRWORA provides that an alien who is not a qualified alien, as defined in section 431 of PRWORA, is not eligible, with certain specified exceptions, for any "Federal public benefit." PRWORA, as amended by section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, and by sections 5302 and 5571 of the Balanced Budget Act of 1997, Pub. L. 105-33, defines "qualified alien" as an alien who, at the time the alien applies for, receives or attempts to receive a public benefit, is (1) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (the "Act"); (2) an alien granted asylum under Section 208 of the Act; (3) a refugee admitted to the United States under Section 207 of the Act; (4) an alien paroled into the United States under Section 212(d)(5) of the Act for a period of at least one year; (5) an alien whose deportation is being withheld under Section 243(h) of the Act as in effect prior to April 1, 1997, or whose removal is being withheld under Section 241(b)(3) of the Act; (6) an alien granted conditional entry under Section 203(a)(7) of the Act as in effect prior to April 1, 1980; (7) an alien who is a Cuban Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; or (8) an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Section 401(c) of PRWORA 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." Section 432 of PRWORA as amended by section 504 of IIRIRA and section 5572 of the Balanced Budget Act of 1997, further requires that certain providers of "Federal public benefits" verify the citizenship or immigration status of an individual applying for a "Federal public benefit" for purposes of establishing eligibility unless the benefit falls within a specific exemption.

Although section 401(b) of PRWORA identifies specific types of benefits and services that are explicitly exempted from these new requirements, PRWORA does not identify the specific benefits that are "Federal public benefits," and the definition in section 401(c), standing alone, does not provide sufficient guidance for benefit providers to make that determination. In order to facilitate compliance with the verification requirement in Section 432, the Department and other Federal agencies should interpret the term. (See the Department of Justice's "Proposed Rule on Verification of Eligibility for Public Benefits" published elsewhere in this issue of the *Federal Register* and "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" 62 FR (November 17, 1997) pp. 61344-61416.)

II. Interpretation

"Federal public benefits" that fall within Part A of the definition (i.e., "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") generally include agreements or arrangements between Federally funded programs and individuals, such as research grants, student loans, or patent licenses. For example, the Native Hawaiian Loan Program and the Repatriation Program are "Federal public benefits" because, as loan programs, they meet the statutory definition's criteria under Part A. Similarly, the term "grant" in Part A refers to financial awards to individuals; it does not include so-called "block grants" which are provided to states or localities, since that would give the word an entirely different meaning than the other terms in that Part. (This interpretation follows the traditional canon of statutory construction, *noscitur a sociis*, that provides that "words grouped in a list should be given related meaning." *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1989) (citing *Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989) (quoting *Schreiber v. Burlington*, 472 U.S. 1, 8 (1985).))

If a benefit does not fall within Part A of the definition, it must be determined whether the benefit is a "Federal public benefit" under Part 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."

To qualify as a "Federal public benefit" under Part B, a benefit must satisfy two conditions. First, the benefit must be one of those enumerated in section 401(c)(1)(B), that is, a "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [or] unemployment benefit," or be a "similar benefit." Second, a program's benefits or assistance must be provided to an "individual, household or family eligibility unit by an agency of the United States or by appropriated funds of the United States."

Although the litany of categories in 401(c)(1)(B) is broad, it is not comprehensive and clearly excludes certain categories from the definition. For example, by explicitly identifying "postsecondary education" the statute excludes non-postsecondary education programs, such as Head Start and elementary and secondary education.

With respect to the second condition, the phrase "individual, household, or family eligibility unit" is particularly ambiguous and requires clarification. At the outset we interpret the phrase to narrow the set of benefits that fall within Part B of the definition. This point is best illustrated by comparing "Federal public benefits" in PRWORA to the term "Federal benefit" in IIRIRA. Section 561 of IIRIRA contained a provision that increased criminal penalties for forging Federal documents in order to prevent the fraudulent receipt of "Federal benefits."

"Federal benefit" is defined in IIRIRA as: "(A) the issuance of 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, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19 USC 1396b(v)), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States." IIRIRA's definition of "Federal benefit" is nearly the same as PRWORA's definition of "Federal public benefit" but with some significant differences. First, the definition of "Federal benefit" contained a more comprehensive list of benefits than that found in PRWORA's definition of "Federal public benefit."

Second, the Federal benefit definition *did not* include the phrase "individual, household, or family eligibility unit." The term "Federal public benefit," therefore, should be construed more narrowly than "Federal benefit." In addition, the PRWORA Conference Report contains language confirming the limiting effect of the phrase "individual, household, or family eligibility unit." In describing the application of the "Federal public benefit" definition to one particular program—Title I, Part A of the Elementary and Secondary Education Act (ESEA)—the conference report stated that it was "[t]he intent of the conferees" that it "not be affected by section 401 *because the benefit is not provided to an individual, household, or family eligibility unit.*" [H.R. Conference Report No. 104-725 at 380 (1996) (emphasis added)]. Given Congress' assessment that the benefits conferred under the ESEA are not provided to "individual, household, or family eligibility units," ESEA benefits are not "federal public benefits." In sum, these points confirm that Congress included the phrase "individual, household, or family eligibility unit" in the definition in order to limit those benefits that would not be available to non-qualified aliens.

We interpret the phrase "individual, household, or family eligibility unit" to refer to benefits that are (1) provided to an individual, household, or family, and (2) the individual, household, or family must, as a condition of receipt, meet specified criteria (e.g., a specified income level or residency) in order to be conferred the benefit, that is, they must be an "eligibility unit." Such benefits do not include benefits that are generally targeted to communities or specified sectors of the population (e.g., people with particular physical conditions, such as a disability or disease; gender; general age groups, such as youth or elderly). For example, in order for a program to be determined to provide benefits to "eligibility units" the authorizing statute must be interpreted to mandate ineligibility for individuals, households, or families that do not meet certain criteria, such as a specified income level or a specified age.

Many HHS programs are targeted to meet the needs of certain populations such as children or pregnant women. But unless the authorizing statutes require that the characteristics of these groups form the basis for denial of services or benefits, these are not benefits that go to "eligibility units." The authorizing statutes of these programs identify populations with specific characteristics to clarify the types of services that should be

provided; they do not contemplate that providers use variations in individual characteristics as a basis for determining eligibility, on a case by case basis. Therefore a benefit targeted to certain populations based on their characteristics, such as a benefit provided under the Maternal and Child Health program, which provides health services to women and children, is *not* a "Federal public benefit."

Some programs may provide a mixture of services, some of which are provided to "individual, household, or family eligibility units," and others that are provided to communities or specified sectors of the population. Programs that are primarily designed to target and provide services to communities should not be burdened with new verification procedures merely because they may include some services that flow more directly to the individual, household or family. Therefore, we have determined that a preponderance of a program's services must be provided to individual, household, or family eligibility units in order to be considered a "Federal public benefit" program under this Notice.

III. HHS Programs

After a review of HHS programs, we have determined that the following programs provide "Federal public benefits," are not otherwise excepted from the eligibility restrictions imposed by 401(a) of PRWORA:

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)—State Developmental Disabilities Councils (direct services only)
- ADD—Special Projects (direct services only)
- ADD—University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research
- Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare
- Medicaid (except assistance for an emergency medical condition)
- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program

- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)

This does not mean, however, that all benefits or services provided by these programs are "Federal public benefits" and require verification. For example, some states may provide LIHEAP funds for weatherization of multi-unit buildings. These funds would not be considered a "Federal public benefit" since the eligibility of individuals, households, or family units is not considered in determining whether such funds will be used to improve the building. Other programs that have been determined to provide "Federal public benefits" under this Notice should consult their Federal program administrators if it is believed that some of the program's services do not constitute "Federal public benefits."

Although SSBG does not have statutorily mandated eligibility criteria and therefore would not be included in our definition of "Federal public benefits" as explained in section III above, its inclusion in section 402 as a "federally designated program" for which States can determine the eligibility of qualified aliens suggests that the SSBG program be classified as providing "Federal public benefits." Otherwise, we would leave open the possibility of a state denying qualified aliens SSBG benefits or services while maintaining access to such benefits or services to non-qualified aliens.

Services or benefits that are wholly funded by state or local governments may be "state or local public benefit(s)" as defined in section 411(c) of PRWORA. However, services or benefits that are wholly or partially funded with HHS resources must comply with the interpretation provided in this Notice.

The Department of Justice issued a Notice, dated November 17, 1997, entitled "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996", at 62 *Fed Reg* 61344 (the "Interim Guidance") to assist affected providers in performing the verification procedures necessary to determine which aliens are "qualified aliens". Providers are encouraged to review that

guidance in order to understand the several important exemptions detailed there. These exemptions include those for: nonprofit charitable organizations; the provision of emergency medical care and certain other immunizations and treatments; the protection of certain battered aliens, and the provision of in-kind, community based services that are not contingent on income or resources and are necessary for the protection of life and safety. Further information regarding these exemptions is included below (section IV).

IV. Exemptions

Congress created specific exemptions to the verification requirements. Therefore, in addition to the programs identified above, some HHS programs have eligibility requirements in statute but are otherwise specifically exempted under the provisions of section 401(b).

Section 401(b)(1)(C), exempts "public health assistance...for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease." This exemption, designed to protect public health, excludes some HHS programs from the definition of "Federal public benefits."

Services or assistance specified by the Attorney General that (i) deliver in-kind services at the community level; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety are also exempted. The Attorney General published general guidance on August 30th, 1996 regarding which types of services and benefits meet these criteria at 61 FR 45985. We have reviewed our programs and have determined that a number of programs meet this criteria.

Section 432(d) of PRWORA (added by Section 508 of IIRIRA) exempts all providers that are nonprofit charitable organizations from these verification rules, even if they provide services or benefits funded by the HHS programs identified in this notice. Refer to the Department of Justice's Interim Guidance for more information on the applicability of these exemptions.

V. 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 public benefit." Additional delay will cause costly, unnecessary and/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 public benefit" people may have been denied critical benefits and services for which, under this interpretation, they are 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 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, this interpretation is effective immediately.

VI. 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. This interpretation requires verification only for those activities within programs that have eligibility units defined by statutory eligibility criteria. Otherwise, a great deal of needless and costly verification might have been undertaken.

PRWORA creates major economic effects, a large portion of which results from changes in the law relating to immigrants' eligibility for Federal benefits. However, these effects are essentially due to other provisions of PRWORA, such as sections 402, 403 and 421, which alter the eligibility rules for certain mandatory spending programs and are largely in effect. This Notice provides clarifying guidance as to which HHS programs are subject to the existing PRWORA requirements regarding immigrants' eligibility for "Federal

public benefits," thereby avoiding confusion among administering agencies, grantee agencies, benefit providers, and the public on the question of which programs must institute new eligibility and verification procedures. Therefore, the interpretation does not have an economic impact, and it does not affect the overall spending levels for any discretionary-funded HHS program. Nor does this interpretation create burdens or mandates on states or small entities.

As a result we have determined that this notice is not economically "significant" under Executive Order 12866's criterion of an economic effect of more than \$100 million. For the same reason, it is not 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).

Dated: July 27, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98-20491 Filed 8-3-98; 8:45 am]

BILLING CODE 4140-04-P



Daniel J. Chenok
03/26/99 11:27:17 AM

Record Type: Record

To: Jack A. Smalligan/OMB/EOP, Irene Bueno/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Lori Schack/OMB/EOP, Anil Kakani/OMB/EOP, Andrea Kane/OPD/EOP
Subject: TANF Public benefit section conference call -- PLEASE READ AND RESPOND ASAP

Cynthia and I just spoke to HHS regarding the new public benefit section in the TANF rule. The HHS immigration team wrote this (Jack, Dave Neilson was involved).

The policy/strategy concern that I have continues to be the sentence on p. 568 that states that because Federal TANF generally provides a public benefit, then "we must also conclude that the TANF program, using State funds that have been segregated from Federal TANF funds, generally provides a State or local public benefit".

As you may recall, Federal agency have not made statements about which State or local programs should be counted as either means-tested public benefits or public benefits. HHS acknowledges that this statement represents new policy. HHS has two primary reasons for including the statement:

- 1) **A legal call.** HHS points out that as a legal matter it would be hard to argue that segregated State TANF spending is not a public benefit since the statutory language on State or local public benefits (411(c)) is the same as the equivalent section for Federal public benefits (401(c)). (I think they are probably right).
- 2) **A policy call.** HHS believes that there is a danger that States could decide that segregated program are not public benefits and claim, for the TANF maintenance of effort funds, lots of spending on aliens who would not otherwise be eligible. (I think the risk of this is low, and anyway States could the same thing in the separate state programs under TANF).

The biggest concern I have with the underlined sentence above is the change in strategy vis-a-vis State discretion that it represents. We have gone to great lengths to give States and locals broad discretion on which programs, using their money, they consider to be public benefits. Even if we think that as a legal matter it would be obvious that State TANF dollars are public benefits, it would be counter to our existing approach to State discretion to "conclude" that such spending is a public benefit.

My preference would be to delete the discussion, which would end the paragraph on p. 568 after "It is generally up to the State to determine if the benefits it offers are State or local public benefits within the meaning of the Act" (which is consistent with where we have been on this issue). However, let's **have an e-mail discussion or a conference call ASAP** to decide on a position. We are shooting to clear the rule by COB today; HHS will probably defer to our judgment on this.

Thanks.

Dan's question - _____
- TANF - ~~FPPB~~ FPPB - why is this
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counseling, or parenting and money management classes.

The NPRM stated that we expect States to define "child" consistent either with the "minor child" definition given in section 419 or some other definition applicable under State law. The State must be able to articulate a rational basis for the age they choose.

The definition of "eligible family" expressly includes families that "would be eligible for such assistance but for the application of section 408(a)(7) of this Act."

Under section 408(a)(7), States may not use Federal TANF funds to provide TANF assistance to a family that includes an adult who has received federally funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes. [NOTE: In the NPRM, in §273.2(c), we did not accurately cite the applicable criteria. The final rule at §263.2(c) corrects this error; in referencing paragraph (b) of this section, it captures all three criteria for "eligible families."]

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Section 5506(d) of Pub. L. 105-33 (the Balanced Budget Act

Revised/clarified
presentation (new)

of 1997) clarified that the definition of an eligible family also includes lawfully present aliens who would be eligible for TANF assistance but for the application of title IV of PRWORA.

Thus, the definition of eligible family allows States to claim MOE expenditures with respect to three types of family members: (1) those who are eligible for TANF assistance; (2) those who would be eligible for TANF assistance, but for the time-limit on the receipt of federally-funded assistance; and (3) those lawfully present who would be eligible, but for the application of title IV of PRWORA. An alien family who meets any one of these three criteria may be considered an eligible family provided they also meet the family composition requirement (i.e., have a child living with custodial parent or other caretaker relative or be a pregnant individual) and financial eligibility criteria established by the State. These last two requirements are based on the statutory language stating that eligible families "means families eligible for assistance under the State program funded under this part (TANF)...and that would be eligible for such assistance."

While this three-part definition of eligible families may appear to allow States to claim qualified expenditures with respect to all lawfully present alien eligible family

members, i.e., both qualified and non-qualified aliens, as discussed further below, this is not necessarily the case. Nor is it the case that the amendment to the definition under the Balanced Budget Act precludes States from claiming MOE for illegal aliens under certain circumstances.

While we mentioned the 1997 amendment in the NPRM, at that time, we had not fully analyzed the significance of the statutory language defining "eligible families" for MOE claiming purposes, relative to the extant eligibility provisions in title IV of PRWORA. Title IV of PRWORA sets forth the aliens who are eligible for Federal public benefits and for State and local public benefits; whereas, the definition of eligible families limits the expenditures that may be claimed for MOE. While there is obvious overlap between these two concepts, they are distinct and must be analyzed separately.

To understand eligibility for Federal TANF benefits, readers must be familiar with the definition of qualified alien, Federal public benefit, and Federal means-tested public benefits. Section 401 in title IV of PRWORA provides that, in general, only qualified aliens, as defined in section 431 of PRWORA, are eligible for Federal public benefits. (At the end of this discussion, we explain two very limited circumstances under which it may be possible for a State to

provide certain benefits to all aliens.) The definition of "qualified aliens" at §260.30 refers to section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208) and the Balanced Budget Act of 1997 (Pub. L. 105-33). The revised definition of "qualified aliens" includes: legal permanent residents; asylees; refugees; aliens paroled into the U.S. for at least one year; aliens whose deportations are being withheld; aliens granted conditional entry; battered alien spouses, battered alien children, the alien parents of battered children, and alien children of battered parents who fit certain criteria; and Cuban/Haitian entrants. *and amnestians*

The Department has interpreted the term "Federal public benefit" (see TANF-ACF-IM-98-5, dated August 24, 1998, transmitting the notice with comment period interpreting "Federal public benefit," published in the Federal Register dated August 4, 1998, vol. 63, No. 14, and available online at <http://www.acf.dhhs.gov/programs/ofa/im98-5.htm>). It has determined that the TANF program (when using Federal TANF funds) generally provides a Federal public benefit. The Department also issued an interpretation of the term "Federal means-tested public benefit" and designated the TANF program as a Federal means-tested public benefit. (See the Federal Register for August 26, 1997, 62 FR 45256.)

~~Section 403 of PRWORA prohibits~~
Even qualified aliens may be ineligible for means-tested Federal public benefits. Section 403 of PRWORA prohibits qualified aliens, with exceptions, who arrive on or after August 22, 1996, i.e., "newly-arrived aliens," from receiving Federal means-tested public benefits for five years. Exceptions to the five-year bar include qualified aliens who are refugees, asylees, or aliens whose deportation is being withheld, Amerasians, and Cuban/Haitian entrants, as well as veterans, members of the military on active duty, and their spouses and unmarried dependent children.

However, as discussed below, States may elect to help any newly-arrived aliens who are eligible family members by providing either State or local public benefits or benefits that are not a State or local benefit. If the State uses segregated State funds in TANF or funds in separate State programs to provide such benefits, the expenditures may qualify as MOE.

Further, in regard to whether qualified aliens may be eligible for Federal TANF benefits, section 402 of PRWORA provides that States have the authority in TANF to decide whether to help qualified aliens who arrived in this country prior to August 22, 1996, and qualified aliens who arrived on or after August 22, 1996, but for whom the five-year bar

had expired. In other words, States are authorized to decide whether qualified aliens are eligible for the State's TANF program. However, a State may not deny certain qualified aliens eligibility even if it decides that as a general matter qualified aliens are not eligible to receive Federal TANF benefits. States may not deny eligibility to refugees and asylees, aliens whose deportation has been withheld, Amerasians, and Cuban/Haitian entrants. These groups are eligible for Federal TANF benefits for five years after the date of their entry into the country or the date asylum or withholding of deportation was granted. Also, States may never deny eligibility to legal permanent residents who have worked forty qualifying quarters or to aliens who are veterans, members of the military on active duty, and their spouses and unmarried dependent children.

As with other parts of the TANF program, the way the State structures the delivery of TANF and MOE benefits determines which eligibility requirements apply. If a State commingles Federal TANF funds with State funds, then the benefits provided must follow the rules at section 401(c) for Federal public benefits. A State providing Federal public benefits to aliens and using commingled TANF funds to help aliens may claim, for MOE purposes, only the expenditures that it makes with respect to eligible qualified alien family members. Eligible qualified aliens include those who are eligible for

TANF assistance; would be eligible for TANF assistance, but for the time limit on receiving federally funded TANF assistance; or are lawfully present in this country and would be eligible for TANF assistance, but for the application of title IV of PRWORA. If the State decides to restrict the eligibility of non-citizens to receive TANF benefits and commingles its MOE funds, then it will only be able to claim toward MOE the expenditures that it must make on behalf of the excepted qualified aliens mentioned above.

If a State does not commingle Federal and State funds, but instead uses segregated State funds in its TANF program or separate State program funds to provide benefits that meet the definition of a State or local public benefit, then it must follow the rules of section 411 of PRWORA. State or local public benefits have the meaning prescribed under section 411(c) of PRWORA. It is generally up to the State to determine if the benefits it offers are State or local public benefits within the meaning of the Act. However, because we interpreted that the TANF program, using Federal TANF or State commingled funds, generally provides a Federal public benefit, ^{on legal interpretation} we must also conclude that the TANF program, using State TANF funds that have been segregated from Federal TANF funds, generally provides a State or local public benefit (subject to the very limited circumstances explained at the end of this discussion). We draw this

*Dan - go we have to
make this statement?*

conclusion because the statutory language in section 401(c) is identical to the language in 411(c). Within the meaning prescribed under section 411(c), States would also determine whether various separate State or local programs or activities are State or local public benefits.

Section 411(a) provides that only qualified aliens and certain nonqualified aliens are eligible for State or local public benefits. The nonqualified aliens consist of nonimmigrants under the Immigration and Nationality Act or aliens paroled into this country under section 212(d)(5) of such Act for less than one year. There are a handful of legal nonqualified aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with protected status, and aliens in deferred action status who are prohibited from receiving State or local public benefits under this provision. (At the end of this discussion, we explain two very limited circumstances under which it may be possible to provide certain benefits to all aliens.)

Section 411(d) permits States to expand alien eligibility by providing State or local public benefits to illegal aliens. But this may occur only if the State enacts a law after August 22, 1996, that affirmatively provides that illegal aliens are eligible to receive (all or particular) State or local public benefits.

The Act at section 412 also allows States, at their option, to further limit alien eligibility for State public benefits. There are time-limited exceptions for refugees, asylees, or aliens whose deportation has been withheld. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF during their first five years following entry, grant of asylum, or withholding of deportation. The other excepted qualified aliens consist of veterans, members of the military on active duty, and their spouses and unmarried dependent children, as well as permanent residents who have earned forty qualifying quarters. Like Federal TANF benefits, these groups are eligible to receive State public benefits under TANF without the time limit described above.

In light of sections 411 and 412 of PRWORA, we have concluded that, if a State uses segregated State TANF funds or separate State program funds to provide State or local public benefits, it may only claim for MOE purposes the qualified expenditures made with respect to eligible family members who are qualified aliens, nonimmigrants under the Immigration and Nationality Act, aliens paroled into this country under section 212(d)(5) of such Act for less than one year, and illegal aliens if the State enacted a law after August 22, 1996, that affirmatively provides for eligibility to receive specifically authorized State or

local public benefits.

A State may claim the expenditures for illegal aliens for MOE purposes only if the law in question is broad enough to encompass TANF eligibility. The only avenue for claiming expenditures for illegal aliens in the definition of eligible families in section 409(a)(7)(B)(i)(IV) is under the criteria of families eligible for assistance under TANF. Once a State affirms that illegal aliens are eligible for TANF assistance, then the State may provide a State or local public benefit as part of TANF or a separate State program. For example, if the State's law only authorizes for child care to be provided to illegal aliens through a non-TANF program (e.g., CCDF), it could not claim any such expenditures as MOE. However, if its law authorizes child care provided through TANF for illegal immigrants, it may claim such expenditures as MOE. Or, if it provides such a service to illegal aliens through a separate State program and not the TANF program, but the illegal aliens are eligible for both, it may claim those expenditures as MOE.

A State may claim qualified expenditures for the individuals described in the prior two paragraphs for MOE purposes because these are the aliens who are either eligible for TANF benefits; would be eligible for TANF assistance, but for the time limit on receiving federally funded TANF

assistance; or are lawfully present in this country and would be eligible for TANF assistance, but for the application of title IV of PRWORA. If a State decides to restrict alien eligibility for State public benefits, then it may only claim MOE for qualified segregated TANF expenditures or qualified separate State program expenditures made with respect to the excepted qualified aliens mentioned in section 412.

Two limited circumstances exist in which it may be possible for a State to help all aliens. These circumstances apply regardless of funding source, i.e., whether a State uses Federal TANF, State TANF, or separate State program funds. These circumstances derive from section 401(b) and (c) and section 411(b) and (c) of PRWORA, which describe alien eligibility for Federal public benefits and State or local public benefits, respectively.

First, both sections 401(b) and 411(b) affirm that States may provide certain non-cash Federal or State and local public benefits to any alien. Such benefits are those necessary for the protection of life or safety and include those specified by the Attorney General in a notice dated August 23, 1996 (AG Order No. 2049-96, 61 Federal Register 45985 available online at <http://www.acf.dhhs.gov/news/welfare/wr/830fdreg.htm>). In

the notice, the Attorney General specified the kinds of non-cash government-funded community programs, services, or assistance that are necessary for protection of life or safety and for which all aliens continue to be eligible. However, for all aliens to be eligible, sections 401(b)(1)(D) and 411(b)(4) both state that neither the government-funded programs, services, or assistance provided, nor the cost of such assistance, may be conditioned on the individual recipient's income or resources. While such service may meet one of the purposes of TANF and may be provided as part of TANF or a separate State program, a State may claim toward MOE only qualified expenditures with respect to eligible (needy) families. Therefore, to claim any expenditures that meet the Attorney General's specifications for life and safety, a State must have a sound methodology that enables it to identify and claim only the portion of total qualified expenditures for benefits that it has provided to eligible families.

Second, section 401(c) defines a Federal public benefit and section 411(c) defines a State or local public benefit. Both sections use the same definition. The August 4, 1998, Federal Register notice that identified TANF as a Federal public benefit expressly states that not "all benefits or services provided by these programs are 'Federal public benefits' and require verification." Because sections

401(c) and 411(c) use the same wording to define a public benefit, we believe this statement may also apply to benefits provided with segregated State TANF funds and separate State program funds. When a benefit is not a Federal or State or local public benefit, a State is not statutorily bound to restrict eligibility to certain aliens and can provide that benefit to all aliens.

The August 4, 1998, Federal Register "Notice with Comment Period" includes some general discussion about discerning whether a benefit should or should not be considered a Federal public benefit. We suggest this same discussion may be valuable to States in interpreting, per section 411(c), the specific services that a State would or would not consider a State or local public benefit under TANF or through a separate State or local program. If a particular benefit or service under the State's TANF program or separate State or local program is not a public benefit, then the State may claim qualified expenditures with respect to any alien family member who is "eligible for TANF assistance."

In addition we proposed that States may be able to count as MOE expenditures, funds transferred to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF

program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not count as MOE. Only expenditures used to assist an "eligible family" under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

(c) Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)-(ee) specifies that State expenditures on eligible families for the following types of assistance are "qualified expenditures" for basic MOE purposes:

- o cash assistance (see subsequent discussion on this);
- o child care assistance (see the discussion at §263.3);
- o education activities designed to increase self-sufficiency, job training, and work (note the specific exception at §263.4);
- o any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

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

AGENCY: Office of the Secretary, HHS.
ACTION: Notice with comment period.

SUMMARY: This notice with comment period interprets the term "Federal public benefit" as used in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193, and identifies the HHS programs that provide such benefits under this interpretation. According to section 401 of PRWORA, aliens who are not "qualified aliens" are not eligible for any "Federal public benefit," unless the "Federal public benefit" falls within a specified exception. A "Federal public benefit" includes "any grant, contract, loan, professional license, or commercial license" provided to an individual, and also "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." Under section 432, providers of a non-exempt "Federal public benefit" must verify that a person applying for the benefit is a qualified alien and is eligible to receive the benefit.

The HHS programs that provide "Federal public benefits" and are not otherwise excluded from the definition by the exceptions provided in section 401(b) are:

- Adoption Assistance
- Administration on Developmental Disabilities (ADD)—State Developmental Disabilities Councils (direct services only)
- ADD—Special Projects (direct services only)
- ADD—University Affiliated Programs (clinical disability assessment services only)
- Adult Programs/Payments to Territories
- Agency for Health Care Policy and Research
- Dissertation Grants
- Child Care and Development Fund
- Clinical Training Grant for Faculty Development in Alcohol & Drug Abuse
- Foster Care
- Health Profession Education and Training Assistance
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low Income Home Energy Assistance Program (LIHEAP)
- Medicare

- Medicaid (except assistance for an emergency medical condition)
- Mental Health Clinical Training Grants
- Native Hawaiian Loan Program
- Refugee Cash Assistance
- Refugee Medical Assistance
- Refugee Preventive Health Services Program
- Refugee Social Services Formula Program
- Refugee Social Services Discretionary Program
- Refugee Targeted Assistance Formula Program
- Refugee Targeted Assistance Discretionary Program
- Refugee Unaccompanied Minors Program
- Refugee Voluntary Agency Matching Grant Program
- Repatriation Program
- Residential Energy Assistance Challenge Option (REACH)
- Social Services Block Grant (SSBG)
- State Child Health Insurance Program (CHIP)
- Temporary Assistance for Needy Families (TANF)

While all of these programs provide "Federal public benefits" this does not mean that all benefits or services provided under these programs are "Federal public benefits." As discussed in sections II and III below, some benefits or services under these programs may not be provided to an "individual, household, or family eligibility unit" and, therefore, do not constitute "Federal public benefits" as defined by PRWORA.

DATES: Effective Date: This notice is effective on August 4, 1998.

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 5, 1998.

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: Colleen Curtin Rathgeb.

FOR FURTHER INFORMATION CONTACT: Colleen Curtin Rathgeb, (202) 401-6639.

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, D.C. The above contact should be used only to submit general comments regarding the policy interpretation contained in this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 401 of PRWORA provides that an alien who is not a qualified alien, as defined in section 431 of PRWORA, is not eligible, with certain specified exceptions, for any "Federal public benefit." PRWORA, as amended by section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, and by sections 5302 and 5571 of the Balanced Budget Act of 1997, Pub. L. 105-33, defines "qualified alien" as an alien who, at the time the alien applies for, receives or attempts to receive a public benefit, is (1) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (the "Act"); (2) an alien granted asylum under Section 208 of the Act; (3) a refugee admitted to the United States under Section 207 of the Act; (4) an alien paroled into the United States under Section 212(d)(5) of the Act for a period of at least one year; (5) an alien whose deportation is being withheld under Section 243(h) of the Act as in effect prior to April 1, 1997, or whose removal is being withheld under Section 241(b)(3) of the Act; (6) an alien granted conditional entry under Section 203(a)(7) of the Act as in effect prior to April 1, 1980; (7) an alien who is a Cuban Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; or (8) an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Section 401(c) of PRWORA 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." Section 432 of PRWORA as amended by section 504 of IIRIRA and section 5572 of the Balanced Budget Act of 1997, further requires that certain providers of "Federal public benefits" verify the citizenship or immigration status of an individual applying for a "Federal public benefit" for purposes of establishing eligibility unless the benefit falls within a specific exemption.

Although section 401(b) of PRWORA identifies specific types of benefits and services that are explicitly exempted from these new requirements, PRWORA does not identify the specific benefits that are "Federal public benefits," and the definition in section 401(c), standing alone, does not provide sufficient guidance for benefit providers to make that determination. In order to facilitate compliance with the verification requirement in Section 432, the Department and other Federal agencies should interpret the term. (See the Department of Justice's "Proposed Rule on Verification of Eligibility for Public Benefits" published elsewhere in this issue of the Federal Register and "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" 62 FR (November 17, 1997) pp. 61344-61416.)

II. Interpretation

"Federal public benefits" that fall within Part A of the definition (i.e., "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") generally include agreements or arrangements between Federally funded programs and individuals, such as research grants, student loans, or patent licenses. For example, the Native Hawaiian Loan Program and the Repatriation Program are "Federal public benefits" because, as loan programs, they meet the statutory definition's criteria under Part A. Similarly, the term "grant" in Part A refers to financial awards to individuals; it does not include so-called "block grants" which are provided to states or localities, since that would give the word an entirely different meaning than the other terms in that Part. (This interpretation follows the traditional canon of statutory construction, *noscitur a sociis*, that provides that "words grouped in a list should be given related meaning." *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1989) (citing *Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989) (quoting *Schreiber v. Burlington*, 472 U.S. 1, 8 (1985)).)

If a benefit does not fall within Part A of the definition, it must be determined whether the benefit is a "Federal public benefit" under Part 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."

To qualify as a "Federal public benefit" under Part B, a benefit must satisfy two conditions. First, the benefit must be one of those enumerated in section 401(c)(1)(B), that is, a "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [or] unemployment benefit," or be a "similar benefit." Second, a program's benefits or assistance must be provided to an "individual, household or family eligibility unit by an agency of the United States or by appropriated funds of the United States."

Although the litany of categories in 401(c)(1)(B) is broad, it is not comprehensive and clearly excludes certain categories from the definition. For example, by explicitly identifying "postsecondary education" the statute excludes non-postsecondary education programs, such as Head Start and elementary and secondary education.

With respect to the second condition, the phrase "individual, household, or family eligibility unit" is particularly ambiguous and requires clarification. At the outset we interpret the phrase to narrow the set of benefits that fall within Part B of the definition. This point is best illustrated by comparing "Federal public benefits" in PRWORA to the term "Federal benefit" in IIRIRA. Section 561 of IIRIRA contained a provision that increased criminal penalties for forging Federal documents in order to prevent the fraudulent receipt of "Federal benefits."

"Federal benefit" is defined in IIRIRA as: "(A) the issuance of 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, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19 USC 1396b(v)), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States." IIRIRA's definition of "Federal benefit" is nearly the same as PRWORA's definition of "Federal public benefit" but with some significant differences. First, the definition of "Federal benefit" contained a more comprehensive list of benefits than that found in PRWORA's definition of "Federal public benefit."

Second, the "Federal benefit" definition did not include the phrase "individual, household, or family eligibility unit." The term "Federal public benefit," therefore, should be construed more narrowly than "Federal benefit." In addition, the PRWORA Conference Report contains language confirming the limiting effect of the phrase "individual, household, or family eligibility unit." In describing the application of the "Federal public benefit" definition to one particular program—Title I, Part A of the Elementary and Secondary Education Act (ESEA)—the conference report stated that it was "[t]he intent of the conferees" that it "not be affected by section 401 because the benefit is not provided to an individual, household, or family eligibility unit." (H.R. Conference Report No. 104-725 at 380 (1996) (emphasis added)). Given Congress' assessment that the benefits conferred under the ESEA are not provided to "individual, household, or family eligibility units," ESEA benefits are not "federal public benefits." In sum, these points confirm that Congress included the phrase "individual, household, or family eligibility unit" in the definition in order to limit those benefits that would not be available to non-qualified aliens.

We interpret the phrase "individual, household, or family eligibility unit" to refer to benefits that are (1) provided to an individual, household, or family, and (2) the individual, household, or family must, as a condition of receipt, meet specified criteria (e.g., a specified income level or residency) in order to be conferred the benefit, that is, they must be an "eligibility unit." Such benefits do not include benefits that are generally targeted to communities or specified sectors of the population (e.g., people with particular physical conditions, such as a disability or disease; gender; general age groups, such as youth or elderly). For example, in order for a program to be determined to provide benefits to "eligibility units" the authorizing statute must be interpreted to mandate ineligibility for individuals, households, or families that do not meet certain criteria, such as a specified income level or a specified age.

Many HHS programs are targeted to meet the needs of certain populations such as children or pregnant women. But unless the authorizing statutes require that the characteristics of these groups form the basis for denial of services or benefits, these are not benefits that go to "eligibility units." The authorizing statutes of these programs identify populations with specific characteristics to clarify the types of services that should be

provided; they do not contemplate that providers use variations in individual characteristics as a basis for determining eligibility, on a case by case basis. Therefore a benefit targeted to certain populations based on their characteristics, such as a benefit provided under the Maternal and Child Health program, which provides health services to women and children, is not a "Federal public benefit."

Some programs may provide a mixture of services, some of which are provided to "individual, household, or family eligibility units," and others that are provided to communities or specified sectors of the population. Programs that are primarily designed to target and provide services to communities should not be burdened with new verification procedures merely because they may include some services that flow more directly to the individual, household or family. Therefore, we have determined that a preponderance of a program's services must be provided to individual, household, or family eligibility units in order to be considered a "Federal public benefit" program under this Notice.

III. HHS Programs

After a review of HHS programs, we have determined that the following programs provide "Federal public benefits," are not otherwise excepted from the eligibility restrictions imposed by 401(a) of PRWORA:

Adoption Assistance
Administration on Developmental Disabilities (ADD)—State Developmental Disabilities Councils (direct services only)
ADD—Special Projects (direct services only)
ADD—University Affiliated Programs (clinical disability assessment services only)
Adult Programs/Payments to Territories
Agency for Health Care Policy and Research
Dissertation Grants
Child Care and Development Fund
Clinical Training Grant for Faculty
Development in Alcohol & Drug Abuse
Foster Care
Health Profession Education and Training Assistance
Independent Living Program
Job Opportunities for Low Income Individuals (JOLI)
Low Income Home Energy Assistance Program (LIHEAP)
Medicare
Medicaid (except assistance for an emergency medical condition)
Mental Health Clinical Training Grants
Native Hawaiian Loan Program
Refugee Cash Assistance
Refugee Medical Assistance
Refugee Preventive Health Services Program
Refugee Social Services Formula Program
Refugee Social Services Discretionary Program

Refugee Targeted Assistance Formula Program
Refugee Targeted Assistance Discretionary Program
Refugee Unaccompanied Minors Program
Refugee Voluntary Agency Matching Grant Program
Repatriation Program
Residential Energy Assistance Challenge Option (REACH)
Social Services Block Grant (SSBG)
State Child Health Insurance Program (CHIP)
Temporary Assistance for Needy Families (TANF)

This does not mean, however, that all benefits or services provided by these programs are "Federal public benefits" and require verification. For example, some states may provide LIHEAP funds for weatherization of multi-unit buildings. These funds would not be considered a "Federal public benefit" since the eligibility of individuals, households, or family units is not considered in determining whether such funds will be used to improve the building. Other programs that have been determined to provide "Federal public benefits" under this Notice should consult their Federal program administrators if it is believed that some of the program's services do not constitute "Federal public benefits."

Although SSBG does not have statutorily mandated eligibility criteria and therefore would not be included in our definition of "Federal public benefits" as explained in section III above, its inclusion in section 402 as a "federally designated program" for which States can determine the eligibility of qualified aliens suggests that the SSBG program be classified as providing "Federal public benefits." Otherwise, we would leave open the possibility of a state denying qualified aliens SSBG benefits or services while maintaining access to such benefits or services to non-qualified aliens.

Services or benefits that are wholly funded by state or local governments may be "state or local public benefit(s)" as defined in section 411(c) of PRWORA. However, services or benefits that are wholly or partially funded with HHS resources must comply with the interpretation provided in this Notice.

The Department of Justice issued a Notice, dated November 17, 1997, entitled "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996", at 62 *Fed Reg* 61344 (the "Interim Guidance") to assist affected providers in performing the verification procedures necessary to determine which aliens are "qualified aliens". Providers are encouraged to review that

guidance in order to understand the several important exemptions detailed there. These exemptions include those for: nonprofit charitable organizations; the provision of emergency medical care and certain other immunizations and treatments; the protection of certain battered aliens, and the provision of in-kind, community based services that are not contingent on income or resources and are necessary for the protection of life and safety. Further information regarding these exemptions is included below (section IV).

IV. Exemptions

Congress created specific exemptions to the verification requirements.

Therefore, in addition to the programs identified above, some HHS programs have eligibility requirements in statute but are otherwise specifically exempted under the provisions of section 401(b).

Section 401(b)(1)(C), exempts "public health assistance...for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease." This exemption, designed to protect public health, excludes some HHS programs from the definition of "Federal public benefits."

Services or assistance specified by the Attorney General that (i) deliver in-kind services at the community level; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety are also exempted. The Attorney General published general guidance on August 30th, 1996 regarding which types of services and benefits meet these criteria at 61 FR 45985. We have reviewed our programs and have determined that a number of programs meet this criteria.

Section 432(d) of PRWORA (added by Section 508 of IIRIRA) exempts all providers that are nonprofit charitable organizations from these verification rules, even if they provide services or benefits funded by the HHS programs identified in this notice. Refer to the Department of Justice's Interim Guidance for more information on the applicability of these exemptions.

V. 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 public benefit." Additional delay will cause costly, unnecessary and/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 public benefit" people may have been denied critical benefits and services for which, under this interpretation, they are 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 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, this interpretation is effective immediately.

VI. 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. This interpretation requires verification only for those activities within programs that have eligibility units defined by statutory eligibility criteria. Otherwise, a great deal of needless and costly verification might have been undertaken.

PRWORA creates major economic effects, a large portion of which results from changes in the law relating to immigrants' eligibility for Federal benefits. However, these effects are essentially due to other provisions of PRWORA, such as sections 402, 403 and 421, which alter the eligibility rules for certain mandatory spending programs and are largely in effect. This Notice provides clarifying guidance as to which HHS programs are subject to the existing PRWORA requirements regarding immigrants' eligibility for "Federal

public benefits," thereby avoiding confusion among administering agencies, grantee agencies, benefit providers, and the public on the question of which programs must institute new eligibility and verification procedures. Therefore, the interpretation does not have an economic impact, and it does not affect the overall spending levels for any discretionary-funded HHS program. Nor does this interpretation create burdens or mandates on states or small entities.

As a result we have determined that this notice is not economically "significant" under Executive Order 12866's criterion of an economic effect of more than \$100 million. For the same reason, it is not 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).

Dated: July 27, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98-20491 Filed 8-3-98; 8:45 am]

BILLING CODE 4140-04-P

Diana
Rob Warner
Barbara Woolley
Jack Smelligan
Dana

National Association of Public Hospitals & Health Systems (NAPH) and
National Association of Community Health Centers (NACHC) Attendees
White House meeting
March 19, 1998

	Name	Title	Organization
	<u>NAPH:</u>		
	Pete Velez	Senior Vice President	Queens Health Network
verification	Peter Klemperer	Assistant Vice President, Corporate Reimbursement Services	NYCHHC
	Christine Burch	Executive Director	NAPH
	Barbara Eyman	Associate	Powell, Goldstein, Frazier & Murphy
	Lynne Fagnani	Vice President	NAPH
	Anne Lewis	Associate	Powell, Goldstein, Frazier & Murphy
	<u>NACHC:</u>		
	Benjamin H. Flores	Executive Director	Columbia Valley Community Health Services (Washington)
	Dan Hawkins	Vice President of Federal & State Affairs	NACHC
	John F. Markus	Of Counsel	Greenberg, Traurig
	Susan McNally	Director of Federal Affairs	NACHC

50 - 700 CTR
not 501B)

Public Hospital unclear

Willing to consult w/ others

Diana - FRB must mean something.
Bode loss from the bill.

Timing -

ability to commit

before finalise
(Heckler to
Heckler up to the)

Don

- Queens - hospital & last resort
- Korea, Indian, Mexican - growth
 - concerned about verification - chilling effect
 - Health Problems - TB, prevention
 - NY City Health officials

Columbia CHC (WA) - ~~Martha~~ ^{Don} ~~Stacy~~
Seasonal workers (not migrant)
Rapid primary care providers - 27 yrs.
• serve everyone regardless of income

Verification
CHC do not verify ~~if~~ ^{if} many states, ~~not~~ but verify income + insurance coverage

Chilling Effect -
Medicaid - ~~voluntary~~, reimbursement
• verification more denial of services not a reimbursement issue
~~Not~~ Not an individual

~~Eligibility~~
FPB to an Eligibility Unit.

- See \$ flows to the recipient.
- lump sum / grant from to state, local provider $\neq$ FPB
 - if \$ is for a claim for ~~the~~ service provided.
 - ex. ADAP / Ryan White = tied to services provided = FPB but all other Ryan White are BG. T/F FPB (not Family Plan)
- NASC grant
Not usual ~~type~~ FPB

ReB - Appropriated ~~fund~~ ^{fund}
~~FPB~~ provided to an Eligibility Unit - ~~\$~~ = FPB
Ex, metro $\neq$ FPB

~~PHS~~ Public Health would be at risk. = county served.

CHC
§330 - grant every year, budget - cost, revenue
Medicaid
(under 30% Fed funding)
unreimbursed cost expenses covered by appropriation.

Non profit Exemption
Only part of funding, segregate funds
When providing of service could be subject to deputation - ~~that~~

Your Copy

Colleen Costello, ASPE



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Deputy Assistant
Secretary for Legislation
(Congressional Liaison)

Washington, D.C. 20201

4/17/98

Colleen -

~~Please~~ attached is the document
you requested on the roll-out list for
federal means-testing.

Jane

**FEDERAL MEANS-TESTED DEFINITION
ROLL-OUT CONTACTS**

National Immigration Law Center
Josh Bernstein
(202) 776-0470 x202

National Immigration Forum
Frank Sharry, Director.
TEL #

National Asian Pacific American Legal Consortitium
Karen Narasaki
(202) 296-2300

National Council of La Raza
Cecilia Munoz
TEL #

Council of Jewish Federation
Dianna Avi
TEL #

US Catholic Conference/Migration and Refugee Services
Micheal Hill
(202) 541-3140

Childrens Defense Fund (CDF)
Helen Blank
(202)628-8787

National Association of Child Care Resource & Referral Agencies (NACCRRA)
Yasmina Vinci
(202) 393-5501

National Association for the Education of Young Children (NAEYC)
Barbara Willer
(202) 232-8777

National Family Planning and Reproductive Health Association
Judy DeSarno (EK)
(202) 628-3535
Child Care Law Center
Deena Lahn

(415) 495-5498

Child Care Action Campaign
Gail Richardson
(212) 239-0138

Association of Maternal and Child Health Programs
Catherine Hess
775-0436

National Association of Community Health Centers
Freda Michum
(202) 659-8008

AAPCHO (Association of Asian Pacific Community Health Organizations)
Steve Jaing, Exec. Director
510-272-9536

COSSMHO
Adolf Falcon, VP for Policy
202-387-5000

National Council of La Raza
Dr. Henry Pacheco/Cecilia Munoz
202-785-1670

National Center for Farmworker Health
Joni Barnett
512-328-7682

Asian and Pacific Islander American Health Forum
Tessie Guillermo, Exec. Dir. /
(415) 512-2710

League of United Latin American Citizens (LULAC)
Brent Wilkes, Director of Public Policy
TEL. #

Disability
The ARC
Paul Marchand
(202) 467-4179

Child Care Action Campaign
Gail Richardson
(212) 239-0138

Association of Maternal and Child Health Programs
CONTACT CATHERINE HESS
775-0436

Minority Health

AAPCHO (Association of Asian Pacific Community Health Organizations)
Steve Jaing, Exec. Director
510-272-9536

COSSMHO
Adolf Falcon, VP for Policy
202-387-5000

National Council of La Raza
Dr. Henry Pacheco/Cecilia Munoz
202-785-1670

National Center for Farmworker Health
CONTACT JONI BARNETT
512-328-7682

Bubbi Ryder

Asian and Pacific Islander American Health Forum
Tessie Guillermo, Exec. Dir./
(415) 512-2710

League of United Latin American Citizens (LULAC)
Brent Wilkes, Director of Public Policy
TEL. #

Disability

The ARC
Paul Marchand
(202) 467-4179

National Association of
Community Health
Centers

202-659-8008

Frieda M. ...

Friday 9am
Push TWIN
NCCP 305-4801

OUTSIDE CONSTITUENCIES FOR THE OFFICE
OF INTERGOVERNMENTAL AFFAIRS

(STATE AND LOCAL GOVERNMENT ORGANIZATIONS)

✓ NATIONAL GOVERNORS' ASSOCIATION (202) 624-5300
444 North Capitol St., NW FAX# 624-5313
Suite 267
Washington, DC 20001

Susan Golonka 624-5360

✓ NATIONAL CONFERENCE OF STATE LEGISLATURES (202) 624-5400
444 North Capitol St., NW FAX# 737-1069
Suite 515
Washington, DC 20001

* Human RESOURCES/AFFAIRS DIRECTOR - Sheri Steisel

✓ NATIONAL ASSOCIATION OF COUNTIES (202) 393-6226
440 First ST., NW FAX# 393-2630
8th Floor
Washington, DC 20001

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☒ IRENE BUENO

☐ MARK MAGANA

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☐ BEATRICE BUTLER

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☐ TIJUANA TRIPPLET

☐ STACEYE ARRINGTON

REMARKS:

*Here's some letters the Administration sent on the issue
of undocumented immigrants eligibility for benefits.*

Sharon + happy holidays!

*(You can leave me a voice mail ~~the~~ message. I will be checking
it while I am on leave 202-260-7199).*



Office of the Deputy Attorney General
Washington, D.C. 20530

February 14, 1996

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

This letter presents the views of the Administration concerning S. 1394, the "Immigration Reform Act of 1995" as reported out of the Subcommittee on Immigration (Subcommittee) on November 29, 1995.

While the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration, and S. 1394 contains numerous responsible and thoughtful reforms, S. 1394 raises considerable concerns in specific areas that we hope the Committee will examine thoroughly before reporting the bill to the Senate floor. In particular, employment eligibility verification systems should contain necessary privacy protections and be piloted before any nationwide implementation. We urge the Committee to adopt our proposal to pilot programs for 3 years and then request Congressional authorization to implement only those pilot projects that work. Any increases in penalties for and enforcement of employer sanctions should be similarly increased for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement. Labor and immigration law enforcement should be increased and coordinated. S. 1394 should adopt our proposal to hire 202 Department of Labor (DOL) Wage and Hour Staff to investigate and prosecute labor standards and employer sanctions violators. The birth and death registry provision presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Expedited exclusion procedures should be established in extraordinary situations the Attorney General deems appropriate. Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when

to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the U.S. is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the U.S. when we concluded the Cuban Migration Agreements in September 1994 and May 1995.

While we are pleased that this section extends application of the Act to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section fails to mention the Cuban Migration Agreement signed on September 9, 1994, the announcements by the President on October 14, 1994, and by the Attorney General on December 2, 1994, and thus continues to lack a means to adjust the immigration status of individuals who will be or have been admitted, inspected, or paroled from Havana or from the safehavens in Guantanamo and Panama into the U.S.

Sec. 197 also provides that the number of those obtaining lawful permanent resident status after being paroled into the U.S. will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of U.S. citizens and legal permanent residents from countries other than Cuba.

Title II--FINANCIAL RESPONSIBILITY

PART 1--RECEIPT OF CERTAIN PUBLIC BENEFITS

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and benefits earned as a result of U.S. military service. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the U.S. The Administration, however, opposes application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, to immigrants who have become U.S. citizens, and to lawful immigrants seeking to participate in

student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; and (5) public health assistance for immunizations and for testing and treatment for communicable diseases. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

This section also requires the Secretary of the Department of Housing and Urban Development (HUD), within 90 days of the date of enactment, to submit a report to the Committees on Banking and Committees on the Judiciary of the House and Senate describing how HUD is enforcing section 214 of Housing & Community Development Act of 1980, including statistics of individuals denied assistance.

This section also limits benefits under the Social Security Act to U.S. citizens and eligible aliens who have been granted work authorization and then only those benefits attributable to the authorized employment. Ineligible aliens may not be reimbursed amounts paid into SSA accounts.

While we support the goal of establishing a uniform definition of alien eligibility, we oppose section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represents a new mandate to many state and local governments; and targets current immigrant beneficiaries, some of whom are residing lawfully in the U.S. with the knowledge and permission of the INS.

We encourage you to examine the definition of "qualified" alien as the Administration proposed in its welfare reform bill, introduced in 1994, the "Work and Responsibility Act of 1994" and in the Administration's Balanced Budget proposal.

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, and Medicaid.

The Food Stamps Act already defines an eligible alien. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

The Administration's approach would avoid a number of problems that would result under S. 1394. For example, the eligibility provision in S. 1394 might be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. The principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students and are likely to adversely affect, and be divisive within, our communities. Moreover, instead of making progress towards becoming productive, responsible adults, uneducated children are vastly more likely to wind up on the streets, possibly engaged in unlawful behavior. Finally, schools and school systems are ill-suited to make determinations about the citizenship status of students and should not be forced to bear the uncompensated expense and burden of doing so. We urge that this section be revised so that it does not call into question the full participation of any child in the U.S. in public elementary and secondary education, including participation in pre-school and school lunch programs.

In addition, the definition of an "eligible alien" in section 201(d) could be read to exclude certain postsecondary students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

This provision also should be modified to clarify that it has no effect on the applicability of section 214 of the Housing and Community Development Act of 1980 to HUD programs, and that it does not apply to assistance provided by HUD. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program. The definition of "ineligible alien", by its silence, includes U.S. nationals, thus making natives of American Samoa ineligible for benefits under this section.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g., B for business visitors, E for treaty traders and investors, L for intracompany transferees, and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any federal, state, or local government. One concern is that by prohibiting the award of federal contracts and the granting of federal licenses, this section would preclude local acquisition by diplomatic posts and military bases in foreign countries to the extent that such acquisitions involve contracts with foreign individuals. In addition, section 201(a)(1), which would make ineligible aliens ineligible for government contracts, would be inconsistent with our obligations under the World Trade Organization's Agreement on Government Procurement.

Section 201 may violate NAFTA provisions on services and investment (chapters 11 and 12) and potentially violate our obligations under the GATS agreement and bilateral investment treaties if the class of ineligible aliens is not specifically narrowed. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses, and section 201 would be in violation of those obligations.

This section appears to impose a duty on agencies to make new eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include soup kitchens, food banks, and public health programs such as community and migrant health centers. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

In addition, section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notices all ineligible aliens of the termination of their benefits. While we believe that it is important to notify individuals of their benefit determination, this requirement would place a significant burden on smaller benefit programs such

as those mentioned above. The effects of these requirements on smaller programs should be considered.

Section 201(c) has many undesirable effects on the operation of the Social Security program. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the payment of such benefits by other countries to U.S. citizens. Furthermore, this provision would deny Social Security benefits as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the U.S.

The payment restrictions are also inconsistent with current provisions of law that permit payment of benefits to aliens outside the U.S. if they are citizens of a country whose social insurance system does the same for U.S. citizens. About 65 countries meet this requirement.

It is not clear whether the payment restrictions would be prospective or retrospective. If the Social Security benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide SSA with the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers.

Although it would be feasible for SSA to suspend Social Security benefits payable to a person who is currently in this country illegally, assuming appropriate evidence were obtained, such an approach would not impose any sanctions on legally admitted aliens who received Social Security credit for past periods of unauthorized work.

Also the provision does not address the complex issue of Social Security benefit eligibility for citizens who are dependents or survivors of ineligible aliens, or ineligible aliens who are dependents or survivors of U.S. citizens.

The Administration would support a provision that would restrict the payment of Social Security benefits to aliens who are in the United States illegally if the provision were drafted in a manner that did not compromise existing international arrangements concerning payment of Social Security benefits. We look forward to working with the Committee to address these concerns.

We also would seek to ensure that programs of assistance to refugees under Title IV of the Social Security Act be designed to promote early economic self-sufficiency and social adjustment and to meet the specific needs of refugees. Our concern is that newly arriving refugees, for whom the federal government has a special responsibility, should be provided with services and work and training participation requirements that are adapted to their situation.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a nonimmigrant, the first five years after adjustment to permanent resident status. Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a nonimmigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to the effect of this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

This section also requires the Attorney General to review applications for benefits under section 216, 245 or chapter 2 of Title III of the INA to determine whether the exception to the definition of public charge applies. If the exception does not apply, the Attorney General shall institute deportation proceedings unless she exercises discretion to withhold or suspend deportation.

The legislation would require increased administrative efforts to ascertain (1) whether an alien who had received benefits for more than an aggregate of 12 months during the public charge period was receiving such benefits due to a "pre-



Office of the Deputy Attorney General
Washington, D.C. 20530

September 15, 1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

This letter presents the views of the Administration concerning H.R. 2202, the "Immigration in the National Interest Act of 1995," as introduced on August 4, 1995.

Many of the provisions in H.R. 2202 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration that are a result of failed enforcement policies of the past. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995. These two proposals share many common provisions. Our positions on the individual provisions are outlined in the following section-by-section discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- higher levels of staffing and support than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. We are committed to achieving a strength of at least 7,281 Border Patrol agents by the end of FY 1998. Border

undocumented immigrants. The only exceptions should include matters of public health and safety--such as emergency medical services, immunization and temporary disaster relief assistance--and every child's right to a public education. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration also supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, strongly opposes application of new eligibility and deeming provisions to current recipients, including the disabled who are exempted under current law. The Administration also is deeply concerned about the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 600 makes certain statements concerning national policy with respect to welfare and legal and illegal immigration. We note that the title of this section should be renamed to include restrictions on benefits for legal immigrants.

Section 601 provides that aliens not lawfully present in the U.S. are uniformly ineligible to receive benefits under any means-tested program provided or funded, in whole or in part, by the Federal or State Governments and also are ineligible to receive any grant, contract or loan agreement, or to be issued any professional or commercial license, provided or funded by the Federal or State Governments. Six federal agencies must require applicants to provide sufficient proof of eligibility to receive assistance. Proof of eligibility is limited to showing one of the following four documents: (1) a United States passport (either current or expired if issued both within the previous 20 years and after the individual attained 18 years of age); (2) Resident alien card; (3) State driver's license, if presented with the individual's social security account number card; or (4) State identity card, if presented with the individual's social security account number card. State agencies are authorized to require proof of eligibility to receive State assistance.

We support the goal of establishing a uniform definition of alien eligibility in affected programs. We encourage you, however, to examine and adopt the definition of eligible alien the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994." We also urge that this definition apply only to the four primary needs-based programs -- AFDC, SSI, Medicaid, Food Stamps -- allowing for state and local cash and medical general assistance programs to also use this definition.

In addition, we do not think it is appropriate to include

the Social Services Block Grant program as one of the 6 programs required to rely on 4 documents to determine eligibility. While the other 5 programs are clearly means-tested entitlements (AFDC, SSI, Medicaid, Food Stamps, and Housing Assistance), the Social Services Block Grant funds a wide variety of services in localities all over the United States, many of which are not means-tested. State and localities have wide discretion in the use of their social service block grant funds. Resources from the social service block grant are often co-mingled with funds provided by the states and localities themselves, or other sources. For example, funds may be used to help provide child care services or to help fund meals for the elderly or persons with disabilities that lack mobility. Many of these elderly persons and children, whether citizens or non-citizens, may have difficulty acquiring one of the four documents. We have concerns about imposing a new documentation requirement on states, localities, and clients that will be burdensome to a large number of U.S. citizens.

The Administration's approach would avoid a number of problems. For example, section 601 could be read to deny needs-based, education-related services and assistance paid for with federal, state, or local funds to undocumented alien children. However, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to authorize the exclusion of undocumented alien children from elementary and secondary schools remain powerful. In addition, many students who are United States citizens and legal permanent residents could be stigmatized based on name or appearance, and parents, fearful for their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all children and is likely to adversely effect and be divisive within our communities. We are concerned that this will impose higher costs to states and localities as a result of increased crime from keeping children out of school. We urge that this section be clarified to exclude educational services provided to children in elementary or secondary school, or that an exemption for these services be provided in section 603.

This provision should further be clarified so as not to apply to programs under section 214 of the Housing and Community Development Act of 1980. Without such clarification, this provision would impose a great burden on states and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Section 601 would undermine effective verification for public benefits. Our current system -- the Systematic Alien Verification for Entitlements Program (SAVE), enacted by section 121 of the IRCA of 1986 -- is an efficient, cost-effective means of verification. The SAVE process is a two-step verification process. The primary verification is accomplished through INS' centralized automated database, which is called the Alien Status Verification Index and contains immigration status information on over 28 million resident aliens and 21 million non-immigrant aliens. Although details of the procedure vary, states have an electronic link, for example, voice response unit or computer tape matches, to the INS database. If the alien registration number cannot be verified through the automated system, the state sends a photocopy of the documentation submitted by the alien to the INS. INS reviews and verifies the alien's status within 10 days through a secondary manual procedure. In FY 93, states reported receiving over 3.8 million AFDC applications. Slightly less than one million of those applications were denied. States reported that about 5,300 applications were denied because the applicant or other household members was an "undocumented alien." We believe these data indicate that most ineligible aliens are aware of the restrictions on their receipt of welfare benefits, and therefore do not apply for benefits. By contrast, section 601 relies on individual documents, e.g. a passport or resident alien card, for verification rather than immigration status information from INS databases. Verification based only upon the showing of a single document, particularly nonfederal documents, will certainly weaken present verification.

Section 602 provides that aliens are ineligible for unemployment benefits payable out of federal funds to the extent such benefits are attributable to any employment for which the alien was not authorized.

The Administration supports this as a matter of policy, however, it is not clear whether the payment restrictions would be prospective or retrospective. If the benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers. Manually retrieving such information would impose a tremendous strain on INS' resources and would divert resources from other priority enforcement efforts. Payment restrictions do not advance an enforcement goal which would warrant the cost of capturing this information.

Section 603 provides that sections 601 and 602 does not apply to the provision of emergency medical services, public health immunizations, and short-term emergency disaster relief.

To: Bridgett Taylor
From: Colleen Rathgeb
Subject: "Federal public benefits"

Thank you for the opportunity to talk to you yesterday about the HHS interpretation of the term "Federal public benefit" as used in the Personal Responsibility and Work Opportunity Act of 1996. We understand your concerns about Medicare but as we attempted to explain at yesterday's meeting we believe that the law quite clearly includes Medicare as such a benefit. Our interpretation of the definition clearly would apply to Medicare and the statutory definition in Section 401 does include "any retirement...or...health...benefit provided to an individual, household or family eligibility unit."

As I mentioned yesterday we felt that Congressional intent to include Medicare as a "Federal public benefit" was illustrated further by a provision in the Balanced Budget Act which carved out an exception to the restrictions in Section 401 with respect to Medicare for a subgroup of people. We believe that Congress would not have felt it necessary to modify the restrictions on eligibility for "Federal public benefits" with respect to Medicare if Medicare was not a program it considered to be a "Federal public benefit."

After our meeting I looked up the provision since as I stated I was unclear of exactly whom it exempted. I was incorrect yesterday when I said that I believed this was for those on SSI. The BBA provision (attached) states that the restrictions with respect to Medicare "shall not apply ...to an alien who is lawfully present in the US..., who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits." HCFA and the Social Security Administration are well aware of this provision and it will be taken into account when they are determining eligibility. As we did state this would be a small subgroup since the majority of non-qualified aliens would not have work authorization.

I believe this may allay your concern over the injustice of allowing non-qualified aliens with work authorization to pay into the system and subsequently deny them benefits. Please feel free to call me (401-6639) if you have any further questions or comments on our notice.

in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 110 Stat. 2112).

CHAPTER 4—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

Subchapter A—Eligibility for Federal Benefits

SEC. 5561. ALIEN ELIGIBILITY FOR FEDERAL BENEFITS: LIMITED APPLICATION TO MEDICARE AND BENEFITS UNDER THE RAILROAD RETIREMENT ACT.

(a) LIMITED APPLICATION TO MEDICARE.—Section 401(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)) is amended by adding at the end the following:

“(3) Subsection (a) shall not apply to any benefit payable under title XVIII of the Social Security Act (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title, who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.”

(b) LIMITED APPLICATION TO BENEFITS UNDER THE RAILROAD RETIREMENT ACT.—Section 401(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)) (as amended by subsection (a)) is amended by inserting at the end the following:

“(4) Subsection (a) shall not apply to any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.”

SEC. 5562. EXCEPTIONS TO BENEFIT LIMITATIONS: CORRECTIONS TO REFERENCE CONCERNING ALIENS WHOSE DEPORTATION IS WITHHELD.

Sections 402(a)(2)(A), 402(b)(2)(A), 403(b)(1)(C), 412(b)(1)(C), and 431(b)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A), 1612(b)(2)(A), 1613(b)(1)(C), 1622(b)(1)(C), and 1641(b)(5)) as amended by this Act are each amended by striking “section 243(h) of such Act” each place it appears and inserting “section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)”.

SEC. 5563. VETERANS EXCEPTION: APPLICATION OF MINIMUM ACTIVE DUTY SERVICE REQUIREMENT; EXTENSION TO UNREMARIED SURVIVING SPOUSE; EXPANDED DEFINITION OF VETERAN.

(a) APPLICATION OF MINIMUM ACTIVE DUTY SERVICE REQUIREMENT.—Sections 402(a)(2)(C)(i), 402(b)(2)(C)(i), 403(b)(2)(A), and 412(b)(3)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(i), 1612(b)(2)(C)(i), 1613(b)(2)(A), and 1622(b)(3)(A)) are each amended by inserting

“and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38, United States Code” after “alienage”.

(b) EXCEPTION APPLICABLE TO UNREMARIED SURVIVING SPOUSE.—Sections 402(a)(2)(C)(iii), 402(b)(2)(C)(iii), 403(b)(2)(C), and 412(b)(3)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(iii), 1612(b)(2)(C)(iii), 1613(b)(2)(C), and 1622(b)(3)(C)) are each amended by inserting before the period “or the unmarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38, United States Code”.

(c) EXPANDED DEFINITION OF VETERAN.—Sections 402(a)(2)(C)(i), 402(b)(2)(C)(i), 403(b)(2)(A), and 412(b)(3)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(i), 1612(b)(2)(C)(i), 1613(b)(2)(A), and 1622(b)(3)(A)) are each amended by inserting “, 1101, or 1301, or as described in section 107” after “section 101”.

SEC. 5564. NOTIFICATION CONCERNING ALIENS NOT LAWFULLY PRESENT: CORRECTION OF TERMINOLOGY.

Section 1631(e)(9) of the Social Security Act (42 U.S.C. 1383(e)(9)) and section 27 of the United States Housing Act of 1937, as added by section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, are each amended by striking “unlawfully in the United States” each place it appears and inserting “not lawfully present in the United States”.

42 USC 1437y.

SEC. 5565. FREELY ASSOCIATED STATES: CONTRACTS AND LICENSES.

Sections 401(c)(2)(A) and 411(c)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c)(2)(A) and 1621(c)(2)(A)) are each amended by inserting before the semicolon at the end “, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect”.

SEC. 5566. CONGRESSIONAL STATEMENT REGARDING BENEFITS FOR HMONG AND OTHER HIGHLAND LAO VETERANS.

(a) FINDINGS.—The Congress makes the following findings:

(1) Hmong and other Highland Lao tribal peoples were recruited, armed, trained, and funded for military operations by the United States Department of Defense, Central Intelligence Agency, Department of State, and Agency for International Development to further United States national security interests during the Vietnam conflict.

(2) Hmong and other Highland Lao tribal forces sacrificed their own lives and saved the lives of American military personnel by rescuing downed American pilots and aircrews and by engaging and successfully fighting North Vietnamese troops.

(3) Thousands of Hmong and other Highland Lao veterans who fought in special guerilla units on behalf of the United States during the Vietnam conflict, along with their families, have been lawfully admitted to the United States in recent years.

(4) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), the new national welfare reform law, restricts certain welfare benefits for noncitizens of the United States and the exceptions for noncitizen

To: ireneb@ASL
From: Mina Suk@ASL

Cc:

Bcc:

Subject: HHS/INS notices

Attachment:

Date: 8/4/98 2:22 PM

I sent a package to:

HOUSE

Matt Weidinger (Archer)
Ron Haskins (Archer)
Kevin Brennan (Sherrod Brown)
Howard Cohen (Bliley)
Denzel McGuire (Goodling)
Alex Nock & Marci Phillips (Martinez)
Stephanie Peters (Conyers)

SENATE

Michael Myers (Kennedy)
Kimberly B. O'Connor (Jeffords)
Douglas Steiger (Moynihan)
Alex Voshon (Roth)

 Guy F. B. M.

To: ireneb@ASL
From: Mina Suk@ASL
Cc:
Bcc:
Subject: More HHS/INS notices
Attachment:
Date: 8/4/98 4:56 PM

I will also be sending HHS notices to the Senate Judiciary staff we met with:

Esther Olavarria (Kennedy)
Melody Barnes (Kennedy)
Darla Silva (Durbin)
Liz Kessler (Abraham)
Karen Marangi (Leahy)
Ash Jain (Thompson - Gov Affairs Cmte)

Do I include INS' notice as well?

- FOR INTERNAL USE ONLY-

WELFARE MAGNET

Question: But doesn't providing these other benefits to illegal aliens just serve as a magnet to encourage more of them to come to the U.S.?

Answer:

- First, most research in this area shows that undocumented immigrants generally do not migrate to obtain government funded services.
- Second, our major welfare and health programs have **always** been limited to only citizens and legal immigrants; we have **never** provided welfare to undocumented immigrants.
- Finally, as I have already indicated, we are requiring many new programs other than the major welfare programs to implement new verification procedures in order to deny services or benefits to undocumented immigrants.
- Under the law, over 95% of all HHS resources are denied to illegal immigrants.