

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. 28, 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.

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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.

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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.

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SUPPLEMENTARY INFORMATION:

I. Background

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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

(B) Subparagraphs (B) and (C) of section 454(9) (42 U.S.C. 654(9)).

(C) Section 456(a)(3) (42 U.S.C. 656(a)(3)).

(D) Subsections (a)(3)(A), (a)(6), (a)(8)(B)(i), (b)(3)(A), and (b)(3)(B) of section 466 (42 U.S.C. 666).

(E) Paragraphs (2) and (4) of section 469(b) (42 U.S.C. 669(b)).

TITLE IV—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SEC. 400. STATEMENTS OF NATIONAL POLICY CONCERNING WELFARE AND IMMIGRATION.

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) *Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.*

(2) *It continues to be the immigration policy of the United States that—*

(A) *aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and*

(B) *the availability of public benefits not constitute an incentive for immigration to the United States.*

(3) *Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates.*

(4) *Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system.*

(5) *It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy.*

(6) *It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.*

(7) *With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this title, a State that chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.*

Subtitle A—Eligibility for Federal Benefits

SEC. 401. ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not a qualified alien (as defined in section 431) is not eligible for any Federal public benefit (as defined in subsection (c)).

(b) **EXCEPTIONS.**—

(1) Subsection (a) shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act, supplemental security income benefits under title XVI of such Act, or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act) 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.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, to the extent that the alien is receiving such a benefit on the date of the enactment of this Act.

(2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233

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WELFARE AND ALIENS

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of the Social Security Act, to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act, or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before the month in which this Act becomes law.

(c) **FEDERAL PUBLIC BENEFIT DEFINED.**—

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

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

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

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States; or

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

SEC. 402. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) **LIMITED ELIGIBILITY FOR SPECIFIED FEDERAL PROGRAMS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 431) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) **EXCEPTIONS.**—

(A) **TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.**—Paragraph (1) shall not apply to an alien until 5 years after the date—

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

(ii) an alien is granted asylum under section 208 of such Act; or

(iii) an alien's deportation is withheld under section 243(h) of such Act.

(B) **CERTAIN PERMANENT RESIDENT ALIENS.**—Paragraph (1) shall not apply to an alien who—

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security

Act or can be provided under such qualifying after December means: section 403) during

(C) **VETERAN** graph (1) shall not apply in any State or

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(D) **TRANSIT** BENEFITS.—

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Subtitle A—Eligibility for Federal Benefits

ALIENS WHO ARE NOT QUALIFIED ALIENS INELIGIBLE FOR FEDERAL PUBLIC BENEFITS

Current law

Current law limits alien eligibility for most major Federal assistance programs, including restrictions on, among other programs, Supplemental Security Income, Aid to Families with Dependent Children, housing assistance, and Food Stamps programs. Current law is silent on alienage under, among other programs, school lunch and nutrition, the Special Supplemental Food Program for Women, Infants, and Children (WIC), Head Start, migrant health centers, and the earned income credit. Under the programs with restrictions, benefits are generally allowed for permanent resident aliens (also referred to as immigrants and green card holders), refugees, asylees, and parolees, but benefits (other than emergency Medicaid) are denied to nonimmigrants (or aliens lawfully admitted temporarily as, for example, tourists, students, or temporary workers) and illegal aliens. Benefits are permitted under AFDC, SSI, unemployment compensation, and non-emergency Medicaid to other aliens permanently residing in the United States under color of law (PRUCOL).

House bill

Noncitizens who are "not qualified aliens" (generally, illegal immigrants and nonimmigrants such as students) are ineligible for all Federal public benefits, with limited exceptions for emergency medical services, emergency disaster relief, immunizations and testing and treatment of symptoms of communicable diseases, community programs necessary for the protection of life or safety, certain housing benefits (only for current recipients), licenses and benefits directly related to work for which a nonimmigrant has been authorized to enter the U.S., and certain Social Security retirement benefits protected by treaty or statute.

Federal public benefits include: any grant, contract, loan, professional license or commercial license, and any retirement, welfare, health, disability, food assistance, unemployment or similar benefit provided by an agency or appropriated funds of the United States.

Senate amendment

Similar to House, except that the exception for communicable diseases is limited to treatment of the disease itself and must be triggered by a finding by HHS that testing and treatment of a particular disease is necessary to prevent its spread.

Conference agreement

The conference agreement follows the House bill.

The allowance for treatment of communicable diseases is very narrow. The conferees intend that it only apply where absolutely necessary to prevent the spread of such diseases. This is only a stop-gap measure until the deportation of a person or persons un-

lawfully here. It is not intended to provide authority for continued treatment of such diseases for a long term.

The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.

The intent of the conferees is that title I, part A of the Elementary and Secondary Education Act would not be affected by section 401 because the benefit is not provided to an individual, household, or family eligibility unit.

3. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS

Present law

With the exception of certain buy-in rights under Medicare, immigrants (or aliens) lawfully admitted for permanent residence are eligible for major Federal benefits, but the ability of some immigrants to meet the needs tests for SSI, AFDC, and food stamps may be affected by the sponsor-to-alien deeming provisions discussed below. Refugees, asylees, and parolees also generally are eligible. Benefits are permitted under AFDC, SSI, unemployment compensation, and nonemergency Medicaid to other aliens permanently residing in the United States under color of law (PRUCOL).

House bill

Legal noncitizens who are "qualified aliens" (i.e., permanent resident aliens, refugees, asylees, aliens paroled into the United States for a period of at least 1 year, and aliens whose deportation has been withheld) are ineligible for SSI, Medicaid, and food stamp benefits until they attain citizenship, with exceptions noted below. States are given the option of similarly restricting Federal cash welfare and Title XX benefits for qualified aliens, with the exception of those who are receiving benefits on the date of enactment as described below.

Refugees, asylees, and aliens whose deportation has been withheld are excepted for 5 years after being granted their respective statuses. Also excepted are legal permanent residents who have worked (in combination with their spouse and parents) for at least 10 years, and noncitizens who are veterans or on active duty or their spouse or unmarried child.

To allow individuals time to adjust to the revised policy, otherwise restricted aliens who are receiving SSI, food stamps, cash welfare, Medicaid or Title XX benefits on the date of enactment would remain eligible for at most 1 year after enactment. However, if a review determines the noncitizen would be ineligible if enrolling under the revised standards for SSI, Medicaid, and food stamps (for example, because the noncitizen failed to qualify under the refugee or work exemptions) such benefits would cease immediately. States have the option of ending cash welfare and social services benefits for current recipients after January 1, 1997.

Senate amendment

Similar to House bill, except the programs subject to State

Conference agreement

The conference agreement

FIVE-YEAR LIMITED ELIGIBILITY MEANS-TEST

Present law

See above.

House bill

The proposal restricts, including SSI, food stamps, social services benefits) for after the date of enactment States. Programs that are in the future include emergency disaster relief, immunizations and testing, communicable diseases, foster care and E of Title IV of the Act for the protection of life, primary education programs, Act, and higher education. Exceptions are made for tation is being withheld, tive duty, or the spouse

Senate amendment

Excepted programs differences:

- (1) benefits under Partnership Act are
 - (2) the exception limited to Part E of
 - (3) the exception for communicable diseases is finding by HHS that disease is necessary
 - (4) includes titles III, VII, and
- Excepted classes

Conference agreement

The conference amendment as follows: Public Benefit (definitional, housing, and for Government in which family eligibility unit or both are determined)

Jane

URGENT

July 30, 1998

Note to: Rich
Jane
Mary

From: Irene

RE: FEDERAL PUBLIC BENEFIT

Attached for your information is the following background on the Federal Public Benefit notice that will be published on Tuesday, August 4, 1998:

- Federal Register Notice
- Talking Points
- Questions and Answers
- Sample letters that OPDIVs plan to send their grantees

I am working with Justice staff to schedule the briefings for Monday, August 3. I plan to offer briefings to the following Committee staffs:

Senate

- Finance
- Labor
- Judiciary

House

- Ways and Means
- EWF
- Commerce
- Judiciary -
- Congressional Hispanic Caucus
- Congressional Asian Pacific American Caucus

Please let me know if you have any questions.

NOTICES

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 **[insert 60 days from date of publication]**.

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" *Federal Register* (August 4, 1998) 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 *Federal Register* (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 *Fed Reg* 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: [enter date].

Donna E. Shalala

Secretary.

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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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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.

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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.

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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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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.

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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

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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.”

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.

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.

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).

**FEDERAL PUBLIC BENEFIT DEFINITION
ROLL-OUT CONTACTS**

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

National Immigration Forum
Frank Sherry, Director
(202) 544-0004

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

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

Council of Jewish Federations, Inc.
Diana Avi
(202) 785-5900

Center on Budget and Policy Priorities
Stacey Dean
(202) 408-1080

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

Children's 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)
Babara 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

Association of Asian Pacific Community Health Organizations (AAPCHO)

Steven Jaing, Executive Director

(510) 272-9536

COSSMHO

Adolf Falcon, VP for Policy

(202) 387-5000

National Center for Farmworker Health

Joni Barnett

(512) 328-7682

Asian and Pacific Islander American Health Forum

Tessie Guillermo, Executive Director

(415) 512-2710

League of Latin American Citizens (LULAC)

Brent Wilkes, Director of Public Policy

(202) 409-0060

The ARC

Paul Marchand

(202) 467-4179

Alan Guttmacher Institute

Cory Richards

(202) 296-4012

Catholic Charities USA

Sharon Daly

(703) 549-1390

Georgetown University Law Center

Federal Legislative Clinic

Chai Feldblum

(202) 662-9595

AoA Federal Public Benefit Roll-Out Contacts

Stephen McConnell
Sr. Vice President of Public Policy
Alzheimer's Disease & Related Disorders Association, Inc.
1319 F St., NW, Ste. 710
Washington, DC 20005

Sheldon Goldberg, President
American Association of Homes for the Aging
901 E Street, NW, #500
Washington, DC 20004-2037

Horace B. Deets, Executive Director
American Association of Retired Persons
601 E Street, NW
Washington, DC 20049

Nancy Coleman
Council Rep. for American Society on Aging
American Bar Assoc
740 15th Street, NW
Washington, DC 20005-1009

Carmela G. Lacayo, President/CEO
Asociacion Nacional Pro Personas Mayores
3325 Wilshire Blvd, #800
Los Angeles, CA 90010-1784

Ronald Pollack, Executive Director
Families USA
1334 G Street, NW
Washington, DC 20005

Carol Schutz, Acting Executive Director
Gerontological Society of America
1275 K St, NW, #350
Washington, DC 20005-4006

Don Watanabe, Executive Director
National Asian Pacific Cent. on Aging
Melbourne Tower, Ste. 914
1511 Third Avenue
Seattle, WA 98101

Val Halamandaris, President
National Association for Home Care
519 C Street, N.E. Stanton Park
Washington, DC 20002

Janice Fiegner
National Association of Area Agencies on Aging
1112 16th St, NW, #100
Washington, DC 20036

Margaret Ingraham, Legislative Director
Nat'l Assoc of Meal Programs
1414 Prince Street, Ste. 202
Alexandria, VA 22314

Connie Benton-Wolfe
National Association of Nutrition & Aging Services Programs
2675 44th St, SW, #305
Grand Rapids, MI 49509

Daniel A. Quirk
National Association of State Units on Aging
1225 I Street, NW, Ste. 725
Washington, DC 20005

Samuel J. Simmons
National Caucus & Center on Black Aged, Inc.
1424 K Street, NW, #500
Washington, DC 20005

Steve Protulis, Executive Director
National Council of Sr. Citizens
1331 F Street, NW
Washington, DC 20004-1171

James Firman, President & CEO
National Council on Aging, Inc.
409 3rd St, SW, 2nd Fl
Washington, DC 20024

Marta Sotomayor, President
National Hispanic Council on Aging
2713 Ontario Rd, NW, #200
Washington, DC 20009

Burton Fretz, Executive Director
National Senior Citizens Law Cent.
1815 H Street, N.W., Suite 700
Washington, DC 20006

**Federal Public Benefit
Additional Public Health Roll Out Contacts**

Bryon J. Harris/Joe Kelly
National Alliance of State and Territorial AIDS Directors
Office: BJ: (202) 434-8068
JK: (202) 434-8091
Fax: (202) 434-8092

Miguelina Maldonado
National Minority AIDS Council
Office: (202) 483-6622 x 324
Fax: (202) 483-1135

Michael D. Shriver, Director of Public Policy
National Association of People with AIDS
Office: (202) 898-0414
Fax: (202) 898-0435

Phill Wilson, Administrator of Federal Affairs
CAEAR Coalition
Office: (202) 789-3565
Fax: (202) 789-4277

Ron Johnson, Executive Director
Gay Men's Health Crisis
Office: (212) 367-1220

Shelly Davis
Farmworker Justice Fund
(202) 776-1757

Roger Rosenthal
Migrant Legal Action Council
(202) 462-7744

Gloria Feldt, President
Planned Parenthood

Association of State and Territorial Health Officials

NACCHO

Roll-out

To: MaryB@ASL, Jane Horvath@ASL, Stephanie Wilson@ASL

From: Irene Bueno@ASL

Cc:

Bcc:

Subject: Federal Public Benefit roll-out-URGENT!

Attachment:

Date: 7/30/98 11:15 AM

The Federal Public Benefit definition will be published in the Federal Register on Tuesday, August 4, 1998. I suggest that we offer briefings to Democratic staff to the committees listed below and to send a note along with a courtesy copy of the Federal Register notice to the majority staff informing them of the notice and offering them a briefing.

Since the Department of Justice is publishing their verification regulation on the same day which is related to the Federal Public Benefit definition, they will accompany us on the briefings.

I plan to call the staff listed to offer a briefing. Please let me know by 2 PM today, Thursday, 7/30 if you have any concerns. I will begin making calls at that time.

With the exception of the Judiciary Committee staff, I do not expect much interest. I will let you know when the briefings are scheduled. Thanks.

Senate

- Finance Ds

Moynihan - Doug Stieger / Alex Vachon

- Labor

Kennedy - Michael Myers / Kimberly Barnes O'Connor / Scott Giles

- Judiciary - see list - send to list

Leahy - staff name?

Kennedy - Esther Cruz - Olivari / Melody Barnes

House

- Ways and Means

Rangel - staff name?

Levin - staff name?

- EWF -

Clay - staff name?

Martinez - staff name?

- Commerce

Dingell - Bridgett Taylor

Brown - Kevin Brennan

Waxman - Karen Nelson

- Judiciary -

Conyers - Stephanie Peters

~~Watts - Tina Hone~~

- Congressional Hispanic Caucus

Becerra - Esther Aguilera / William

- Congressional Asian Pacific American Caucus

Mink - Laura Efurd

Matt Widing

Nick ^{Guy} ~~Kelley~~

Don. Dengel

Reg:

Howard Cohen

Smith?

PROPOSED HHS FEDERAL PUBLIC BENEFIT ROLL-OUT TIMELINE

(A= PUBLICATION DATE)

CURRENT ACTIVITIES

- ▶ Clear notice, letters, questions and answers internally
- ▶ Clear notice with OMB
- ▶ Discussions with other agencies General Counsels
- ▶ Prepare roll-out strategy

A MINUS 3 DAYS

- ▶ Briefing of Congressional staff (see attached list)
- ▶ Send internal letter to OPDIVs and STAFFDIVs explaining the definition of Federal Public benefit. Require OPDIVs and STAFFDIVs to prepare dissemination plan.???

A DAY

- ▶ Federal Register Notice on Display
- ▶ Brief other organizations
- ▶ OPDIVs send letter to HHS grantees on the definition???

ATTACHMENT

Briefing List

COMMITTEES OF JURISDICTION

- House Ways and Means Committee
 - Representative Clay Shaw (R-FL), Chairman, Subcommittee on Human Resources
 - Representative Sander Levin (D-MI), Ranking Members and other Democratic members
- Senate Finance Committee
 - Senator Roth, Chairman
 - Senator Moynihan, Ranking member and other Democratic members
 - Other Senators: Chafee, Jeffords, D'Amato
- House Commerce Subcommittee on Health
 - Representative Bilirakis, Chairman
 - Representative Sherrod Brown (D-OH), Ranking member
- Senate Labor and Human Resources Committee
 - Senator Jeffords, Chairman
 - Senator Kennedy, Ranking Member and other Democratic staff
- Judiciary Committees
 - House Judiciary Committee
 - Representative Lamar Smith (R-TX), Chairman, Subcommittee on Immigration
 - Representative Mel Watt (D-NC), Ranking Member of Subcommittee and other Democratic members
 - Senate Judiciary Committee
 - Senator Hatch, Chairman
 - Senator Abraham, Chairman Subcommittee on Immigration
 - Senator Kennedy, Ranking Member and other Democratic staff
- Others
 - Congressional Hispanic Caucus
 - Congressional Asian Pacific American Caucus
 - State delegations - CA, FL, etc.

OUTSIDE ORGANIZATIONS

- National Association of Community Health Centers
- Maternal and Child Health Group
- Child Care Groups
- IGA Groups (NGA, NCSL, NACO)
- National Immigration Forum & other immigrant groups
- Religious/Immigrant organizations
- Other health organizations



Washington, D.C. 20201

JUL 29 1998

TO: The Secretary
Through: DS _____
COS _____
ES _____

FROM: Margaret Hamburg, M.D. *MH*
Assistant Secretary for Planning and Evaluation

SUBJECT: Roll-out of "Federal Public Benefit" Interpretation - **INFORMATION ALERT**

The Department's notice interpreting the term "Federal Public Benefit" as used in the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) will be published in the Federal Register on . The notice is effective immediately with a 60 day comment period.

With some exceptions, all providers of "Federal public benefits" must verify the citizenship and immigration status of applicants and deny services to non-qualified aliens. Since the law does not list which specific programs or providers are required to verify status, we are interpreting how it applies to our programs and providers through this Federal Register notice. Under our interpretation of the term, we have identified 31 HHS programs that provide "Federal public benefits" and are not otherwise excepted from the verification requirement (see list, Attachment A).

PRWORA required the Attorney General, in consultation with the Secretary of HHS, to promulgate regulations on the verification of eligibility for "Federal public benefits." The Department of Justice (DoJ) will be publishing the proposed regulations on Verification of Eligibility for Public Benefits in the same issue of the Federal Register. The DoJ proposed rule on Verification tells providers to consult their administering agency to determine whether or not they provide "Federal public benefits." Our notice directs those HHS programs that we have determined provide "Federal public benefits" to consult DoJ's proposed rule on Verification. This joint publication allows for optimal coordination and ease of implementation by providers since both pieces of the information will be available in one Federal Register.

ASL will offer briefings to the Hill and send a courtesy copy of the regulations. IGA will brief intergovernmental groups. ASPE will notify advocacy groups. Operating Divisions will be sending letters explaining the interpretation to their providers using a sample letter which was cleared through the Department. Talking Points (Attachment B) and Questions and Answers (Attachment C) have also been cleared and distributed.

Please let me know if you have any questions or would like more information.

Background

HHS is interpreting "Federal public benefit" to include "any grant, contract, loan, professional license, or commercial license" provided to individuals, and "any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit." We have determined that an eligibility unit exists when there are specified eligibility criteria requiring that benefits or services be denied to individuals, households, or families that do not meet the eligibility criteria.

We believe that our proposed interpretation best protects public health and minimizes burden on providers, while remaining consistent with the law. While we have not had formal consultations with Congress, we anticipate a mixed reaction with some members in opposition to our proposed interpretation and others in support. The Administration has received several letters from advocacy groups expressing concern about the definition of "Federal public benefit" and urging an interpretation which protects safety net programs. We believe that these and other groups will be supportive since safety net public health programs such as Community Health and Maternal and Child Health programs are not defined as providing "Federal public benefits." However, advocates as well as some State and local governments may be concerned about the inclusion of some programs identified as "Federal public benefits" (e.g. Social Services Block Grant, Child Care, and Low Income Heating and Energy Assistance Program). We found no supportable way to exclude them from the list.