Comparison of Administration and Moynihan-Levin Immigrant Benefit Restoration Packages		
Proposal	***Moynihan-Levin (Fairness for Legal Immigrants Act of 1999) S.792/H.R. 1399***	***Administration Budget***
SSI and Related Medicaid	*Elderly*. Restores SSI eligibility for qualified immigrants who were lawfully residing in the U.S. on 8/22/96 who subsequently reach age 65.	No provision.
	Disabled. Provides SSI and related Medicaid to qualified immigrants who enter after 8/22/96 and subsequently become blind or disabled. • Exemption from 5-year ban. • Exemption from deeming. • Sponsors are liable for reimbursement.	Provides SSI and related Medicaid to qualified immigrants who enter after 8/22/96 and subsequently become blind or disabled. • 5-year ban remains in place. • Exemption from deeming. • Sponsors are liable for reimbursement unless they experience financial hardship.
Health Care for Children	State option to provide Medicaid and CHIP to lawfully residing children regardless of date of entry (pre- & post-8/22/96). • No 5-year ban, no deeming. • Sponsors are NOT liable for reimbursement.	State option to provide Medicaid and CHIP to lawfully residing children who enter after 8/22/96. • Ban, deeming, and sponsor-reimbursement provisions same as Moynihan-Levin.
Health Care for Pregnant Women	State option to provide Medicaid to lawfully residing pregnant women regardless of date of entry (pre- & post-8/22/96). • No 5-year bar, no deeming. • Sponsors are NOT liable for reimbursement.	State option to provide Medicaid to lawfully residing pregnant women who enter after 8/22/96. • Ban, deeming, and sponsor-reimbursement provisions same as Moynihan-Levin.
Health Care for Medically Needy	State option to provide Medicaid to aliens who are low-income and blind or disabled but are not receiving SSI.	No provision.
Food Stamps	Restores eligibility to all qualified immigrants who were lawfully residing in the U.S. on 8/22/96.	Restores eligibility to qualified immigrants lawfully residing in the U.S. on 8/22/96 who subsequently reach age 65.
Victims of Domestic Violence	Exempts legal immigrants suffering from domestic abuse from the 5-year ban on means-tested benefits, and would restore their eligibility for SSI and Food Stamps. Retains deeming.	No provision.

Options for Benefit Restorations for Non-citizens

(dollars in millions)

Program		*Description of Restoration*	*Number Affected in 2005*	*Costs in FY01*	*Costs in FY01-05*	*Costs in FY01-10*
SSI	*Pre-8/22/96*	Aged (reach age 65 or apply for SSI-aged after PRWORA)	43,000	$78	$974*	$2,153*
	Post-8/22/96	Disabled after entry, retain 5-year ban and deeming until citizenship	30,000	$0	$404*	$2,911*
		Disabled after entry, retain 5-year ban, no deeming after 5 years	53,000	$0	$707#	$5,128#
		Disabled after entry, no 5-year ban, retain deeming until citizenship	39,000	$20	$654*	$3,506*
		Disabled after entry, no 5-year ban, no deeming after 5 years	62,000	$20	$958*	$5,815*
Food Stamps	*Pre-8/22/96*	Restore those reaching age 65 after PRWORA	10,000	$10	$140	$315
		Restore members of households with eligible children		$55	$550	$980
		Restore all legal immigrants		$76	$606	$846
	Post-8/22/96	Restore children – no 5-year ban		$10	$200	$615
	Pre- and post-8/22/96	Restore members of households with children, no 5-year ban		$85	$1,125	$2,725
		Restore eligibility to all legal immigrants, keep 5-year ban		$76	$796	$1,651
		Restore eligibility to all legal immigrants, no 5-year ban		$135	$1,593	$3,393
Medicaid	*Post-8/22/96*	Restore Medicaid and CHIP to children and pregnant women, no deeming or affidavit enforcement	90,000	$57	$395	$1,125

Special Populations		*Description of Restoration*	*Number Affected in 2005*	*Costs in FY01*	*Costs in FY01-05*	*Costs in FY01-10*
Refugees	*Pre and post*	Eliminate 7-year time limit on SSI and Food Stamp eligibility		Estimates under development		
Domestic Violence Victims	*Pre and post*	For victims of domestic violence as defined in 1996 Immigration Act, eliminate 5-year ban on benefits and restore eligibility for SSI and Food Stamps		Estimates under development		

*excludes associated Medicaid costs.

#Additional associated Medicaid costs are $651 million over 5 years; $5,093 million over 10 years.

Dan

CHIP for parents – state option for all parents maybe include legal imm

– CHIP for parents

– CHIP kids

Doesn't include parents of post-96 kids $2 billion parents

<u>Last year proposal</u>

3.1 over $	5
11.6	12

$ 3.2 – Advocacy groups

Advocates cover SSI eligible but under 5 yr ban – get Medicaid (maybe hear)

aged = eventually become disabled.

President Clinton and Vice President Gore:
Fighting for Fairness for Legal Immigrants

New Proposals in the Administration's FY 2000 Budget

President Clinton and Vice President Gore believe that legal immigrants should have the same opportunity, and bear the same responsibility, as other members of society. Upon signing the 1996 welfare law, the President vowed to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the goal of moving people from welfare to work. Because of the Administration's leadership, the Balanced Budget Act and the Agricultural Research Act restored eligibility for Medicaid, SSI, and Food Stamps to hundreds of thousands of legal immigrants. The President's FY 2000 Budget would build on this progress by restoring important disability, health, and nutrition benefits to additional categories of legal immigrants, at a cost of $1.3 billion over five years.

Disability and Health

The Balanced Budget Act of 1997 and the Noncitizen Technical Amendments Act of 1998 restored disability and health benefits to 380,000 legal immigrants who were in this country before welfare reform became law (August 22, 1996), at an estimated cost of $11.5 billion. The Administration's new budget would restore eligibility for SSI and Medicaid to legal immigrants who enter the country after that date if they have been in the United States for five years and become disabled after entering the United States. This proposal would cost approximately $930 million and assist an estimated 54,000 legal immigrants by 2004, about half of whom would be elderly.

Nutritional Assistance

The Agricultural Research Act of 1998 provided food stamps for 225,000 legal immigrant children, senior citizens, and people with disabilities who came to the United States by August 22, 1996. The President's Budget would extend this provision by allowing legal immigrants in the United States on August 22, 1996 who subsequently reach age 65 to be eligible for food stamps at cost of $60 million, restoring benefits to about 15,000 elderly legal immigrants by 2004.

Childrens' Health Care and Maternal Care for Pregnant Women

States currently can provide health coverage to immigrant children who entered the country before August 22, 1996. The President's FY 2000 Budget would give states the option to provide health coverage to legal immigrant children who entered the country after August 22, 1996. Under this proposal, states could provide health coverage to those children through Medicaid or their CHIP allotment. The proposal would cost $220 million and serve approximately 55,000 children by FY 2004. Furthermore, the budget proposes to give states the option to provide Medicaid coverage to pregnant legal immigrant women who entered the country after August 22, 1996. Such coverage would help reduce the number of high-risk pregnancies, ensure healthier children, and lower the cost of emergency Medicaid deliveries. This proposal would cost $105 million and serve approximately 23,000 women by FY 2004.

President Clinton and Vice President Gore:
A Record of Restoring Benefits to Legal Immigrants

Upon signing the 1996 welfare law, President Clinton vowed to reverse some of the unnecessary cuts in benefits to legal immigrants. The President and Vice President fought for three laws continuing or restoring SSI, Medicaid, and Food Stamps to certain groups of legal immigrants. The Balanced Budget Act of 1997 (BBA) "grandfathered" eligibility for SSI and Medicaid for legal immigrants, while the Agricultural Research Act addressed eligibility for Food Stamps. In addition, legislation making technical corrections to benefits for legal immigrants restored SSI and Medicaid eligibility of certain recipients not covered under the BBA.

Balanced Budget Act of 1997 Restored Disability and Health Benefits

The BBA restored SSI and Medicaid eligibility to about 375,000 legal immigrants. CBO estimated the cost of these provisions at $11.5 billion over five years ($9.5 billion for SSI, $2 billion for Medicaid). Briefly, the BBA:

- Continued SSI and related Medicaid for legal immigrants receiving benefits on August 22, 1996;
- Allowed SSI and Medicaid benefits for legal immigrants who were here on August 22, 1996 and who later become disabled;
- Extended the exemption from SSI and Medicaid restrictions for refugees and asylees from five to seven years after entry;
- Classified Cuban/Haitians and Amerasians as refugees, as they were prior to 1996;
- Exempted certain native Americans living along the Canadian and Mexican borders from SSI and Medicaid restrictions.

Agricultural Research Act of 1998 Restored Food Stamp Eligibility

The Agricultural Research, Extension, and Education Reform Act of 1998 restored Food Stamp eligibility to approximately 225,000 legal immigrants at a cost of $818 million over five years. Under the Act, the following groups became eligible for Food Stamps:

- Noncitizen children under age 18 who entered by August 22, 1996;
- Legal immigrants here by August 22, 1996, who were age 65 and over or disabled on that date, or who become disabled after that date;
- Refugees and asylees for seven years after entry as refugees or obtaining asylum status in the United States, as opposed to five years under the welfare law;
- Hmong refugees; and
- Certain Native Americans living along the Canadian and Mexican borders.

Technical Amendments Act of 1998 Protected Those Receiving Assistance

The Noncitizen Technical Amendments Act of 1998 ensured that individuals who were receiving disability and health benefits when welfare reform became law were able to continue receiving assistance, even if they were too disabled to prove their date of entry into the United States. This change protected an estimated 3,400 elderly and severely disabled recipients at a cost of $41 million over five years.

The President's FY 2000 Budget Legal Immigrant Benefit Proposal: Restoring Food Stamp Eligibility for Elderly Legal Immigrants

Summary

The President's Budget proposes to restore food stamp eligibility to elderly legal immigrants who were lawfully residing in the United States on August 22, 1996 and later reached age 65. This proposal builds upon the Administration's efforts to restore food stamp eligibility to all elderly legal immigrants who were lawfully present in the United States on August 22, 1996.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 eliminated food stamp eligibility for most legal immigrants. Three categories of legal immigrants were exempted from the restrictions: (1) lawful permanent residents who could be credited with 40 qualifying quarters of work; (2) veterans, aliens on active duty in the Armed Forces, their spouses and unmarried dependent children; and (3) refugees, asylees, and those with their deportation withheld for 5 years.

The Agriculture Research Act of 1998 restored food stamp eligibility effective November 1, 1998 to about 225,000 of the most vulnerable legal immigrants, including:

- Children under 18 years old who were lawfully present in the United States on August 22, 1996;
- Elderly legal immigrants who were at least 65 years old on August 22, 1996 and were lawfully in the United States on that date;
- Blind/disabled (including those who become disabled) legal immigrants and were lawfully here on August 22, 1996;
- Hmong refugees who were tribal members at the time they assisted our military during the Vietnam conflict;
- Cross-Border Native Americans living along the Canadian and Mexican borders; and,
- Refugees and asylees who had their food stamp eligibility extended from 5 to 7 years.

The President's Budget FY 2000 Proposal and Rationale

The President's Budget builds upon the Agriculture Research Act by restoring food stamp eligibility to legal immigrants who turned or will turn 65 after August 22, 1996, but who were lawfully residing in the United States on that date. This proposal would restore eligibility to about 15,000 elderly legal immigrants by 2004, and cost $60 million over 5 years.

While the Agricultural Research Act restores eligibility for some legal immigrants, many vulnerable immigrants remain ineligible. For example, under current law, elderly aliens are eligible for food stamps if they were lawfully residing in the United States on August 22, 1996, and age 65 years or older. However, those legal immigrants who turn 65 after that date remain ineligible. The President's proposal rectifies the inequity of treating elderly legal immigrants differently solely on the basis of date of birth.

The President's FY 2000 Budget Legal Immigrant Benefit Proposal: Restoring SSI Eligibility for Blind and Disabled Legal Immigrants

Summary

The President's Budget provides Supplemental Security Income (SSI) and related Medicaid eligibility for two groups of qualified aliens who are lawfully admitted to the United States after August 22, 1996, and live in the United States for 5 years: individuals who become disabled after their entry; and, certain disabled children.

Background

In a bipartisan effort to restore SSI eligibility to the most vulnerable populations, the Balanced Budget Act of 1997 continued SSI benefits for nearly 300,000 qualified noncitizens who were receiving SSI as of August 22, 1996, and restored SSI eligibility for an estimated 75,000 individuals who were lawfully residing in the United States on that date.

The Noncitizens Benefit Clarification and Other Technical Amendments Act of 1998 continued SSI eligibility to an estimated 3,400 noncitizens who were receiving SSI benefits on August 22, 1996, and would otherwise have lost eligibility under welfare reform.

The President's FY 2000 Budget Proposal

The President's Budget builds upon the Administration's efforts to provide SSI and health care to individuals with disabilities. It proposes to restore SSI eligibility for qualified noncitizens who legally enter the United States after August 22, 1996, become blind or disabled after their entry, and live in the United States for 5 years. Qualified immigrant children who enter the country with a disability would be eligible for SSI if they apply for benefits within a specified period after their entry.

In addition, because the receipt of SSI benefits generally confers Medicaid eligibility, this proposal would extend Medicaid to legal immigrants made eligible for SSI. The proposal would also modify the affidavit-of-support requirement under which a sponsor is liable for reimbursement of any SSI or Medicaid assistance provided a legal immigrant before accumulating 40 quarters of coverage or becoming a U.S. citizen. For disabled legal immigrants made eligible under the proposal, sponsors would not be liable for reimbursement of Medicaid assistance. Sponsors would remain liable for SSI benefits provided, unless the sponsor experiences financial hardship and cannot make reimbursement as determined by the Commissioner.

And finally, the President's Budget modifies the current law requirement to deem sponsors' income and resources, until the legal immigrant becomes a citizen. Under this proposal, no deeming would occur following the general, 5-year bar on immigrant eligibility for Federal benefits.

Under this proposal, approximately 54,000 additional disabled legal immigrants would be eligible for SSI by FY 2004. The 5-year cost of the proposal is estimated at $585 million for the SSI program and $344 million for Medicaid.

Rationale

SSI eligibility would be provided with the recognition that most legal immigrants intend to work and become self-sufficient when they enter the United States. However, a serious accident or debilitating illness may leave some legal immigrants unable to work and without sufficient means of support. Therefore, the President's Budget would provide SSI eligibility to low-income legal immigrants if they become blind or disabled after entry into the country.

SSI eligibility would also be provided to severely disabled children admitted into the United States for family reunification. For example, under the proposal, a mentally retarded child would be eligible for SSI 5 years after he reunited with his parent who had earlier immigrated to the United States.

Most of the individuals covered by the proposal have sponsors who signed legally binding affidavits of support. The President's Budget continues to hold sponsors responsible for legal immigrants, and recognizes that sponsors may not have the means to support severely disabled individuals over a period of many years. Sponsors would be responsible for providing support during a legal immigrant's first 5 years in the United States. After the fifth year, sponsors would be liable for reimbursement of SSI cash benefits unless the sponsor suffers a financial hardship. Sponsors would not be required to provide reimbursement for medical services through Medicaid. This proposal takes into consideration the high costs of health care and ensures that the most vulnerable individuals receive the health care they need.

The President's FY 2000 Budget Legal Immigrant Benefit Proposal: Restoring Medicaid and CHIP Eligibility for Pregnant Women and Children

Summary

The President's Budget would give States the option to provide Medicaid or CHIP health coverage to lawfully residing pregnant women and children who enter the country after August 22, 1996. This coverage will allow pregnant women to receive necessary prenatal health care and ensure healthier children.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allowed States to provide Medicaid and CHIP coverage to all qualified immigrants who had entered the country as of August 22, 1996, but prohibited qualified immigrants entering after August 22, 1996 from being eligible for Medicaid and CHIP for 5 years after entry.

The Administration's previous successes at restoring eligibility to legal immigrants is reflected in the Balanced Budget Act of 1997 and the Noncitizens Benefit Clarification and Other Technical Amendments Act of 1998 that ensured all qualified immigrants who were in the United States as of August 22, 1996 retained their SSI and Medicaid eligibility. These proposals secured SSI and Medicaid eligibility for about 380,000 legal immigrants who otherwise would have lost eligibility under welfare reform. The Agricultural Research Act of 1998 restored food stamps to about 225,000 of the most vulnerable legal immigrants who were lawfully present in the United States on August 22, 1996. All refugees and asylees entering the country after August 22, 1996 had their SSI, Medicaid, and Food Stamp eligibility extended from 5 to 7 years after entry.

The President's FY 2000 Budget Proposal

The President's Budget gives States the option to extend Medicaid to lawfully residing immigrants who are pregnant and entered the country after August 22, 1996. Such coverage would help reduce the number of high-risk pregnancies and ensure healthier children. An estimated 23,000 legal immigrant women will be insured under this proposal by FY 2004.

This proposal also provides States the option to extend Medicaid and CHIP coverage to lawfully residing immigrant children who entered the country after August 22, 1996. Under current law, these children are not eligible for Medicaid/CHIP coverage. Enactment of this proposal would provide insurance to an estimated 55,000 legal immigrant children by FY 2004.

Under the restorations for children and pregnant women, the current law five-year ban, sponsor deeming, and affidavit of support sponsor reimbursement requirements would be waived.

In addition, the President's Budget would restore SSI for qualified legal immigrants, regardless of age, who entered the country after August 22, 1996, and who become disabled at any time after they entered. The proposal would also extend SSI eligibility to certain qualified

legal immigrant children who enter the country with a disability. To the extent that receipt of SSI benefits confers Medicaid eligibility, restoration of SSI would provide Medicaid for qualified legal immigrants. Current law affidavit of support sponsor reimbursement requirements would be waived for Medicaid benefits received by these immigrants. These Medicaid costs are $344 million through FY 2004.

Legal Immig Restorations · 11/3

[Jeff Farrow - been flagged as an issue]

pre-natal + children 8400m (1) Medicaid/SSI
State option SSI - disabled + after 1996 eligible ~~but~~ - SSI & Medicaid - parallel - fills the gap.

✓ (2) Domestic Violence provisions for all programs - Moynihan + Levin = no cost but impact

✓ (3) Refugees/Asylees · 7 yrs - SSI + medicaid, FS - difficult to naturalize
5 yrs -
Extend permanently = low cost

✓ FY2001 (4) FOOD STAMPS - full restoration pre + post = cost?
consistent w/ SSI eligibility
legislation - Senate version = Specter; House = Walsh
Nutrition groups are pushing.
(a) Moynihan - Levin = $1.2 million only pre-1996 (c) Adult who lives w/ household - OMB
(b) Pre 96 + kids regardless of entry (d) adding FS SSI proposal 1998

Jack S. Reproposing President's proposal on all restoration proposals ~~SSI~~ for next year - will increase in the outyears.

(5) NPRM by USDA - Food Vendor Rules - requires state data processing on dual participants - quarterly report. Preamble indicates can't report WIC - SSN.
~~Advoc~~ This will limit all immig participation in WIC.
Comment period just ended.

CENTER ON BUDGET AND POLICY PRIORITIES

Robert Greenstein
Executive Director

Iris J. Lav
Deputy Director

820 First Street, NE
Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

October 29, 1999

Pat Daniels, Director
Supplemental Foods Program Division
Food and Nutrition Service
USDA, Room 540
310 Park Center Drive
Alexandria, VA 22303

Dear Pat,

Our comments cover three sets of issues: the proposed requirement for states to identify and compile on a quarterly basis all cases of suspected dual participation, which appears effectively to be a requirement for states to collect Social Security numbers; proposals dealing with sanctions and claims against participants; and proposals dealing with vendor approval and monitoring.

We would note that we believe the issue relating to Social Security numbers raises civil rights issues, as well as issues relating to the operation of the WIC program.

Social Security Numbers

We are dismayed to read the strong recommendation in the preamble for states to require Social Security numbers from applicants and participants. Of still greater concern, this recommendation is directly tied to the proposed requirement that states compile lists of suspected dual participants on a quarterly basis, which would effectively compel states to require Social Security numbers. Requiring Social Security numbers would represent a significant program change that almost certainly would have substantial harmful effects on immigrant women, infants and children (and some citizen children with immigrant parents).

For some poor immigrants, WIC is one of the few — and often the only — program for which they may qualify. In passing the 1996 welfare law, Congress considered and explicitly decided *not* to make any categories of immigrant women, infants, and children ineligible for WIC, not even undocumented immigrants. Congress was mindful of the fact that immigrant pregnant women will give birth to citizen children, and if these children are born at a low birthweight due to denial of WIC to their mothers during pregnancy, the nation may pay a price both as a result of higher Medicaid and other costs for these children and lower productivity from the children when it is time for them to join the labor force.

A requirement for Social Security numbers can have a profound effect in discouraging immigrants — both documented and undocumented — from participating in WIC. Inducing states to adopt Social Security number requirements in WIC could depress WIC participation significantly in immigrant communities, leading to more low-birth weight infants, more anemic children, and possibly more infant mortality. It also would be likely to result eventually in increased federal budget costs due to higher Medicaid expenditures down the road.

This issue is directly related to the provision of the proposed rules that would require states to compile quarterly lists of suspected dual participants. This requirement would very likely lead to mandatory Social Security number requirements in all or nearly all states. We appreciate the Department's concerns regarding dual participation. But policymaking means making decisions that entail balancing competing concerns. With regard to requiring Social Security numbers, the positive effects of facilitating detection of a larger share of the tiny fraction of cases in which dual participation may be occurring are heavily outweighed by the much larger, adverse effects of discouraging significantly greater numbers of poor immigrant pregnant women, infants, and children from accessing WIC benefits for which they qualify.

As you know, the General Accounting Office recently conducted a survey of 500 local WIC agencies, to which 458 agencies responded. Responding agencies reported cases of dual participation over a two-year period from October 1996 through September 1998. These 458 agencies make up 25 percent of the 1,846 local agencies in the program. If these agencies accounted for 25 percent of the WIC participation nationally and one multiples by four the number of cases of dual participation these agencies reported, then such cases amounted to less than two-tenths of one percent of average monthly WIC participation in FY 1998.

It may be argued that not all cases of dual participation are detected and the actual number of such infractions may be higher. But it also should be noted that in deriving the figure of less than two-tenths of one percent, we divided the number of reported cases of dual participation over at *two* year period by average WIC participation in FY 1998. If the number of reported cases in a 12-month period, rather than a 24-month period, were divided by average monthly participation during the year in question, the result would be only about one-tenth of one percent of WIC participants.

More important, it is likely that some of these reported cases constituted dual *enrollment* rather than dual *participation*. Dual enrollment can readily occur when a family moves but does not notify the original WIC agency of the move. Dual enrollment without dual participation results in no misuse of program dollars. The preamble to the regulation implies that a substantial share of the problem cases in this area may involve dual enrollment but not dual participation. As a result, the two-tenths of one percent figure is probably more likely to be too high than too low. (Common sense also suggests this problem is very limited — how much infant formula, iron-fortified infant cereal, or the like can someone consume? Are they willing to risk being found to have defrauded the program to get double provisions of a WIC food item? The nature of WIC does not make dual participation particularly enticing.)

Whatever the precise incidence of dual participation, the point is that dual participation represents a tiny fraction of the WIC caseload. The incremental gain from detecting a somewhat larger share of a tiny percentage of cases does not justify the substantial injurious effect that this proposal could have due to its effect in driving states to impose requirements for obtaining Social Security numbers.

Proposed Rule Is Contrary to Administration Policy on Social Security Numbers and Poses Civil Rights Concerns

The effective compulsion this rule would place on states to require Social Security numbers, despite the fact that the statute contains no such requirement, runs counter to Administration policy and the policies of the Department of Health and Human Services with regard to other means-tested health programs for low-income families with children.

The Department of Health and Human Services is now vigorously pursuing policies to prevent states from seeking Social Security numbers in Medicaid and CHIP in circumstances where such numbers are not mandated by law. Federal law limits Medicaid to U.S. citizens and certain categories of legal immigrants. The law also requires Medicaid enrollees to provide Social Security numbers. HHS has instructed states that they may *not* require Social Security numbers from family members who are not themselves enrolled in or applying for Medicaid; such family members include parents who are undocumented immigrants. Seeking Social Security numbers from these individuals would inhibit Medicaid participation by children and other members of these families who are eligible for Medicaid.

Moreover, in guidance issued September 10, 1998, the Health Care Financing Administration of HHS instructed states that they may not require Social Security numbers as a condition of eligibility from children participating in a non-Medicaid child health insurance program funded under the CHIP program or from the parents of those children. It may be noted that the statute authorizing CHIP does not contain a Social Security number requirement, which makes the CHIP situation parallel to that which the WIC program faces.

This issue has been raised forcefully within HHS by that Department's Office of Civil Rights. Where federal law does not mandate collection of Social Security numbers, requiring such numbers to be provided as a condition of eligibility is seen by HHS' Office of Civil Rights as having a detrimental effect on participation that disparately affects immigrants and, consequently, as a civil rights issue. (Title VI of the Civil Rights Act of 1964 provides that "No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. In *Lau v. Nichols*, 414 U.S. 563 (1974), the U.S. Supreme Court held that the San Francisco school system violated Title VI by failing to provide instruction in languages other than English. The Court noted that this failure had a disproportionate effect on children whose national origin was Chinese and thus that it violated Title VI's protections. Policies, such as a requirement to provide Social Security

numbers, that have a disproportionate effect on immigrants – persons with particular national origins – are similarly problematic under Title VI of the Civil Rights Act.)

HHS and its Office of Civil Rights are now aggressively prodding states not to require Social Security numbers beyond what federal law requires. In addition to issuing the September 10, 1998 guidance, HCFA is now conducting reviews of Medicaid operations in all 50 states to determine where there are problems in state administration of TANF and Medicaid that are causing children and families eligible for Medicaid not to receive it; these reviews include a civil rights component in which HCFA, in conjunction with the Office of Civil Rights, determines whether the state's child health insurance applications inappropriately require the provision of Social Security numbers.

This is relevant to the WIC issue at hand. The WIC statute, like the CHIP statute, does not require the provision of Social Security numbers. Yet while HHS is moving to push states not to collect Social Security numbers from CHIP applicants and non-Medicaid members of a family that includes Medicaid participants, FNS is proposing to induce states to impose a requirement to collect Social Security numbers from WIC participants. While HHS has identified practices requiring Social Security numbers from undocumented immigrants as a civil rights problem that must be addressed, the proposed WIC rules would prod states to institute such practices in WIC. As a result, the proposed rules would be likely to have a chilling effect on participation by, among others, undocumented pregnant women whose children will be U.S. citizens. Moreover, because this rule would have disparate effects in deterring participation among low-income immigrants despite their eligibility for the program, the rule raises civil rights concerns.

Proposed Rule Also Ill-Advised for Other Reasons

The requirement that states compile quarterly lists of suspected dual participants seems ill-advised for other reasons as well. It would consume scarce administrative resources for what would be a small pay-off given the small numbers of cases of dual participation involved. These resources would likely secure more "bang for the buck" if they were directed to vendor monitoring. The incidence of vendor abuse is much higher than the incidence of dual participation.

In their totality, the array of new administrative requirements that the proposed WIC rules would impose on state and local agencies appears to exceed what many WIC agencies can accommodate within existing resources without compromising other parts of the WIC program. In the final rules, FNS will have to scale back some of these requirements. Directing significantly more resources to the vendor side is essential. Requiring quarterly lists of suspected dual participants is not and seems like overkill, in addition to having adverse and discriminatory effects on immigrant women, infants and children.

We are particularly struck by the fact that the proposed WIC requirement regarding dual participation goes beyond federal requirements regarding dual participation in the food stamp

program. Dual participation is a more significant problem in the food stamp program, and the Food Stamp Act specifically requires that "the state agency shall establish a system and take action on a periodic basis to verify and otherwise ensure that an individual does not receive coupons in more than one jurisdiction within the State..." Yet the food stamp program has never found it appropriate to mandate that states compile quarterly lists of suspected dual participants in that program.

We strongly recommend that this requirement be dropped. The GAO report recommends that USDA "work with state agencies and the National Association of WIC Directors to develop and implement cost-effective strategies for states to use in collecting and maintaining information on instances of participant fraud and abuse which would be periodically reported to the Food and Nutrition Service." This is the appropriate route to follow, rather than imposing this new mandate. NAWD also opposes this requirement. FNS should drop the requirement from this regulation and engage in a process of working with states and NAWD to develop the most appropriate measures to institute.

Sanctions and Claims Against Participants

We are deeply concerned by some of the proposals in this area, and in particular, the proposal for a mandatory one-year disqualification for participants against whom claims are established.

We understand the need to make the maximum disqualification period longer than three months so states may impose a longer disqualification in some cases involving particularly serious violations. But the combination of a 12-month maximum disqualification period and the requirement for the maximum sentence to be imposed in *all* cases that give rise to a claim, regardless of the circumstances involved, is excessive and contrary to the goals of the program.

The preamble describes — and in a sense, seeks to justify — the mandatory disqualification provision by indicating, on page 32330, that it applies only when participants have "defrauded" the program. This is not, however, an accurate description of the proposal. The regulations contain no requirement — and the WIC program has no mechanism — for a finding of fraud to be made through a court or an administrative fraud hearing. As a result, the mandatary one-year disqualification would be required if it were the *opinion* of a WIC eligibility worker or local office that a WIC overissuance had been caused by intentional misrepresentation rather than by unclear or confusing explanations of the WIC rules by a worker, confusion regarding the WIC application form or related requirements on the part of a mother who has literacy problems or difficulty understanding English, or an inadvertent mistake that the participant made for other reasons. This severe penalty would be imposed even in the case of pregnant women, when the fate of the unborn child may be at stake. As you know, we are great admirers and longstanding supporters of FNS' administration of the WIC program. But we find this proposal appalling.

In the food stamp program — a program with much more significant fraud and overpayment problems than WIC — every state must establish a system of special administrative fraud hearings to make findings of whether an intentional program violation has actually occurred when an IPV charge is made by a food stamp office. The food stamp program has always regarded the normal hearing and appeal procedure as insufficient to make a finding that an intentional violation has been committed and that the more severe penalties for fraud (as opposed to a simple finding of current ineligibility) should be imposed. The food stamp program has long recognized that distinguishing intentional misrepresentation from inadvertent error, and sorting out the role of the eligibility worker in cases where an exchange between the worker and the client may have led to misunderstanding of a requirement by a client (or in cases where the client insists she provided information about a change in circumstances but the worker failed to act on it) is not something that can simply be left to the judgment of an eligibility worker or supervisor. Indeed, in some such cases the worker or supervisor may have an effective conflict of interest if the alternative to a finding of fraud by the recipient is to identify negligence by the eligibility worker.

Yet in the WIC program — where more is at stake in terms of the health of infants and young children — these proposed regulations would cross that line. They would enable mandatory one-year disqualifications to be imposed based on an opinion that an error which had caused an overpayment was intentional. In the food stamp program, only 6.5 percent of over issuances have been found to be fraudulent. (The true percentage is probably somewhat higher).

Let us be clear that we are *not* suggesting that state WIC programs be required to set up a system of administrative fraud hearings as in food stamps. That would be an unwise use of limited administrative resources; directing more of those resources into vendor monitoring is a much higher priority. But in the absence of such a procedure to adjudicate when fraud has occurred, a one-year mandatory disqualification is too severe and indiscriminate.

We believe it is appropriate to lengthen the maximum disqualification period (so long as there is state flexibility as to the length of the disqualification in each case) and also to direct states to make all cost-effective efforts to collect claims. But we believe it is essential that states retain flexibility as to when and for how long to impose disqualifications, up to the maximum disqualification period.

For example, when a state believes a violation has occurred, but a pregnant mother is involved who can't make restitution now and the well-being of the fetus could be affected (or a breastfeeding mother is involved and the health of the infant is at stake), the state should have the authority not to disqualify as well as the authority to impose a disqualification for less than the maximum period.

Any notion that the provisions of the proposed rules which would permit states to allow participants to perform in-kind service is a satisfactory solution to this problem should be discarded. WIC offices are not employment or welfare offices that can readily administer workfare or other work programs. Who in the WIC office does FNS envision as developing the

in-kind service slots? Who would develop and administer the reporting systems between the entity for which the in-kind service was being performed and the WIC office? This feature of the proposed rules seems rather unrealistic.

Nor is the provision in the regulations concerning the designation of a proxy in the case of an infant or child participant an adequate solution in cases where the person otherwise facing disqualification is an infant or a child. Suppose the child is homeless and no proxy is available? As the National Association of WIC Directors has noted in its comments: "Access to supplemental nutrition benefits should not be predicated on whether a child's parents have relatives or friends who are willing to serve as a proxy; inevitably, the most at-risk children, those who are homeless or in transition, will be least able to access the alternative."

For all of these reasons, we strongly urge the Department to rethink and revise these proposals and to remove the mandatory disqualification provision. That provision is at cross-purposes with the basic purposes of the WIC program. It also reflects unwarranted distrust of states to make appropriate judgments as to when and for how long to disqualify WIC participants. (If the mandatory disqualification provision is retained in the final rules, we would oppose extending the maximum disqualification period to 12 months.)

Further aggravating the problems with this severe proposal is the accompanying proposal to penalize women, infant and children participants — and to mandate their disqualification from the program for a year — any time a claim is established in a case where the alleged intentional misrepresentation was committed by a proxy, including cases in which the proxy is *not* the parent or caretaker of an infant or child participant and not a member of the family. Where a proxy commits an intentional violation, the proxy should clearly be barred from continuing to act as a proxy. But whether the participant should be disqualified should rest on the facts and circumstances in the case, and in particular, on whether there is evidence that the parent or caretaker acted in collusion with the proxy to commit the violation. Where a proxy who is not a parent or caretaker has committed the violation but evidence of collusion is lacking, disqualification of the participant generally will be too severe a sanction (and mandatory disqualification for 12 months will be far too harsh).

In short, the proposed rule would compel states to impose a one-year disqualification indiscriminately in all cases in which it is the opinion of the local agency that an overpayment was intentional rather than inadvertent, including cases where the individual who is alleged to have acted purposefully is a proxy who is not a family member and there is no evidence that the participant colluded with the proxy. This stricture would apply even when the participant removed from the program for one year is a high-risk pregnant woman. Don't you think this is rather extreme? We do.

Vendor Issues

We strongly support the provisions of the proposed rule that would require a "price" criterion in selecting WIC vendors. We urge FNS to resist pressures to weaken this aspect of the rules.

We also strongly recommend that the final regulations include a requirement that states include a provision in their vendor agreements that would prohibit a vendor from imposing a greater percentage mark-up on the infant formula brand being used in WIC than on non-WIC brands. Vendor agreements in Rhode Island and Texas include this provision; these states have found it useful and effective. This is a common-sense provision; all vendor agreements should have it. That will not occur, however, unless FNS requires this in the final regulations.

We have some concerns about the vendor limitation proposal. We appreciate the goal here — the program needs more vendor monitoring, and for states to be able to conduct the needed monitoring without that imposing too heavy a workload, it often will be necessary to find a way to limit the number of vendors. But for a state to develop and effectively enforce such a limitation may be easier said than done. If, in an area of a state, 12 vendors meet all of the state's vendor selection criteria but the state's limitation criteria allow only seven vendors, how does the state determine which seven to authorize? We are concerned that the need to pick and choose among such vendors and defend against challenges to those decisions could itself consume considerable staff time and resources. The question here is whether the net effect will be to free up or further strain staff resources. We think FNS needs to examine this issue carefully and reconsider this proposal.

On the question of high-risk vendor monitoring, we support the structure of the 10 percent rule. If the regulations were simply to require the monitoring of all high-risk vendors but no specific percentage was set, that would create perverse incentives for states to identify fewer high-risk vendors.

Our concern here is whether the combination of the 10 percent requirement and the three-compliance-buys requirement is feasible in terms of workload and resources. We do not have sufficient information to make a judgment on this matter but are concerned that this might not be feasible for some states without too great a drain on resources (and consequent adverse effects on other important areas of program operations). We suggest that FNS retain the structure of this provision in the final rules but consider whether the percentage level can safely be set somewhat below the 10 percent level and whether three compliance buys are needed in every high-risk vendor case.

We appreciate the opportunity to submit these comments.

Sincerely,

Robert Greenstein
Executive Director

Stefan Harvey
Director, WIC Project

Cynthia A. Rice 12/15/99 12:59:32 PM

Record Type: Record

To: Jack A. Smalligan/OMB/EOP@EOP, Jennifer Friedman/OMB/EOP@EOP, Jeffrey A. Farkas/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message
Subject: Re: immigrant cost estimates

Thanks this is very helpful.

Do we know how much it would cost to add to our FY 2000 Medicaid proposal a state option to cover all lawfully resident immigrants with disabilities under Medicaid (i.e., eliminate the 5-year ban)? This as I recall is what the immigrant groups identified to us as their highest additional priority.

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 12/15/99 12:53 PM ----------

Eugenia Chough 12/14/99 07:47:01 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP

cc: Andrea Kane/OPD/EOP@EOP
Subject: immigrant cost estimates

---------- Forwarded by Eugenia Chough/OPD/EOP on 12/14/99 07:46 PM ----------

Jennifer E. McGee
12/14/99 06:17:30 PM

Record Type: Record

To: Eugenia Chough/OPD/EOP@EOP

cc:
Subject: immigrant cost estimates

You can forward this to appropriate staff. Thanks.

---------- Forwarded by Jennifer E. McGee/OMB/EOP on 12/14/99 06:19 PM ----------

Diana L. Meredith

12/14/99 06:10:29 PM

Record Type: Record

To: Jennifer E. McGee/OMB/EOP@EOP

cc: Jennifer Friedman/OMB/EOP@EOP, Jack A. Smalligan/OMB/EOP@EOP, Jeffrey A. Farkas/OMB/EOP@EOP

Subject: immigrant cost estimates

Attached is a table with our latest estimates of the costs of various options for immigrant benefit restorations.

immigrant_restorations_lis

Message Copied To:

Jennifer E. McGee/OMB/EOP@EOP
J. Eric Gould/OPD/EOP@EOP
Eugenia Chough/OPD/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Jeanne Lambrew/OPD/EOP@EOP

J. Eric Gould 11/30/99 04:39:03 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc: Eugenia Chough/OPD/EOP
Subject: Draft ideas on LI benefit restorations

These are the preliminary ideas that Cynthia forwarded to Bruce and Eric. We are waiting of cost estimates on these proposals from OMB. Are you in agreement?

Legal Immigrant Benefits

Legal Immigrant Benefits: At a minimum we should repeat the proposals we made last year, and there are compelling reasons to go further in several areas.

a) **Health Care**: Our FY2000 proposal would have provided a state option to cover children and pregnant women under CHIP and Medicaid, regardless of when they entered the U.S. (Under current law, states have this option only for immigrants who arrived in the U.S. before 8/22/96.) This proposal has bipartisan support and was introduced by Senators Chafee, Mack, McCain, Jeffords, Moynihan, and Graham and costs $325 million over five years. OMB $57 01 $1.1:01-10
$345 01-05
The immigrant groups support expanding our proposal by adding one introduced this year by Senator Moynihan and Rep. Levin that would expand this Medicaid state option to also cover disabled immigrants regardless of when they enter the U.S. This proposal would cost about $2 billion over 5 years. The groups identified this as their highest priority to add to our proposals from last year.

b) **Domestic Violence Victims**: The immigrant groups say their second priority above our proposals from last year is to allow legal immigrants who are qualified under the Violence Against Women Act due to domestic violence to be eligible for all federal public benefits, including SSI, food stamps, TANF, Medicaid, and CHIP, regardless of the date of entry. Cost is likely to be small, but is yet undetermined. Cost?

c) **Refugees**: The groups' third highest priority is to eliminate the 7 year limitation on the exemption from all benefits for refugees and asylees. The argue many elderly or disabled refugees have a very hard time learning English or otherwise qualifying for naturalization and will lose benefits without this extension. The Balanced Budget Act extended these benefits from 5 to 7 years. OMB - Cost - ?

d) **Food Stamps**: Last year, our budget contained a modest food stamp proposal making legal immigrants in the United States on August 22, 1996 who subsequently become elderly eligible for food stamps, at cost of $60 million over 5 years. (The 1997 Agricultural Research Act covered those already elderly as of 8/96.)

There is growing support for a much broader restoration, which would make all legal immigrants eligible for food stamps (this principally adds adults who entered the U.S. before 8/96 and all immigrants who entered the U.S. after 8/96 to the restorations made by the Agricultural Research Act.) This proposal would cost $975 million over five years. This broader restoration was included in bipartisan anti-hunger legislation introduced by Senators Specter and Kennedy and Representatives Walsh and Kaptur which is strongly supported by advocacy groups and also includes expanding the food stamp vehicle limit (see above), an increase in the shelter deduction ($495 million over 5 years) and increased funding for TEFAP – emergency food ($20 million appropriation per year).

It is also possible to devise a proposal to restore food stamps to specific subsets of the legal immigrant population (e.g., all those eligible under our SSI proposal – see below; all

immigrants who entered the U.S. before 8/96; all household with children and/or elderly, irregardless of date of entry).

e) **SSI Disability Payments**: SSI payments for the poor disabled also confer Medicaid eligibility. The Balanced Budget Act of 1997 restored disability and health benefits to 380,000 legal immigrants who were in U.S. before 8/96 and become disabled after entry. Our FY 2000 budget would have restored eligibility for SSI and Medicaid to legal immigrants who enter the country after that date if they have been in the United States for five years and become disabled after entering the United States, at a cost of about $1 billion over 5 years. This proposal needs to be rescored but will be much more expensive this year, since with the passage of time more immigrants would qualify.

Neither the Balanced Budget Act nor our FY 2000 proposal restored SSI to the poor elderly who are not disabled (who would be covered under SSI if they were citizens and many of whom eventually will qualify as disabled as they become frail). This provision is included in the Moynihan/Levin bill, but this expansion of our proposal has not been identified as high a priority as others listed above by the key groups we have consulted. We do not have a score of the cost of this addition.