CC: Cynthia
Genie

May 19, 1999

To: Erik Gould, Irene Bueno, DPC
FAX 456-7431

From: Karin Small Wurapa, Linda Sanches

The attached draft chart displays changes in eligibility for Medicaid services based on alien/immigrant status resulting from The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and the Administration's proposal.
It is understood that the Proposal recommends approving eligibility for only pregnant women and children of select alien/immigrant categories. Note that this chart does not address the intricate details referenced in specific statutes for individual "alien" categories.

Copies of the references for terms and accuracy of information as cited in the endnotes are attached. We expect that INS and DOJ will have comments to improve the accuracy of the chart.

Please call Linda at 690-7233 with any questions.

Draft Revised 5/19/99

ALIEN ELIGIBILITY FOR MEDICAID				
Alien Category[1]	**Description** [2]	**Pre PRWORA** (Shaded=PRUCOL)	**PRWORA**[3]	**Proposed Amendment '99**
Legal Permanent Resident (LPR)	Person granted lawful permanent residence status (green card)	YES	YES	YES
Refugee (b9)	Person admitted as refugee (retain eligibility for benefits even if subsequently adjust to LPR status)	YES	YES	YES
Asylee (b8)	Person granted asylum (retain eligibility for benefits even if subsequently adjust to LPR status)	YES	YES	YES
Granted Withholding of Removal/Deportation (b15)	Person granted withholding of removal, formerly withholding of deportation	YES	YES	YES
Parolee for ≥ a year (b2)	Person paroled into the U.S. for at least one year	YES	YES	YES
Cuban or Haitian Entrant (*)(b2)	Person paroled into the U.S. as a Cuban or Haitian entrant or any other nat'l from Cuba or Haiti who is the subject of exclusion or removal proceedings or who has a pending application for asylum	YES	YES	YES
DED (b14/16)	Alien granted Deferred Enforced Departure (also extended voluntary departure)	YES	NO	YES
Deferred Action Status (b11)	Alien granted Deferred Action status pursuant to INS Service Operations Instruction	YES	NO	YES
Spouse/Child with Adjustment of Status Pending or Petition Approved (b5/6)	Alien who is the spouse or child of a U.S. citizen whose visa petition has been approved or who has a properly filed application for adjustment of status	YES	NO	YES
Alien Granted Permission to Remain in the U.S. (b3/4/7/10/14/15)	Alien granted indefinite voluntary departure, stay of deportation, suspension of deportation	YES	NO	NO
Alien in the U.S. before 1972 (b13)	Alien residing in U.S. prior to 1/1/72. Requires proof of continuous residency	YES	YES, if LPR status NO, if not LPR status	YES

ALIEN ELIGIBILITY FOR MEDICAID				
Alien Category[1]	**Description** [2]	**Pre PRWORA** (Shaded=PRUCOL)	**PRWORA**[3]	**Proposed Amendment '99**
Temporary Resident Status (*)	Legalized alien in Temporary Resident status(TRS) under IRCA amnesty program	[redacted]	NO	YES
Family Unity (*)	Family Unity beneficiary under the IRCA amnesty program (spouse or child of legalized alien with Temporary Resident status)	[redacted]	NO	YES
Resident of U.S. Territories (b16)	Alien who is resident of former U.S. cross territories of the Pacific (i.e, Republic of Marshall Island, Federated States of Micronesia) as described in the document-Compact of Free Association	[redacted]	NO	not addressed
Parolee for <a year	Alien paroled into the U.S. for less than one year is lawfully present unless a) paroled for deferred inspection or pending exclusion proceedings or b) paroled into the U.S. for prosecution pursuant to section 212 (a) (15) or the INA	NO	NO	YES
Native American Alien	American Indian born in Canada and certain other tribal members born outside the U.S.	YES, if LPR or PRUCOL (b16) status	YES, if LPR status NO, if not	YES
Amerasian (not an immigration status)	Child fathered by a U.S. citizen in certain Southeast Asian countries during the years of U.S. Conflict in that region (now granted LPR status)	Eligibility depends on other Pre PRWORA status–may be PRUCOL (b5,16)	YES	YES
Domestic Violence Victims (& their parents or children) * (not an immigration status)	Domestic Violence victims are qualified aliens if: Immigrant battered, immigrant's child or parent battered by spouse, parent, or member of family in same household; and, Immigrant has pending or approved petition for relief under Violence Against Women Act; and, Agency providing benefits determines that need for benefits has connection to battery	Eligibility depends on other Pre PRWORA status–may be PRUCOL (b16)	YES	YES
Hmong/Lao Tribe Member (not an immigration status)	Member of Hmong or Lao tribe during the Vietnam era when they provided military assistance to the U.S.; category includes spouse, unremarried surviving spouse, and child or tribe member	Eligibility depends on other Pre PRWORA status–may be PRUCOL(b16)	Depends on immigration status	Depends on immigration status

ALIEN ELIGIBILITY FOR MEDICAID

Alien Category[1]	Description [2]	Pre PRWORA (Shaded=PRUCOL)	PRWORA[3]	Proposed Amendment '99
Temporary Protected Status	Alien granted Temporary Protected Status (TPS) because of conflict in their home, including natural disasters	NO	NO	YES
Applicant for Asylum or Withholding of Removal	Applicant for asylum or withholding of removal (formerly withholding of deportation) who has been granted employment authorization	NO, although if receiving SSI, may be PRUCOL for Medicaid	NO	YES
Non Immigrant	Person who entered the U.S. as a student, diplomat, tourist, for temporary employment, etc., as categorized in the Immigration and Nationality Act, section 101(a)(15)	NO	NO	NO
Undocumented Immigrant	Person who entered the U.S. without inspection or entered lawfully and have overstayed their visa	NO	NO	NO

1. Alien category refers to PRUCOL & other alien status related to Medicaid eligibility in The Code of Federal Regulations, Title 42, Vol. 3, (42 CFR 435.408). Parenthetical numbers refer to specific PRUCOL alien listings in 42 CFR 435.408 (b) (1998 version).

(*) Cuban or Haitian Entrant, & Temporary Resident Status are included in 42 CFR 435.406 (a)(3), (a)(4) & (b); and, Family Unity provision in the Immigration Act of 1990, (section 301 of Public Law 101-649). These provisions require a 5 year bar prior to receipt of non-emergency medical services for non-disabled adults who do not meet AFDC eligibility standards.

Certain battered aliens who meet the complicated statutory test at 431(c) of PRWORA may be qualified aliens, but may not yet be in a lawful immigration status until they are adjusted to LPR status.

2. Descriptions taken from the Nat'l Immigration Law Center's Glossary of Terms 12/98; The Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (PRWORA), section 431; and Medicaid Rules at 42 CFR 435.406 & .408.

3. Eligibility as defined in section 431 of The Personal Responsibility & Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193 (8 U.S. C. 1641).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATE: 5/26

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TOTAL NUMBER OF PAGES SENT: 3
(including cover page)

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HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE
Wednesday, May 26, 1999

Contact: Michael Kharfen
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HHS JOINS THE INS AND STATE DEPARTMENT IN CLARIFYING "PUBLIC CHARGE" GUIDANCE

The Department of Health and Human Services, along with the Immigration and Naturalization Service (INS) and the State Department, has proposed a list of federal benefits immigrants can receive without affecting their ability to be admitted to the U.S. or to adjust their status to legal permanent residents in the United States. The list would exempt important benefits such as Medicaid, as well as new health programs such as the Children's Health Insurance Program (CHIP).

The Vice President directed all federal agencies that oversee these programs, including the Department of Health and Human Services, the Department of Agriculture, the Department of Justice, the Social Security Administration, and the State Department, to send guidance to their field offices, program grantees and to work with community organizations to educate Americans about this new policy. In response, HHS is sending letters out today notifying all of the department's program offices of the new guidance.

Under current law, before the INS or the State Department can admit someone as a legal permanent resident, they must determine that the person is not likely to become a "public charge," which is someone who is primarily dependent on the government for subsistence. The decision to grant permanent residency is based in part on this public charge determination.

"We have been concerned for quite some time about the confusion and fear in immigrant communities that accepting certain government benefits would jeopardize their ability to become legal U.S. residents," said HHS Deputy Secretary Kevin Thurm. "We're happy that we can clarify which benefits may, or may not, be considered in making 'public charge' determinations. It's especially important to assure access to health care for immigrants, so I am particularly pleased that virtually all health services and benefits--including Medicaid and Children's Health Insurance Program--are exempt from the 'public charge' test for admission, adjustment, or deportation."

The proposed rule, which appears in yesterday's *Federal Register*, would define for the first time which benefits an individual may use without fear of negative immigration consequences and specifies the various factors that must be considered before a public charge determination is made. A number of HHS programs and benefits have been proposed as being exempt from affecting an individual's immigrant status. They include, but are not limited to, Medicaid, the Children's Health Insurance Program (CHIP), the Low-Income Home Energy Assistance Program, child care services,

- More -

and foster care and adoption assistance. Along with the proposed rule, the INS has published field guidance and the State Department has issued a cable, both of which are effective immediately, adopting the public charge definition described in the proposed rule until a final rule is published.

The INS and State Department have proposed to determine that the receipt of cash benefits for income maintenance purposes such as Supplemental Security Income (SSI), cash assistance under Temporary Assistance for Needy Families (TANF) or state cash welfare assistance programs, and the limited case of someone who needs Medicaid or a similar state program to pay for long-term care (nursing home or other institutionalized care), will be taken into account in public charge determinations.

Public charge mostly affects immigrants who do not yet have their "green card," which conveys Legal Permanent Resident (LPR) status. Immigrants granted LPR status no longer are subject to the public charge test unless they travel outside the U.S. for more than six months, which requires them to be "readmitted" to the U.S. There is no public charge test for LPRs who are trying to naturalize.

Refugees, asylees, Amerasians, Cuban/Haitian entrants, and Nicaraguans admitted under the Nicaraguan Adjustment and Central American Relief Act (NACARA) are all exempted from public charge determinations when they are admitted into the U.S.

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Note: HHS press releases are available on the World Wide Web at: http://*www.hhs.gov*.

Date: 5/21/99

FAX

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Number of Pages (excluding cover): 13

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Nutrition Insights
INSIGHT 8

COULD THERE BE HUNGER IN AMERICA?

A Publication of the USDA Center for Nutrition Policy and Promotion September 1998

The economic expansion that began in March 1991 has been widely touted as the longest peacetime expansion of the last 50 years. By implication, all Americans should be enjoying rising household incomes and expanded economic opportunities. Unemployment is at its lowest rate in more than two decades. Earned income tax credits are available for the working poor, and food assistance is available to all citizens living in low-income households. Could there still be hunger in a land where economic times are so good and there is help for the needy?[1]

Hunger Count

According to a national survey taken in 1995, a year marked by good economic news, hunger existed among persons in 4.2 million households, that is 4.1 percent of all U.S. households. These households had one or more persons that reported experiencing reduced food intake because of a lack of financial resources. Nearly 20 percent of households (817,000 of the 4.2 million) had one or more members who experienced severe hunger. In some of these households, children experienced reduced food intake (332,000) or, where no children were present, adults experienced a prolonged lack of food, including going without food for a whole day.

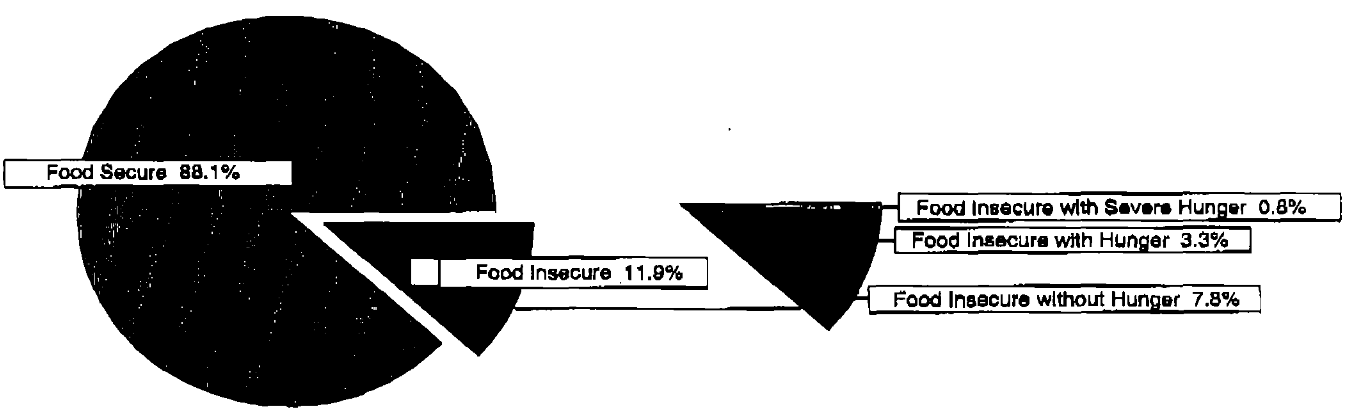
[1]Hunger is the uneasy or painful sensation caused by a lack of food. It can result from the recurrent and involuntary lack of access to food. Severe hunger exists in households when children go hungry or adults experience prolonged or acute hunger. Hunger is a potential although not necessary consequence of food insecurity. Food insecurity is used to describe inadequate access to enough food at all times for a healthy active life. It can be a warning sign for hunger. Malnutrition and related diseases are not addressed in these definitions.

A larger group of households, including households experiencing hunger and those at-risk of hunger, was classified as food insecure. This larger group totaled 11.9 million households, about 12 percent of all U.S. households. Those who were food insecure but not hungry, which accounted for 7.8 percent of all households, were concerned about the adequacy, quality, and variety of their household's food, but did not report sustained reductions in food intake (see figure).

Not all households are equally likely to be hungry. A slightly larger proportion of households with children were classified as experiencing hunger. Black and Hispanic households with children were about twice as likely to be classified as experiencing hunger as their White counterparts. Female-headed households were four times more likely to experience hunger than husband-wife households. The lower a household's income, the higher the chance of experiencing hunger (see table).

The count of hungry people was obtained through a scientific survey conducted by the U.S. Bureau of the Census and sponsored by the USDA's Food and Nutrition Service (FNS). FNS administers the Nation's food assistance programs with annual expenditures of almost $40 billion. The agency's interest in measuring hunger arises from its legal mandate to serve those that meet the requirements for assistance programs. These include the Food Stamp Program, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the National School Lunch Program.

Prevalence of Food Security and Hunger in U.S. Households, 1995



Source: Hamilton et al., 1997, Household Food Security in the United States, Food and Consumer Service, Alexandria, VA.

CNPP 1120 20th Street, NW Suite 200, North Lobby Washington, DC 20036 202/418-2312 FAX 202/208-2321

Prevalence of Household Food Security Status by Selected Characteristics of Households, 1995

Characteristic	Total	Food secure	Food insecure, hunger not evident	Food insecure, hunger evident
	Numbers in thousands	------------- *Percent*	-------------	
All households	100,210	[illegible]	[illegible]	[illegible]
With children under 18 years				
All households	38,113	82.5	12.3	5.3
White	30,438	84.6	11.1	4.3
Black	5,841	71.8	18.1	10.1
Hispanic[1]	4,475	69.6	21.6	8.8
Other	1,833	81.1	12.6	5.3
Married-couple families	26,841	88.5	8.8	2.8
Female head, no spouse	8,941	64.7	22.9	12.3
Male head, no spouse	2,332	81.4	12.0	6.6
All households by annual income	[illegible]	[illegible]	[illegible]	[illegible]
Below $10,000	14,977	67.7	19.6	12.7
$10,000 to $19,999	16,717	80.2	13.2	6.6
$20,000 to $29,999	15,625	89.0	7.7	3.3
$30,000 to $39,999	12,149	93.8	4.6	1.6
$40,000 to $49,999	8,539	95.8	3.0	1.2
$50,000 and above	22,370	98.7	0.9	0.4

[1] Persons of Hispanic ethnicity can be of any race.

Source: Hamilton et al., 1997, Household Food Security in the United States, Food and Consumer Service, Alexandria, VA.

Food Assistance and Hunger

About half the households that reported experiencing hunger received food assistance in the month before the interview. This included households participating in the Food Stamp Program and those receiving WIC benefits. The relationship between hunger and food assistance is complex. Although the benefits reduce hunger, they may not eliminate it completely. For example, Food Stamp Program participants are expected to use one-third of their net income to supplement the food purchasing power of their food stamps. If those supplemental funds were reallocated to pay utility bills or other necessities, the money could not be used for food. This shortfall could result in a lack of food and lead to hunger. Some gaps exist in Federal program coverage because all communities do not sponsor the range of Federal food assistance programs available to them. For instance, the Summer Food Service Program that provides meals to low-income children during school vacations is only available in a limited number of places.

Information Source

The results are based on a sample of 44,730 households that completed the survey interview. The results represent the entire population except the homeless or institutionalized who were not included in the survey. The survey questions refer to the household's situation over the past 30 days and the past 12 months. Only the results for the 12-month period are reported here.[2]

The survey questions determine which households are experiencing hunger by asking about household behaviors that indicate inadequate access to food and an insufficient amount of food available in the household. These conditions are restricted to those related to economic circumstances and do not include hunger that results solely from illness, abuse, or voluntary dieting. Household respondents are asked about lack of food to prepare meals, cutting or skipping meals, and not eating for a whole day. Separate questions were asked about children's behavior that indicate inadequate access to food.

Conclusion

In 1995, hunger existed in 4.2 million households, or 4.1 percent of all households. In these households, one or more persons had an inadequate amount of food because of financial circumstances, affecting up to 11.2 million persons. In 817,000 of the 4.2 million households, hunger was severe, and 692,000 children lived in these households.

[2] Research is ongoing on hunger and food security at USDA, so that methods are subject to change from knowledge gathered through the research process. All data are from the Current Population Survey, Food Security Supplement, April 1995.

Author: Bruce W. Klein, Ph.D., USDA, Center for Nutrition Policy and Promotion.

For more information, contact the CNPP Office of Public Information and Governmental Affairs at (202) 418-2312.

USDA

Nutrition Insights is issued by the Center for Nutrition Policy and Promotion, an organization of the U.S. Department of Agriculture. Nutrition Insights may be accessed at the CNPP Web Site at http://www.usda.gov/cnpp

The mission of the Center for Nutrition Policy and Promotion is to improve the nutritional status of Americans by serving as the focal point within the U.S. Department of Agriculture for linking scientific research to the consumer.

Household Food Security in the United States in 1995

Executive Summary

September 1997

Prepared for
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EXECUTIVE SUMMARY

In April 1995, the U.S. Bureau of the Census conducted the first Food Security Supplement to its regular Current Population Survey (CPS). With about 45,000 household interviews, the Food Security Supplement provides the basis for the first comprehensive measurement of food insecurity and hunger in a nationally-representative sample of U.S. households. This survey is the cornerstone of the food security measurement project begun in 1992 to carry out a key task assigned by the Ten-Year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program (NNMRRP). The task is to develop a standard measure of food insecurity and hunger for the United States, for use at national, state, and local levels.

This project has been a cooperative undertaking by the responsible federal government agencies under the leadership of the Food and Consumer Service (FCS) of the U.S. Department of Agriculture jointly with the National Center for Health Statistics/Centers for Disease Control and Prevention (NCHS) of the Department of Health and Human Services. Academic and other private-sector research experts in the field of food security and hunger measurement have aided the project from its beginning, achieving a substantial public/private partnership in the effort to develop a state-of-the-art food security survey questionnaire, statistical measurement method, and food insecurity and hunger measures and prevalence estimates for the nation.

The present study reports the first of these national prevalence estimates for food insecurity and hunger for the 12-month period ending in April 1995, based on the CPS data and applying a sophisticated statistical measurement method that creates a detailed scale for measuring the underlying level of severity of food insecurity and hunger experienced in U.S. households. Based on this food security scale, a simpler measure is constructed that classifies households into several broad ranges or levels of severity, defining four categories of food security status for U.S. households:

- food secure,
- food insecure without hunger,
- food insecure with moderate hunger, and
- food insecure with severe hunger.

The categorical measure allows one to estimate the number of American households that experience food insecurity and hunger within each of the broad levels specified. The measure is designed to be useful primarily for monitoring changes in prevalence over time, and comparing prevalence across groups within the population, on a sustained, consistent basis.

Background and Definitions

Food security has been defined briefly as "assured access to enough food for an active, healthy life." The household should have access to enough food, the food should be nutritionally adequate, it should be safe, and the household should be able to obtain it through normal channels. Although all of these dimensions of food security are important, the measure presented here focuses on whether the household has "enough" food, as perceived and reported by adult members of the household. When food insecurity on this central dimension reaches severe levels, actual hunger for household members is the result.

Hunger is defined briefly as "the uneasy or painful sensation caused by a lack of food." The CPS Food Security Supplement aims to measure only that hunger which results from the financial resource constraint of the household—from being unable to afford enough food. The survey does not measure hunger that results from being too busy to eat, from voluntary fasting, from illness, or from any other cause except lack of financial resources. Thus, food insecurity and hunger measured here are clearly related to general income poverty. They focus, however, on only one area of household circumstances, rather than on the general problem of whether resources are adequate to cover all areas of need.

Interest in measuring food insecurity and hunger springs from two sources. First, food security is an important dimension of basic individual and family well-being, analogous to health or housing. Food insecurity and hunger are undesirable in their own right, and possible precursors to more serious health and developmental problems. Monitoring food security is important for understanding one fundamental component of the well-being of the American population and for identifying geographic or other subgroups with particularly undesirable and high-risk conditions.

Second, numerous public and private food assistance programs attempt to ameliorate food insecurity and hunger. Accurate measurement of food insecurity and hunger are important for program planners and policymakers to assess adequately the effectiveness of these programs in meeting their intended objectives. This need for concrete indicators of program outcomes takes on new importance for federal agencies under the mandate of the 1993 Government Performance and Results Act (GPRA), which requires agencies to give increased, explicit attention to such indicators.

The government's food security measurement effort was built upon extensive private-sector research in the late 1980s that expanded and sharpened the understanding of food security, food insecurity, and hunger. This work led to the development by an expert working group of the American Institute of Nutrition of the following conceptual definitions, which were published by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (Anderson/AIN/LSRO, 1990):

- ***Food security*** — "Access by all people at all times to enough food for an active, healthy life. Food security includes at a minimum: (1) the ready availability of nutritionally adequate and safe foods, and (2) an assured ability to acquire acceptable foods in socially acceptable ways (e.g., without resorting to emergency food supplies, scavenging, stealing, or other coping strategies)."

- ***Food insecurity*** — "Limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways."

- ***Hunger*** — "The uneasy or painful sensation caused by a lack of food. The recurrent and involuntary lack of access to food. Hunger may produce malnutrition over time. . . . Hunger . . . is a potential, although not necessary, consequence of food insecurity."

These definitions underlie the CPS Food Security Supplement and the new measurement scale discussed below, with the one additional qualification, already described, that only resource-constrained or poverty-linked food insecurity and hunger are intended to be captured by the measure.

The Food Security Scale

The Food Security Supplement contains a large battery of questions asking respondents about various aspects of food sufficiency in their households. Taken individually, none of these questions can provide a measure of the severity and extent of food insecurity or hunger. Taken together, a systematic set of 18 of the CPS questions (those with strong statistical properties identified by the measurement method) do provide such a measure. The CPS questions ask about five general types of household food conditions, events, or behaviors:

- Anxiety that the household food budget or food supply may be insufficient to meet basic needs;

- Perceptions that the food eaten by household members was inadequate in quality or quantity;

- Reported instances of reduced food intake, or consequences of reduced food intake (such as the physical sensation of hunger or reported weight loss) for adults in the household;

- Reported instances of reduced food intake or its consequences for children in the household; and

- Coping actions taken by the household to augment their food budget or food supply (such as borrowing from friends or family or getting food from emergency food pantries).

All of the CPS food security questions explicitly condition the event or behavior identified as being due to financial limitation (such as "... because we couldn't afford enough food" or "because there wasn't enough money to buy food.") Each question addresses an explicit time frame, either the past 12 months or the past 30 days. Several key items include follow-up questions on how often the event or condition occurred within the past 12 months or the past 30 days.

Two separate measurement scales were developed, one for the severity of food insecurity within the 12-month period, the other for the 30-day period. The 12-month scale covers a broader range of severity levels of food insecurity and hunger, because fewer questions were asked in the 30-day time frame. The more comprehensive 12-month measure is expected to be the more useful, both for research and policy purposes, and is the focus of discussion in this report.

The scaling methodology began with exploratory linear and non-linear factor analyses to determine the number of distinct factors that should be represented. Scales were estimated using a Rasch measurement model, a form of non-linear factor analysis in the family of Item Response Theory models.[1] Most food insecurity and hunger questions met the statistical criteria for inclusion in the models, although the resource augmentation questions did not. The final 12-month food

[1] IRT models are a form of statistical measurement model developed in educational testing, where test items vary systematically in difficulty and the overall score measures the level of difficulty that the tested individual has mastered. In the present application, the severity of food insecurity that the household has experienced is analogous to the level of test difficulty that an individual has mastered.

security scale is based on answers to 18 questions, including some from each of the first four types of questions identified above.

Key findings during the scaling analysis were as follows:

- The results are consistent with previous research characterizing food insecurity as a "managed process" through several stages or levels of severity (Radimer *et al.*, 1992). In this process, households first note serious inadequacy in their food supply, feel anxiety about the sufficiency of their food to meet basic needs, and make adjustments to their food budget and food served. As the situation becomes more severe, adults experience reduced food intake and hunger, but they spare the children this experience. In the third stage, children also suffer reduced food intake and hunger and adults' reductions in food intake are more dramatic.

  The severity ranking of questions in the measurement scale proceeds generally in this order. At the same time, it shows that all three stages fit well in a single scale, which means that the level of severity of food insecurity can be measured as an essentially unidimensional aspect of the food insecurity/hunger phenomenon.

- The measurement models were tested with three different population groups: households with children; those without children but with one or more elderly members (age 60 or older); and those with neither children nor elderly members. Tests showed that a single scale can be used with all three populations.

- An extensive series of tests found the food security scale to have good reliability, including good internal (or content) validity and good external (or construct) validity.

Defining Levels of Severity of Food Insecurity and Hunger

Four categories of food security status are defined, based on the distinct behavioral stages associated with the managed process of food insecurity and hunger:

- ***Food secure*** — Households show no or minimal evidence of food insecurity.

- ***Food insecure without hunger*** — Food insecurity is evident in households' concerns and in adjustments to household food management, including reduced quality of diets. Little or no reduction in household members' food intake is reported.

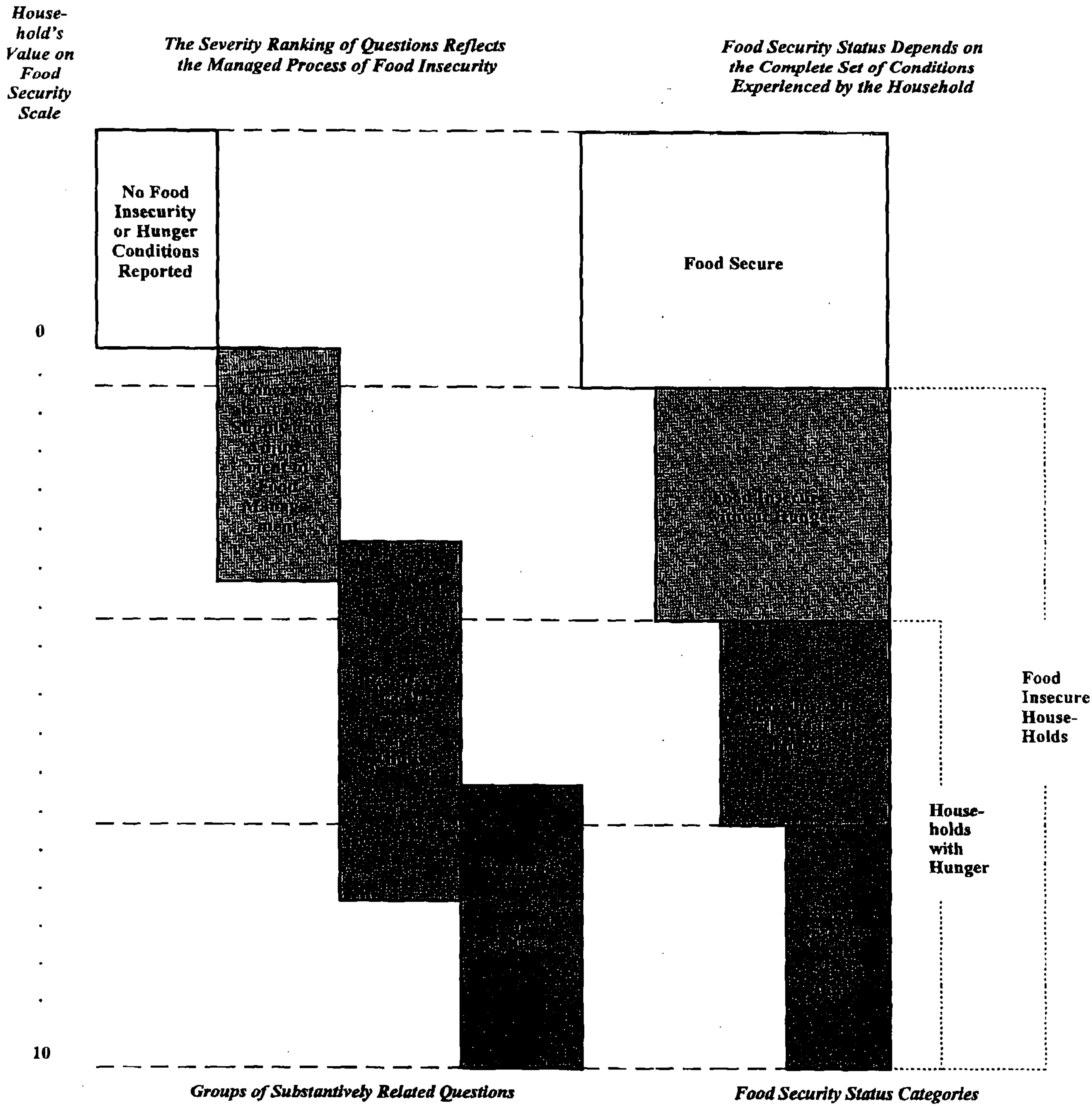
- ***Food insecure with moderate hunger*** — Food intake for adults in the household has been reduced to an extent that it implies that adults have repeatedly experienced the physical sensation of hunger. Such reductions are not observed at this stage for children in the household.

- ***Food insecure with severe hunger*** — Households with children have reduced the children's food intake to an extent that it implies that the children have experienced the physical sensation of hunger. Adults in households with and without children have repeatedly experienced more extensive reductions in food intake at this stage.

Each household is classified into one of the four food security status categories on the basis of its value on the food security scale; Exhibit ES-1 illustrates the process. Households with zero scale score are those reporting no indications at all of food insufficiency or insecurity. Households with low scale values are those reporting very slight experiences of food insecurity. Both these groups are classified as food secure. At the other extreme, households with high scale values are those who report experiencing all or nearly all of the conditions covered by the scale, and are classified as food insecure with severe hunger. A household classified into a particular category must normally have experienced all of the conditions associated with the less-severe categories, plus at least two or three of the conditions associated with the assigned category.

Exhibit ES-1

THE FOOD SECURITY STATUS CATEGORIES

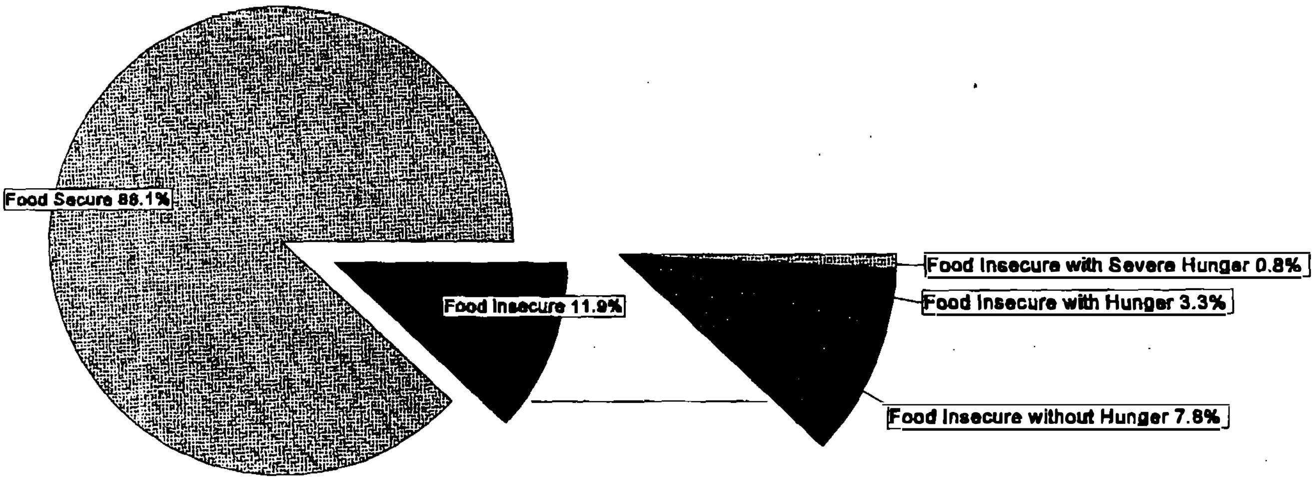


The Prevalence of Food Insecurity and Hunger in the United States

The large majority of American households were food secure in the year ending April 1995. About 88.1 percent of the approximately 100 million households in the United States are classified as food secure over that period, as illustrated in Exhibit ES-2. About 11.9 million households, however, experienced food insecurity at some level during that year.

Exhibit ES-2

PREVALENCE OF FOOD SECURITY AND HUNGER, 1995



Most of the food insecure households are classified as food insecure without hunger (7.8 percent, or 7.8 million households). About 4.1 percent, however, are classified as food insecure with hunger. Thus, one or more adult members of some 4.2 million American households are estimated to have experienced reduced food intake and hunger as a result of financial constraints in the year ending in April 1995.

Among the households experiencing some level of hunger, about 800,000 (0.8 percent) are classified as food insecure with severe hunger. In these households, children as well as adults experienced reduced food intakes and hunger. Adults in these households had very substantial reductions in food intake, such as not eating for a whole day because of lack of money.

Food insecurity is clearly related to income and poverty, but the relationship is not exact. Not all poor households are food insecure, and only a small percentage of households with below-poverty incomes experience actual hunger (13.1 percent). The percent of households estimated to experience food insecurity is somewhat less than the poverty rate for individuals in the same period (12 percent *vs.* 15 percent). More than a third of poor households are classified as food insecure, whereas only 8 percent of households with above-poverty incomes are food insecure, and most of those have near-poverty incomes. Public and private food assistance programs may account for the fact that so many poor households are food secure, but this hypothesis has not yet been analyzed.

Even though food insecurity does not exactly follow income lines, food insecurity tends to be concentrated in population groups that have comparatively high poverty rates. For example, food insecurity rates are higher than average in female-headed households, in households with children (especially young children), in Black and Hispanic households, and in central city areas.

Next Steps

The present analysis represents an important step in the measurement of food security, food insecurity, and hunger, but much more lies ahead for the food security measurement project. A task for the immediate future is to identify subsets of the questions in the CPS Food Security Supplement, and appropriate scaling procedures, so that smaller survey efforts can approximate the scale presented here with reasonable reliability. Another ongoing effort is to refine and strengthen the Food Security Supplement itself, so that the annual surveys planned for the future will yield comparable and increasingly reliable information. In the longer term, FCS and the larger research community will be undertaking several lines of data collection and analysis to understand better the phenomenon of food insecurity and to apply that understanding in the design and implementation of nutrition policies and food assistance programs.

Food Security Measurement Project Reports

Hamilton, W.L., J.T. Cook, W.W. Thompson, L.F. Buron, E.A. Frongillo, C.M. Olson, and C.A. Wehler. "Household Food Security in the United States in 1995: Summary Report of the Food Security Measurement Project." Cambridge, MA: Abt Associates Inc., 1995.

Hamilton, W.L., J.T. Cook, W.W. Thompson, L.F. Buron, E.A. Frongillo, C.M. Olson, and C.A. Wehler. "Household Food Security in the United States in 1995: Technical Report of the Food Security Measurement Project." Cambridge, MA: Abt Associates Inc., 1995.

being sent out by HCFA / ACF

Dear State Health Official:

I am writing to inform you about new guidance from the Immigration and Naturalization Service (INS) that clarifies that the receipt of Medicaid or Children's Health Insurance Program (CHIP) benefits, except in the case of institutionalization for long term care, cannot be considered by INS and State Department officials when making public charge determinations. This guidance should remove a major perceived barrier to enrollment in Medicaid and CHIP, as well as other benefits, for otherwise eligible immigrants.

The INS has issued a Notice of Proposed Rulemaking ["NPRM"] and a corresponding memorandum to INS Regional Directors ["Memorandum"] regarding the receipt of Federal, State, and local public benefits in public charge determinations. Both documents were published in the *Federal Register* on May 26, 1999. The Memorandum states that effective immediately the INS will adopt the public charge definition described in the NPRM until a final rule is published. The definition referenced in the documents will also apply to State Department public charge determinations, per a State Department cable transmitted the same day.

Recent changes in the welfare and immigration laws, along with changes in the Medicaid program, have created some confusion about how Medicaid should be considered in the determination of whether an individual is a "public charge". There have been documented instances in which individuals have been denied re-entry to the United States because they received Medicaid. Moreover, individuals have been told that receipt of Medicaid or CHIP may have a negative effect on their immigration status. These cases have translated into widespread concern in the immigrant community about legal receipt of Medicaid or CHIP, even where the beneficiary is a citizen child.

Under current law, the determination that an alien may be or is likely to become a " public charge" may affect his or her immigration status. The issue arises when an alien seeks to obtain a visa to enter or reenter the United States, or seeks to adjust status from one immigration status to become a lawful permanent resident. Legal immigrants who already have their legal permanent residence status are only faced with public charge determinations if they travel outside of the United States for longer than 180 days (6 months). In rare cases, the issue may also arise in the context of deportation.

The NPRM and the Memorandum clarify that the receipt of Medicaid or CHIP benefits will not be considered in making a public charge determination, except in the case of an alien who is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. This exception will <u>not</u> include short-term rehabilitation stays in long-term care facilities. The INS guidance also states that receipt of Medicaid or CHIP benefits does not prevent immigrants from becoming sponsors under the new affidavit of support.

Since the receipt of Medicaid or CHIP benefits, with the one exception of institutionalization for long-term care, cannot be considered in making a public charge determination, a major barrier to enrollment of immigrant children and families in Medicaid and CHIP is removed. State efforts to enroll these eligible children and families should be greatly facilitated.

With respect to institutionalization for long-term care, these benefits may not be the sole factor in making a public charge determination. The NPRM and Memorandum state that INS and State Department officials must consider the totality of circumstances in determining whether the individual meets the public charge definition of someone who is likely to become primarily dependent on the government for subsistence. At a minimum, this includes consideration of the alien's age, health, family status, assets, resources, financial status, education and skills.

For cases where institutionalization for long-term care is considered in making a public charge determination, the policy announced by INS does not change the policy announced in my letter of December 17, 1997 to State Medicaid Directors regarding release of information to INS or the State Department regarding receipt of Medicaid benefits. In that letter, we indicated that Section 1902 (a)(7) of the Social Security Act requires States to safeguard information regarding applicants for and recipients of Medicaid benefits and prohibits disclosure of that information to an outside entity unless it is directly connected to the administration of the State plan. We have determined that the INS and State Department public charge determinations would not be connected to the administration of the State plan, unless such determinations will directly assist the State in recovering outstanding debts from an alien (most commonly involving overpayments or fraud). States are encouraged to adopt similar restrictions under separate CHIP programs.

We have enclosed copies of the Memorandum, the NPRM, and frequently asked questions and answers about public charge determinations. We strongly encourage you to use your existing children's health insurance outreach efforts to educate providers, eligibility and enrollment counselors, and other state workers who interact with low-income families about this new guidance and its significance for uninsured legal aliens who are potentially eligible for health insurance options.

If you have any questions, please contact your regional office.

Sincerely,

Sally K. Richardson
Director

PATRICK MCDONNELL

(213) 237 4712

(213) 237 4461

FL

TX

CA

NY

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being sent out by all oth HHS prog.

Sample letter to program grantees re: "public charge"-- Programs Not Affected

DATE:

SUBJECT: Guidance on definition of "public charge" in immigration laws

Dear Program Grantee/State Agency:

The Department of Justice (DoJ) published in the *Federal Register* on May 26, 1999 a Notice of Proposed Rulemaking (NPRM) that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable, on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same *Federal Register*, and the Department of State (DoS) has issued a cable to all embassies, implementing immediately the policy set forth in the NPRM.

There has been some confusion among immigrant families, and service and benefit providers, regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The NPRM, along with the INS and DoS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

The DoJ proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) " primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term " assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General Assistance" but which may exist under other names). **The sole exception to the focus on cash assistance is an instance in which Medicaid or a related program would meet this definition by paying for the cost of a person's institutionalization for long-term care.** The NPRM and Guidance clarify that receipt of cash welfare assistance (SSI, TANF, or State/local equivalents) cannot automatically result in a public charge inadmissability determination. The INS and DoS officers must still apply a "totality of the circumstances" test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education, and skills.

_______ is not one of the programs listed above, and it is not identified in the INS or DoJ guidance as providing a cash benefit for income maintenance purposes. Accordingly, an otherwise eligible noncitizen can receive _______ benefits/services under _______ and such

receipt will not be considered by immigration officials as part of the public charge determinations.

Because this policy area is complicated, we encourage grantees to become familiar with the NPRM and Field Guidance published in the *Federal Register*. We are also attaching a short summary of the new policy and a set of frequently asked questions and answers to help grantees/agencies better understand the details of these new public charge policies and which noncitizens may be affected.

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

Sincerely,

[Name and signature of the program director]

Attachments

Sample letter to program grantees re: "public charge" -- Program Affected (TANF)

DATE:

SUBJECT: Guidance on definition of "public charge" in immigration laws

Dear State TANF Agency Head:

The Department of Justice (DoJ) published in the *Federal Register* on May 26, 1999 a Notice of Proposed Rulemaking (NPRM) that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable, on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same *Federal Register*, and the Department of State (DoS) has issued a cable to all embassies, implementing immediately the policy set forth in the NPRM

There has been some confusion among immigrant families, and service and benefit providers, regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The NPRM, along with the INS and DoS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

The INS proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) " primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term " assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General Assistance" but which may exist under other names). **The sole exception to the focus on cash assistance is an instance in which Medicaid or a related program would meet this definition by paying for the cost of a person's institutionalization for long-term care.**

TANF is one of the programs listed above. Accordingly, an otherwise eligible noncitizen who receives cash assistance under TANF may be at risk of being deemed likely to become a public charge. However, there are several reasons why most TANF-eligible noncitizens should not be affected by these public charge rules.

Under Federal law, most noncitizens who are eligible for TANF are legal permanent residents who do not need to adjust their status and are exempt from public charge determinations. For most of these immigrants, they may face public charge determinations (for purposes of admissibility) only in the limited circumstance of traveling outside of the United States for longer than 180 days (6 months). In addition, the NPRM and Guidance re-affirms that the possibility of being found deportable as a public charge due to receipt of cash welfare assistance has always been, and remains, extremely unlikely (see attachments for more details). However, States and/or localities may fund separate cash welfare assistance to noncitizens that still need to adjust their immigration status to legal permanent residence or are not otherwise exempt from public charge determinations. Receipt of these non-Federal TANF, or state/local cash welfare assistance by these immigrants may be considered by INS and DoS officers in determining whether these noncitizens are likely to become public charges.

Further, the NPRM and Guidance clarify that receipt of cash welfare assistance (SSI, TANF, or State/local equivalents) cannot automatically result in a public charge inadmissability determination. The INS and DoS officers must still apply a "totality of the circumstances" test which may include receipt of cash assistance for income maintenance purposes, but also must include several mandatory factors, including age, health, family status, assets and resources, financial status, education, and skills. For example, if a noncitizen received cash assistance in a past period of unemployment, but he or she is currently working and is self-supporting, a public charge determination is not likely to be made. Every admission and adjustment decision is made on a case-by-case basis carefully balancing the totality of the circumstances. The Guidance also clarifies that less significance will be accorded to the receipt of cash welfare assistance if the noncitizen received it in the past, or received or is receiving a small amount of cash assistance (perhaps supplemented by earned income).

Finally, it is important to emphasize that all persons, including all noncitizens, may apply for other benefits such as Medicaid or Food Stamps without having to apply for TANF or other state or local cash assistance. Applicants should be clearly informed regarding their application options, and the different application requirements under each option.

Because this policy area is complicated, we encourage grantees to become familiar with the NPRM and Field Guidance published in the *Federal Register*. We are also attaching a short summary of the new policy and a set of frequently asked questions and answers to help grantees/agencies better understand the details of these new public charge policies and which noncitizens may be affected.

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

Sincerely,

[Name and signature of the program director]

Attachments

[UNOFFICIAL COPY]

BILLING CODE 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 237

INS No. 1989-99; AG Order No.

RIN 1115-AF45

Inadmissibility and Deportability on Public Charge Grounds

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice's (Department's) regulations to establish clear standards governing a determination that an alien is inadmissible or ineligible to adjust status, or has become deportable, on public charge grounds. This proposed rule is necessary to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," the Department seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

DATES: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1989-99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox or Kevin Cummings, Immigration and Naturalization Service, Office of Adjudications, 425 I Street, NW, Washington, DC 20536; telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:

Background and necessity for definition of "public charge"

Recent immigration and welfare reform laws have generated considerable public confusion about whether the receipt of Federal, State, or local public benefits for which an alien may be eligible renders him or her a "public charge" under the immigration statutes governing admissibility, adjustment of status, and deportation. (See 8 U.S.C. 1182(a)(4); 8 U.S.C. 1227(a)(5).) (See also Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, Title V, 110 Stat. 3009-670 (codified as amended in different sections of 8 U.S.C.) (1996); Personal Responsibility and Work

Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193, Title IV, 110 Stat. 2260 (codified as amended generally at 8 U.S.C. 1601, et seq.) (1996).)

Under section 212(a)(4) of the Immigration and Nationality Act (the Act), the determination of whether an individual alien "is likely at any time to become a public charge" is made by a Department of State consular officer at the time the alien's visa application is adjudicated overseas, by an Immigration and Naturalization Service (Service) officer at the time an alien seeks admission into the United States, or by the Service at the time an alien applies for adjustment of status if he or she is already in the United States. 8 U.S.C. 1182(a)(4). The statute further states that the decision shall be "in the opinion of" the consular officer or the Attorney General, who has delegated this authority to the Service. Id.; 8 CFR part 2.1. Under section 237(a)(5) of the Act, an alien is also deportable if he or she "has become a public charge" within 5 years after his or her "date of entry" into the United States for causes not shown to have arisen since entry. 8 U.S.C. 1227(a)(5). An immigration judge will make the determination if any of these issues arise during removal proceedings for an alien.

On August 22, 1996, the President signed PRWORA, known as the welfare reform law. The welfare reform law and its amendments imposed new restrictions on the eligibility of aliens, whether present in the United States legally or illegally, for many Federal, State, and local public benefits. 8 U.S.C. 1601-1646 (as amended). Despite these new restrictions, many legal aliens remain eligible for at least some forms of public assistance, such as Medicaid, Food Stamps, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), among other benefits. Congress also chose not to apply the alien eligibility restrictions in the welfare reform law to emergency medical assistance; short-term, in-kind, non-cash emergency disaster relief; public health assistance related to immunizations and to treatment of the symptoms of a communicable disease; certain in-kind services (e.g., soup kitchens, etc.) designated by the Attorney General as necessary for the protection of life and safety; and assistance under certain Department of Housing and Urban Development (HUD) programs. 8 U.S.C. 1611(b)(1).

Numerous states and localities also have funded public benefits, particularly medical and nutrition benefits, for aliens who are now ineligible for certain Federal public benefits. Congress further authorized states to enact laws after August 22, 1996, that affirmatively provide illegal aliens who would otherwise be ineligible for certain State and local benefits under the welfare reform law with such benefits. 8 U.S.C. 1621(d). A complete overview of all the public benefits and programs that remain available to various categories of aliens under the welfare reform law, as amended, is beyond the scope of this discussion.

Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a "public charge." This tension between the immigration and welfare laws is exacerbated by the fact that "public charge" has never been defined in statute or regulation. Without a clear definition of the term, aliens have no way of knowing which benefits they may safely access without risking deportation or inadmissibility.

Additionally, the Service has been contacted by many State and local officials, Members of Congress, immigrant assistance organizations, and health care providers who are unable to give reliable guidance to their constituents and clients on this issue. According to Federal and State benefit-granting agencies, this growing confusion is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who decline immunization services increase. Concern over the public charge issue is further preventing aliens from applying for available supplemental benefits, such as child care and transportation vouchers, that are designed to aid individuals in gaining and maintaining employment. In short, the absence of a clear public charge definition is undermining the Government's policies of increasing access to health care and helping people to become self-sufficient. The Department seeks to remedy this problem with this proposed rule.

Overview of the proposed rule

First, the proposed rule provides a definition for the ambiguous statutory term "public charge" that will be used for purposes of both admissibility and adjustment of status under section 212(a)(4) of the Act and for deportation under section 237(a)(5) of the Act. Second, the proposed rule describes the kinds of public benefits that, if received, could result in a finding that a person is a "public charge." The proposed rule also provides examples of the types of public benefits that will not be considered in public charge determinations. Third, the proposed rule adopts long-standing principles developed by the case law. As discussed below, the cases have established prerequisites and factors to be considered in making public charge determinations. The rule makes clear that the mere receipt of public assistance, by itself, will not lead to a public charge finding without satisfaction of these additional legal requirements.

<u>The meaning of "public charge" and public benefits that demonstrate primary dependence on the Government for subsistence</u>

Following extensive consultation with benefit-granting agencies, the Department is proposing to define "public charge" to mean an alien who has become (for deportation purposes) or who is likely to become (for admission or adjustment purposes) "primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense." Institutionalization for short periods of rehabilitation does not constitute such primary dependence. This interpretation of "public charge" is reasonable because it is based on the plain meaning of the word "charge," the historical context of public dependency when the public charge immigration provisions were first enacted more than a century ago, and the expertise of the benefit-granting agencies that deal with subsistence issues. It is also consistent with factual situations presented in the public charge case law.

When a word is not defined by statute and legislative history does not provide clear guidance, courts often construe it in accordance with its ordinary or natural meaning as contained in the dictionary. (See, e.g., Sutton v. United Air Lines, Inc., 130 F.3d 893, 898 (10th Cir. 1997), cert. granted, 119 S.Ct. 790 (1999)(citations omitted).) The word "charge" has many meanings in the dictionary, but the one that can be applied unambiguously to a person and best clarifies the phrase "become a public charge" is "a person or thing committed or entrusted to the care, custody, management, or support of another." Webster's Third New International Dictionary of the English Language 377 (1986). The dictionary gives the following apt sentence as an example of usage: "[H]e entered the poorhouse, becoming a county charge." Id. (See also 3 Oxford English Dictionary 36 (2d ed. 1989) (definition # 13 for "charge" - "The duty or responsibility of taking care of (a person or thing); care, custody, superintendence").)

This language indicates that a person becomes a public charge when he or she is committed to the care, custody, management, or support of the public. The dictionary definition suggests a complete, or nearly complete, dependence on the

Government rather than the mere receipt of some lesser level of financial support. Historically, individuals who became dependent on the Government were institutionalized in asylums or placed in "almshouses" for the poor long before the array of limited-purpose public benefits now available existed. This primary dependence model of public assistance was the backdrop against which the "public charge" concept in immigration law developed in the late 1800s.

Although no case has specifically identified the types of public benefits that can give rise to a public charge finding, a definition based on primary dependence on the Government is consistent with the facts found in the deportation and admissibility cases. (See, e.g., Matter of C- R-, 7 I. & N. Dec. 124 (BIA 1956)(deportation based on public mental hospital institutionalization); Matter of Harutunian, 14 I. & N. Dec. 583 (R.C., Int. Dec. 1974)(receipt of old age assistance for principal financial support was an important factor in denying admission).)

The Service has also sought the advice and relied on the expertise of various Federal agencies that administer a wide variety of public benefits. The Service consulted primarily with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and the Department of Agriculture (USDA). The HHS, which administers TANF, Medicaid, CHIP, and many other benefits, has advised that the best evidence of whether an individual is relying primarily on the Government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at Government expense. (See letter to INS Commissioner Doris Meissner from HHS Deputy Secretary Kevin Thurm, dated March 25, 1999)(hereinafter "HHS Letter" and appearing in an appendix to this document.) The USDA, which administers Food Stamps, WIC, and other nutrition assistance programs, and SSA, which administers SSI and other programs, and other benefit-granting agencies have concurred with the HHS advice to the Service that receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government. (See letter to INS Commissioner Doris Meissner from Shirley R. Watkins, USDA Under Secretary for Food, Nutrition and Consumer Services, dated April 15, 1999)(hereinafter "USDA Letter" and appearing in an appendix to this document); letter to Robert L. Bach, INS Executive Associate Commissioner for Policy and Planning from Susan M. Daniels, SSA Deputy Commissioner for Disability and Income Security Programs, dated May 14, 1999)(hereinafter "SSA Letter" and appearing in an appendix to this document.)

Cash assistance for income maintenance includes (1) SSI, (2) cash TANF (other than certain supplemental cash benefits not defined as "assistance" under TANF rules, as provided in §§ 212.103 and 237.13 of this proposed rule), and (3) State or local cash benefit programs for income maintenance (often called "General Assistance" programs, but which may exist under other names). Acceptance of these forms of public cash assistance is one factor that could be considered in determining whether a person is, or is likely to be, a public charge, provided the additional requirements for deportation or inadmissibility discussed later in this Supplementary Section and in the regulation are also met.

According to HHS and other benefit-granting agencies consulted by the Service, non-cash benefits generally provide supplementary support in the form of vouchers or direct services to support nutrition, health, and living condition needs. (See HHS Letter.) These benefits are often provided to low-income working families to sustain and improve their ability to remain self-sufficient. A few examples of these non-cash benefits that do not directly provide subsistence are Medicaid, Food Stamps, CHIP, and their related State analogues, WIC, housing benefits, transportation vouchers, and certain kinds of special-purpose non-cash benefits provided under the TANF program. These forms of benefits, and others discussed below and in the proposed regulation, will not be considered for public charge purposes. The HHS further stated that "...it is extremely unlikely that an individual or family could subsist on a combination of non-cash support benefits or services alone....HHS is unable to conceive of a situation where an individual, other than someone who permanently resides in a long-term care institution, could support himself or his family solely on non-cash benefits so as to be primarily dependent on the [G]overnment." (See HHS Letter.)

The one exception identified by HHS to the principle that non-cash benefits do not demonstrate primary dependence is the instance where Medicaid or related programs pay for the costs of a person's institutionalization for long-term care (other than imprisonment for conviction of a crime). Such institutionalization costs, therefore, may be considered in public charge determinations. However, the proposed rule makes clear that a short period of institutionalization necessary for rehabilitation purposes does not demonstrate that an individual is, or is likely to become, primarily dependent on the Government for public charge purposes.

This distinction between cash benefits that can lead to primary dependence on the Government and non-cash benefits that do not create such dependence is already applied by the State Department with regard to Food Stamps, a non-cash benefit program. The Foreign Affairs Manual (FAM) for consular officers excludes Food Stamps from public charge admissibility consideration because it is an essentially supplementary benefit that does not make recipients dependent on the Government for subsistence. (See 9 FAM section 40.41, N.9.1.) The proposed definition of "public charge" is consistent with this existing State Department policy and that agency's recognition that certain supplemental forms of public assistance should not be considered in a public charge determination.

Receipt of non-cash public benefits that do not demonstrate primary dependence on the Government for subsistence

It has never been Service policy that the receipt of any public service or benefit must be considered for public charge purposes. The nature of the program is important. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, such as WIC, obtaining immunizations, and receiving public emergency medical care typically do not make a person inadmissible or deportable. Non-cash benefits, such as these and others, are by their nature supplemental and frequently support the general welfare. By focusing on cash assistance for income maintenance, the Service can identify those individuals who are primarily dependent on the Government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Certain Federal, State, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. For example, many states provide CHIP to children in families with resources up to 200 percent of the poverty line and sometimes higher. (See HHS Letter at p. 3.) Thus, participation in such programs is not evidence of poverty or dependence.

The proposed rule identifies the major forms of cash benefits that may be considered for public charge purposes and several examples of non-cash benefits that will not be considered. Due to the ever-changing character of the Federal, State, and local public benefits still available to aliens, it is not possible to name every benefit that will or will not be considered for public charge purposes. Aliens and their advisors should carefully consider the nature of the specific public benefits involved. If they could be construed as cash assistance for income maintenance, as distinguished from in-kind services, medical or nutrition benefits, vouchers or other forms of non-cash benefits, then a Service officer may consider their receipt in making a public charge decision, even if the benefit is not specifically addressed by name in the proposed rule. Again, receipt of SSI, cash TANF (except supplemental cash-TANF excluded in the rule), and State or local cash assistance programs for income maintenance (e.g., "General Assistance") will be considered as part of the public charge analysis. Although these benefits are the only examples of "cash assistance for income maintenance" that the Service and other Federal benefit-granting agencies have been able to identify, public comment is requested on whether there are any other specific forms of public cash assistance for income maintenance that should be mentioned. The Service will also consider public benefits (including Medicaid) for supporting aliens who reside in an institution for long-term care (e.g., a nursing home or mental health institution).

A person's mere receipt of any of these forms of cash assistance for income maintenance, or being institutionalized for long-term care, does not necessarily make him or her inadmissible, ineligible to adjust status, or deportable on public charge grounds. As discussed in detail in the next part of this Supplementary Information section, the law requires that a variety of other factors and prerequisites must be considered as well. These additional requirements have been carefully described in both the admissibility and deportation sections of this proposed rule at §§ 212.104, 212.106, 212.108, 212.109, 237.11, 237.15, 237.16, and 237.18. Every public charge decision will continue to be made on a case-by-case basis. In other words, the proposed rule does not create any blanket requirements that individuals who receive public cash assistance or who are institutionalized for long-term care must be removed from the United States or denied admission or adjustment.

Some cash benefits received by aliens from the Government are not intended for income maintenance, and thus will not be considered for public charge purposes under this rule. Examples of such special-purpose cash benefits that do not lead to primary dependence on the Government include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621, et seq.; the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 et seq.; Food Stamp benefits issued in cash (see e.g., 7 U.S.C. 2026(b)); certain educational assistance programs, and non-recurrent, short-term crisis benefits funded in cash by TANF but excluded from the TANF program's definition of "assistance." (See 64 FR 17720, 17880 (April 12, 1999)(codified at 45 CFR 260.31).) In addition, and consistent with existing Service practice, the proposed rule states that cash payments that have been earned, such as benefits under Title II of the Social Security Act, 42 U.S.C. 401 et seq., Government pensions, veterans' benefits, among other forms of earned benefits, do not support a public charge finding.

Other non-cash public benefits that will not be considered and that are listed in the proposed rule include, but are not limited to: Medicaid; CHIP; emergency medical assistance; other health insurance and health services for the testing and treatment of symptoms of communicable diseases; emergency disaster relief; nutrition programs, such as Food Stamps and WIC; housing benefits; energy benefits; job training programs; child care; and non-cash benefits funded under the TANF program. State and local non-cash benefits of a similar nature also will not be considered. It is the underlying nature of the program, not the name adopted in a particular State, that will determine whether it is relevant for public charge consideration.

Additional requirements for public charge determinations

After defining "public charge," the separate admissibility and deportation sections of the proposed rule incorporate principles established by case law and statute for each of those public charge determinations.

Admission and adjustment of status

The provisions that relate to admission and adjustment of status incorporate the "totality of the circumstances" analysis that officers must employ in making a prospective public charge decision. (See, e.g, Matter of Perez, 15 I. & N. Dec. 136, 137 (BIA 1974).) Under section 212(a)(4)(B) of the Act, officers are required to consider specific minimum factors in determining whether the alien's circumstances indicate that he or she is likely to become a public charge. These factors include the alien's age, health, family status, assets, resources, financial status, education, and skills. No single factor, other than the lack of an Affidavit of Support as described below, will determine whether an alien is likely to become a public charge, including past or current receipt of public cash benefits.

In addition, most aliens intending to immigrate or adjust status in family-based and certain employment-based categories after December 19, 1997, are required to file the new Form I-864, "Affidavit of Support Under Section 213A of the Act," signed by their sponsor(s). 8 U.S.C. 1182(a)(4)(C-D); 8 U.S.C. 1183a; 8 CFR part 213a.2. The new Affidavit of Support is legally binding and requires sponsors to maintain the sponsored alien at an annual income of not less than 125 percent of the Federal poverty line for the relevant family size. 8 U.S.C. 1183a(a); 8 CFR part 213a.2. If an Affidavit of Support is not filed, the intending immigrant will be denied admission or adjustment on public charge grounds, unless he or she is exempt from the Affidavit of Support requirement under section 212(a)(4)(C-D) of the Act. As one of the circumstances considered in determining whether a person is likely to become a public charge, officers may also consider any Affidavit of Support filed by a sponsor on behalf of an alien under section 213A of the Act and are encouraged to do so. (See 8 U.S.C. 1182(a)(4)(B)(ii).) Certain categories of aliens seeking to become lawful permanent residents are exempt from the Affidavit of Support requirement--including those who qualify as widows or widowers of citizens or as battered spouses, and their children. Id.

In one significant respect, a public charge determination for purposes of inadmissibility differs from the context of deportability. As the next section describes in detail, deportation on public charge grounds requires the Service to prove that the alien or another obligated party has failed to repay a legal demand for the public benefits at issue. The proposed rule adopts the case-developed doctrine that this failure-to-reimburse prerequisite for deportation does not apply to public charge decisions for admissibility or adjustment of status. (See Matter of Harutunian, 14 I. & N. Dec. at 589-590.) Applicants for admission or adjustment of status, therefore, could be found inadmissible or ineligible to adjust status on public charge grounds even if there is no duty to reimburse the agency that provides the cash assistance. Again, this receipt of public cash benefits will result in such a finding only if the totality of the alien's circumstances, including the minimum factors in section 212(a)(4)(B) of the Act, indicate that he or she is likely to become a public charge.

The provisions on admissibility and adjustment in the proposed rule conclude with a section that lists categories of aliens to whom the public charge ground contained in section 212(a)(4) of the Act does not apply. These categories include refugees, asylees, Amerasians, and certain Nicaraguans, Central Americans, Haitians, and Cuban/Haitian entrants. Although these statutory exemptions are codified throughout the Act and other laws, the rule collects them in one place for the public's ease of reference.

Deportation

The provisions on deportation in the proposed rule incorporate the Attorney General's decision in the leading case, Matter of B-, 3 I. & N. Dec. 323 (AG and BIA 1948), that the Service can prove public charge deportability only if there has been a failure to comply with a legally enforceable duty to reimburse the assistance agency for the costs of care. In addition, the benefit agency's demand for repayment of the specific public benefit must have been made within the alien's initial 5-year period after entry, unless it is shown that demand would have been futile because there was no one against whom payment could be enforced. Matter of L-, 6 I. & N. Dec. 349 (BIA 1954). Under the proposed definition for public charge previously discussed, only the failure to meet an agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care will be considered for deportation. If the alien can show that the causes for which he or she received one of these types of public cash benefits during his or her initial 5 years after entry arose after entry, he or she will not be deportable on public charge grounds. (See 8 U.S.C. 1227(a)(5).)

The requirements and procedures concerning the demand for the repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by State or local governments, not by the Service. This rule does not alter those existing procedures. The Service does not make determinations about which public benefits must be repaid. The Federal, State, and local benefit-granting agencies are responsible for those decisions. The Service may only initiate removal proceedings based on the public charge ground after the benefit agency has chosen to seek repayment, obtained a final judgment, taken all steps to collect on that judgment, and been unsuccessful.

The proposed rule also provides that the Affidavit of Support is relevant to the public charge inquiry for deportation purposes. Under the new Affidavit of Support rules, if a sponsored alien obtains Federal, State, or local means-tested public benefits, the sponsor is obligated to repay those benefits if the benefit-granting agency makes a demand for repayment. (See 8 U.S.C. 1183a(b); 8 CFR parts 213a.2, 213a.4.) Various Federal agencies have designated certain assistance programs that they administer to be "means-tested public benefits." For example, SSI, TANF, Medicaid, Food Stamps, and CHIP have been designated as Federal means-tested public benefits and could give rise to a repayment obligation under the Affidavit of Support. If states designate means-tested public benefits in the future, such benefits also could give rise to such an obligation. However, only demands for the repayment of cash benefits for income maintenance purposes, such as SSI, cash TANF and State General Assistance programs, or the costs of institutionalization for long-term care, will be relevant for deportation determinations under the proposed definition of "public charge."

The Department has determined that the existing three-part Matter of B- test for public charge deportations also applies to demands for repayment of means-tested benefits under the new Affidavit of Support. The Government entity providing the benefit must have a legal right to seek repayment under the Affidavit of Support; the agency must have made a demand for repayment; and the obligated party or parties must have failed to meet this demand. The rule also requires that, before a deportation action may be initiated, the agency seeking repayment must have taken all steps necessary to obtain and enforce a final judgment requiring the sponsor or other person responsible for the debt to pay. Without such a requirement, an alien could be wrongly deported as a public charge based on a debt that a court might later determine was not legally enforceable. Although the demand for repayment must be made within 5 years of the alien's admission, there is no time limit on obtaining a final judgment as long as it is obtained prior to the public charge proceedings.

Welfare reform and other significant factors that limit potential for aliens to become "public charges"

The proposed rule is not expected to alter substantially the number of aliens who will be found deportable or inadmissible as public charges. Deportations on public charge grounds have always been rare due to the strict Matter of B- requirements that agencies first must demand repayment, assuming they have a legal right to do so, and the obligated party or parties must have failed to pay. This is unlikely to change.

Several recently enacted welfare and immigration reform measures have also contributed to reducing the possibility that aliens will be found likely to become public charges under section 212(a)(4) of the Act. Due to the increased restrictions of the welfare reform law, as amended, many aliens are no longer eligible to receive some public benefits formerly available to them. For example, one significant new restriction prohibits legal, "qualified aliens" from receiving Federal means-tested public benefits, with some exceptions, for 5 years if they arrive after August 22, 1996. 8 U.S.C. 1613. Combined with the 5-year limitation in section 237(a)(5) of the Act, the welfare reform restriction means fewer aliens are likely to become deportable public charges. Under new "deeming" rules, some aliens who might otherwise have been able to obtain certain Federal, State, or local means-tested public benefits can no longer do so because their sponsors' resources may now count as resources available to the aliens (i.e., the sponsors' resources are "deemed" available to the alien), which would normally raise the alien's income over the benefit eligibility threshold. 8 U.S.C. 1631, 1632. In addition, the requirement of a legally binding Affidavit of Support obligating sponsors to support their immigrating family members above the poverty level before they will be granted admission or adjustment has significantly raised the bar for people who might, in the past, have entered and become public charges. These new laws work together to limit the potential for immigrants to become dependent on the Government. The proposed rule defining "public charge" will not change or negatively affect the operation of these provisions.

Conclusion

The Department believes that this rule will provide for better overall administration of the public charge provisions of the Act. It will also help alleviate the increasing, negative public health and nutrition consequences caused by the confusion over the meaning of "public charge." The rule will provide rules of decision that will apply in proceedings before the Executive Office for Immigration Review (EOIR), as well as proceedings before the Service. The Department anticipates, based on the

Service's consultations, that the State Department will adopt the same view and will issue guidance to consular officers accordingly.

At a later date, the Department plans to propose additional revised sections for part 212 concerning the other grounds of inadmissibility under section 212 of the Act. Sections 212.100 through 212.112 of this proposed rule are being issued in advance as Subpart G. The Department will amend the labeling of this subpart or section numbers, if necessary, at the time of final publication of any revised sections to this part.

Regulatory Flexibility Act

The Attorney General has determined, in accordance with 5 U.S.C. 605(b), that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule will apply to individual aliens, who are not within the definition of small entities established by 5 U.S.C. 601(6).

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. 2 U.S.C. 658(7)(A)(ii).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f)(4) of E. O. 12866, Regulatory Planning and Review. Accordingly, this proposed rule has been submitted to the Office of Management and Budget for review.

Executive Order 12612

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E. O. 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in subsections 3(a) and 3(b)(2) of E. O. 12988.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

Paperwork Reduction Act of 1995

This proposed rule does not specifically impose an information collection burden on the public separate from existing provisions of the Act or other regulations. However, the Service anticipates revising the Form I-485, "Application to Register Permanent Status or Adjust Status," as necessary, to make it consistent with the final public charge rule. The Department requests public comment on proposed revisions to the I-485, or any other immigration forms, that may be necessary as a result of this public charge rule.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Admission, Adjustment of status, Public charge determinations.

8 CFR Part 237

Administrative practice and procedure, Aliens, Deportation, Public charge determinations.

Accordingly, chapter I of title 8 of the Code of Federal Regulations, is proposed to be amended as follows:

Part 212--Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole.

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1183, 1183a, 1184, 1187, 1225, 1226, 1227, 1228, 1252, 8 CFR part 2, 8 CFR part 213A

2. Sections 212.1 through 212.15 are designated as Subpart A.

3. The heading for Subpart A is added to read as follows:

Subpart A - General

4. Part 212 is amended by adding and reserving Subparts B through F.

5. Subpart G is added to read as follows:

Subpart G--Public Charge Inadmissibility

Sec.

212.100 What issues do §§ 212.100 through 212.112 address?

212.101 What law governs a determination of whether I am inadmissible on public charge grounds?

212.102 What is the meaning of "public charge" for admissibility and adjustment of status purposes?

212.103 What specific benefits are considered to be "public cash assistance for income maintenance"?

212.104 What factors will make me inadmissible or ineligible to adjust status on public charge grounds?

212.105 Are there any forms of public assistance that I can receive without becoming inadmissible as a public charge if I should later apply for a visa, admission, or adjustment of status?

212.106 If I have received public cash assistance for income maintenance, have been institutionalized for long-term care at Government expense, or have been deemed a public charge in the past, will I be inadmissible or ineligible to adjust status on public charge grounds now or in the future?

212.107 Will I be required to pay back any public benefits that I have received before an immigration officer or immigration judge will find me admissible or eligible to adjust status?

212.108 Are there any special requirements for aliens who are seeking to immigrate based on a family relationship or on employment?

212.109 Will I be considered likely to become a public charge because my spouse, parent, child, or other relative has become, or is likely to become, a public charge or has received public cash assistance?

212.110 Are there any individuals to whom the public charge ground of inadmissibility does not apply?

212.111 Are there any waivers for the public charge ground of inadmissibility?

212.112 Is it possible to provide a bond or cash deposit to ensure that I will not become a public charge?

Subpart G--Public Charge Inadmissibility

§ 212.100 What issues do §§ 212.100 through 212.112 address?

(a) Sections 212.100 through 212.112 of this part address the public charge grounds of inadmissibility under section 212(a)(4) of the Act. It applies to all aliens seeking admission to the United States or adjustment of status to lawful permanent residency, except for the categories of aliens described in § 212.110 or other categories of aliens who may be exempted by law.

(b) In §§ 212.101 through 212.112 of this part, the terms "I," "me" and "my" in the section headings and "you" and "your" in the text of each section refer to an alien who may be inadmissible or ineligible to adjust status on public charge grounds.

§ 212.101 What law governs a determination of whether I am inadmissible on public charge grounds?

The public charge grounds of inadmissibility are found under section 212(a)(4) of the Act. A Department of State (State

Department) consular officer makes the public charge determination if you are applying for a visa overseas. A Service officer makes the public charge determination if you are applying for admission at a port-of-entry to the United States or for adjustment of status to that of a lawful permanent resident. Under section 212(a)(4) of the Act, you will be found inadmissible or ineligible to adjust status if, "in the opinion of" the consular officer or Service officer making the decision, you are considered "likely at any time to become a public charge." If you have been placed in removal proceedings where issues of your admissibility or eligibility to adjust status arise, an immigration judge will decide whether you are likely to become a public charge.

§ 212.102 What is the meaning of "public charge" for admissibility and adjustment of status purposes?

(a) (1) "Public charge" for purposes of admissibility and adjustment of status means an alien who is likely to become primarily dependent on the Government for subsistence as demonstrated by either:

(i) The receipt of public cash assistance for income maintenance purposes, or

(ii) Institutionalization for long-term care at Government expense (other than imprisonment for conviction of a crime).

(2) Institutionalization for short periods for

rehabilitation purposes does not demonstrate primary dependence on the Government.

(b) For purposes of §§ 212.100 through 212.112 of this part:

(1) The term "government" refers to any Federal, State or local government entity or entities.

(2) The term "cash" includes not only funds you receive in the form of cash from a government agency, but also funds received from a government agency by check, money order, wire transfer, electronic funds transfer, direct deposit, or any other form that can be legally converted to currency, provided that the funds are for purposes of maintaining your income.

(c) As described in §§ 212.103(c) and 212.105 of this part, some forms of public assistance will not be considered for public charge purposes because they do not result in primary dependence on the Government. Immigration officers and immigration judges must also consider many other factors, as described in §§ 212.101-212.112 of this part, before making a final public charge determination.

§ 212.103 What specific benefits are considered to be "public cash assistance for income maintenance"?

(a) Public benefits considered to be "public cash assistance for income maintenance" include:

(1) Supplemental Security Income (SSI), 42 U.S.C. 1381, et seq.;

(2) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601, et seq., but not including supplemental cash benefits excluded from the term "assistance" under TANF program rules (see 64 FR 17880, April 12, 1999)(codified at 45 CFR 260.31) or any non-cash benefits and services provided by the TANF program; and

(3) State and local cash assistance programs for income maintenance (often called State "General Assistance," but which may exist under other names).

(b) Due to the constantly changing nature of the numerous Federal, State and local benefits for which you may be eligible, it is not possible to give a complete listing of such benefits that could be considered for public charge purposes. If you are receiving, or contemplate receiving, any public cash assistance (as "cash" is described in § 212.102(b)(2)) for purposes of maintaining your income, an immigration officer or immigration judge may consider it as a factor in making a decision as to whether you are likely to become primarily dependent on the Government.

(c) Some forms of cash benefits are not intended for income maintenance and, therefore, will not be considered for public charge purposes under §§ 212.101 through 212.112. Examples of such cash benefits that are supplemental in nature include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C.

8621 et seq.; the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 et seq.; Food Stamp benefits issued in cash (see, e.g., 7 U.S.C. 2026(b)); certain educational assistance benefits; and non-recurrent, short-term crisis benefits, and other services funded in cash by the TANF program that do not fall within the TANF program's definition of "assistance," as described in paragraph (a)(2) of this section.

(d) Cash benefits that have been earned continue to be irrelevant to the public charge ground of inadmissibility. A few examples of such earned benefits that will not be considered include benefits under Title II of the Social Security Act, 42 U.S.C. 401 et seq., government pension benefits, and veterans' benefits.

§ 212.104 What factors will make me inadmissible or ineligible to adjust status on public charge grounds?

(a) Under section 212(a)(4)(B) of the Act, the immigration officer or consular official must consider, "at a minimum," your age, health, family status, assets, resources, financial status, education, and skills in making a decision on whether you are likely to become a public charge. The decision-maker may also consider any Affidavit of Support filed by your sponsor(s) on your behalf under section 213A of the Act and 8 CFR part 213a. The decision-maker will consider the "totality of circumstances" before determining whether you are likely to become a public charge. No single factor, other than the lack of a sufficient Affidavit of Support as required by section 212(a)(4)(C) and (D) of the Act, will control this decision, including past or current receipt of public cash benefits, as described in paragraph (b) of this section.

(b) You are inadmissible or ineligible to adjust status on public charge grounds if, after consideration of your case in light of all of the minimum factors in section 212(a)(4)(B) of the Act, any Affidavit of Support (Form I-864) filed on your behalf under 8 CFR part 213a, and any other facts that may be relevant, the immigration officer, consular officer, or immigration judge determines that it is likely that you will become primarily dependent for your subsistence on the Government, at any time, as demonstrated by:

(1) Receipt of public cash assistance for income maintenance, including SSI, cash TANF (other than cash TANF benefits excluded in § 212.103(a)(2)), or State or local cash benefit programs for income maintenance, such as "General Assistance"; or

(2) Institutionalization for long-term care (other than imprisonment for conviction of a crime) at Government expense. Institutionalization for short-term rehabilitation purposes does not demonstrate primary dependence on the Government.

§ 212.105 Are there any forms of public assistance that I can receive without becoming inadmissible as a public charge if I should later apply for a visa, admission, or adjustment of status?

(a) The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense. Institutionalization for short periods for rehabilitation purposes will not be considered. Non-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government.

(b) Although it is not possible to list all of the non-cash public benefits that will not be considered, you will not risk being found inadmissible as an alien likely to become a public charge by receiving non-cash benefits under the following programs or benefit categories:

(1) The Food Stamp program, 7 U.S.C. 2011, et seq.,

(2) The Medicaid program, 42 U.S.C. 1396, et seq. (other than payments under the Medicaid program for long-term institutional care);

(3) The Children's Health Insurance Program (CHIP), 42 U.S.C. 1397aa, et seq.;

(4) Health insurance and health services (other than public benefits for costs of institutionalization for long-term care),

including, but not limited to, emergency medical services, public benefits for immunizations and for testing and treatment of symptoms of communicable diseases, and use of health clinics;

(5) Nutrition programs, including, but not limited to, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), 42 U.S.C. § 1786; and programs that operate under the National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act, 42 U.S.C. 1771 et seq.; and the Emergency Food Assistance Act, 7 U.S.C. 7501 et seq.;

(6) Emergency disaster relief;

(7) Housing benefits;

(8) Child care services;

(9) Energy benefits, such as LIHEAP, 42 U.S.C. 8621 et seq.;

(10) Foster care and adoption benefits;

(11) Transportation vouchers or other non-cash transportation services;

(12) Educational benefits, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;

(13) Non-cash benefits or services funded by the TANF program;

(14) Job training programs;

(15) State and local supplemental, non-cash benefits that serve purposes similar to those of the Federal programs listed in this paragraph;

(16) Any other Federal, State, or local public benefit program, under which benefits are provided in-kind, through vouchers, or any other medium of exchange other than payment of cash assistance for income maintenance to the eligible person.

(c) Although the non-cash public benefits described in paragraph (b) of this section will not be considered for admissibility purposes, you may still be inadmissible or ineligible to adjust status if, in the opinion of the officer making the decision, you are likely to become a public charge following his or her analysis of the totality of the circumstances, as described in § 212.104. This includes consideration of all the minimum statutory factors described in section 212(a)(4)(B) of the Act.

§ 212.106 If I have received public cash assistance for income maintenance, have been institutionalized for long-term care at Government expense, or have been deemed a public charge in the past, will I be inadmissible or ineligible to adjust status on public charge grounds now or in the future?

(a) Such past circumstances do not necessarily mean that you will be found inadmissible or ineligible to adjust status on public charge grounds based on a present application for admission or adjustment. The immigration officer, consular officer, or immigration judge who makes the decision must consider all of the relevant facts of your case. Past receipt of public cash assistance or institutionalization under circumstances that made you a public charge would support a finding that you are inadmissible only if, in light of all the factors listed in § 212.104, it is likely that you will continue to be, or become again, a public charge in the future.

(b) The length of time during which you previously received benefits or were institutionalized at Government expense, as well as the distance in time from your current application for admission or adjustment, are significant to the decision. Public cash benefits received in the recent past are more predictive of your likelihood to become a public charge in the future than benefits received in the more distant past. Similarly, public cash benefits received for longer time periods are more predictive than benefits received in the past for shorter periods. In addition, small amounts of public cash assistance for income maintenance received in the past are weighed less heavily than greater amounts under the "totality of the circumstances" analysis. The negative implication of your past receipt of public cash benefits for income maintenance or institutionalization for long-term care, however, may be overcome by positive factors in your case demonstrating that you are unlikely to become primarily dependent on the Government for subsistence.

<u>§ 212.107 Will I be required to pay back any public benefits that I have received before an immigration officer or immigration judge will find me admissible or eligible to adjust status?</u>

Immigration officers and immigration judges do not have the authority to require that you reimburse public benefit-granting agencies for assistance that you have received. However, they may consider your receipt of public cash assistance for income maintenance purposes or your institutionalization for long-term care at Government expense as factors in deciding whether you are likely to become a public charge in the future, regardless of whether the agency granting the benefit has sought reimbursement from you or any other party obligated to pay back the benefit on your behalf. If there is a final judgment against you for failure to repay the costs of public cash benefits or institutionalization that has not been satisfied, immigration officers or judges may also consider this failure to repay as one of the relevant factors in deciding whether you are likely to become a public charge.

<u>§ 212.108 Are there any special requirements for aliens who are seeking to immigrate based on a family relationship or on employment?</u>

Under section 212(a)(4)(C) and (D) of the Act, you must file an "Affidavit of Support Under Section 213A of the Act" (Form I-864) from your sponsor(s) in accordance with section 213A of the Act and 8 CFR part 213a if you are seeking to immigrate in certain family-based visa categories or as an employment-based immigrant who will work for a relative or a relative's firm. If you do not file the Affidavit of Support as required, you will be inadmissible or ineligible to adjust status on public charge grounds. Certain widows and widowers, battered spouses and children of U.S. citizens and lawful permanent residents are currently exempt under section 212(a)(4)(C) of the Act from filing an Affidavit of Support.

§ 212.109 Will I be considered likely to become a public charge because my spouse, parent, child, or other relative has become, or is likely to become, a public charge or has received public cash assistance?

(a) The fact that one, or all, of your close relatives has become, or is likely to become, a public charge will not make you inadmissible as a public charge, unless the evidence shows that you, individually, are likely to become a public charge.

(b) Public cash benefits for income maintenance received by your relatives will not be attributed to you for admission or adjustment purposes, unless they also represent your sole support. If such benefits are attributed to you because they are your sole support, they must be considered along with all of the other factors related to your case, as described in § 212.104, before you may be found inadmissible as a public charge.

§ 212.110 Are there any individuals to whom the public charge ground of inadmissibility does not apply?

(a) The Act and various other statutes contain exceptions to the public charge ground of inadmissibility for the following categories of aliens:

(1) Refugees and asylees at the time of admission and adjustment of status to legal permanent residency according to sections 207(c)(3) and 209(c) of the Act;

(2) Amerasian immigrants at admission as described in the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, section 584, contained in section 101(e), Pub. L. 100-202, 101 Stat. 1329-183 (1987) (as amended), 8 U.S.C. 1101 note;

(3) Cuban and Haitian entrants at adjustment as described in the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, Title II, section 202, 100 Stat. 3359 (1986)(as amended), 8 U.S.C. 1255a note;

(4) Nicaraguans and other Central Americans who are adjusting status as described in the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L. 105-100, section 202(a), 111 Stat. 2193 (1997)(as amended), 8 U.S.C. 1255 note;

(5) Haitians who are adjusting status as described in the Haitian Refugee Immigration Fairness Act of 1998, section 902, Title IX, Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255 note;

(6) Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249.

(b) Other categories of aliens may also be excepted from the public charge provisions in section 212(a)(4) of the Act by subsequent legislation. The list of such aliens in paragraph (a) of this section may not include every excepted category.

(c) In addition, aliens who have been previously admitted for lawful permanent residence ("LPRs") and who re-enter the United States are not applicants for admission and, therefore, are not subject to the grounds of inadmissibility, unless they are covered by one of the six categories described in section 101(a)(13)(C) of the Act, including being absent from the United States for over 180 days.

§ 212.111 Are there any waivers for the public charge ground of inadmissibility?

There are no waivers available for the public charge grounds of inadmissibility, except for the waiver for certain aged, blind, or disabled applicants for adjustment of status under section 245A of the Act. (See 8 U.S.C. 1255a(d)(2)(B)(ii)(IV).) However, various laws have exempted certain categories of aliens from the requirements of section 212(a)(4) of the Act. Several of these categories are described in § 212.110(a).

§ 212.112 Is it possible to provide a bond or cash deposit to ensure that I will not become a public charge?

The Service may accept a suitable, legally binding public charge bond or cash deposit on your behalf that meets the conditions set forth in 8 U.S.C. 1183 and in 8 CFR part 213. Acceptance of such a bond or cash deposit is discretionary.

6. Part 237 is added to read as follows:

PART 237--DEPORTABLE ALIENS

Subpart A--Public Charge Deportability

Sec.

237.10 What issues do §§ 237.10 through 237.18 address?

237.11 What law governs whether I am deportable on public charge grounds?

237.12 What does it mean to be a "public charge," for purposes of removal as a deportable alien?

237.13 What specific benefits are considered to be "public cash assistance for income maintenance?"

237.14 Are there any forms of public benefits that I can receive without becoming deportable as a public charge?

237.15 What other conditions must be met for me to be deportable as a public charge?

237.16 Is the "Affidavit of Support Under Section 213A of the Act" (Form I-864) relevant to removal on public charge grounds of deportation?

237.17 Does the 5 year period in section 237(a)(5) of the Act run only from my first entry into the United States?

237.18 Will I be considered a public charge because my spouse, parent, child, or other relative has accepted public benefits or has become a public charge?

Subpart B--[Reserved]

Authority: 8 U.S.C. 1227(a)(5), 8 U.S.C. 1183a, 8 CFR part 213A

§ 237.10 What issues do §§ 237.10 through 237.18 address?

(a) Sections 237.10 through 237.18 of this part address the public charge ground of deportation under section 237(a)(5) of the Act.

(b) In §§ 237.10 through 237.18 of this part, the terms "I," "me" and "my" in the section headings and "you" and "your" in the text of each section refer to an alien who may be deportable as a public charge.

§ 237.11 What law governs whether I am deportable on public charge grounds?

(a) Section 237(a)(5) of the Act describes which aliens are deportable on public charge grounds. If the Service brings a removal proceeding against you charging that you are subject to deportation on public charge grounds, the Service must prove that you became a public charge within 5 years of your entry to the United States.

(b) If you can prove that the causes that led to your becoming a public charge arose after your entry to the United States, you will not be deported.

§ 237.12 What does it mean to be a "public charge" for purposes of removal as a deportable alien?

(a)(1) "Public charge" for purposes of removal as a deportable alien means an alien who has become primarily dependent on the Government for subsistence as demonstrated by either:

(i) The receipt of public cash assistance for income maintenance purposes, or

(ii) Institutionalization for long-term care at Government expense (other than imprisonment for conviction of a crime).

(2) Institutionalization for short periods for rehabilitation purposes does not demonstrate primary dependence on the Government.

(b) For purposes of §§ 237.10 through 237.18 of this part:

(1) The term "government" refers to any Federal, State or local government entity or entities.

(2) The term "cash" includes not only funds you receive in the form of cash from a government agency, but also funds received from a government agency by check, money order, wire transfer, electronic funds transfer, direct deposit, or any other form that can be legally converted to currency, provided that the funds are for purposes of maintaining your income.

(c) As described in §§ 237.13(c) and 237.14 of this part, some forms of public assistance will not be considered for public charge purposes because they do not result in primary dependence on the Government. In addition, you will not be found deportable on public charge grounds unless the other conditions in §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 applies to your case) have been met.

§ 237.13 What specific benefits are considered to be "public cash assistance for income maintenance"?

(a) Public benefits considered to be "public cash assistance for income maintenance" include:

(1) Supplemental Security Income (SSI), 42 U.S.C. 1381, et seq.;

(2) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601, et seq., but not including supplemental cash benefits excluded from the term "assistance" under TANF program rules (see 64 FR 17880, April 12, 1999)(codified at 45 CFR

260.31) or any non-cash benefits and services provided by the TANF program; and

(3) State and local cash assistance programs for income maintenance (often called State "General Assistance," but which may exist under other names).

(b) Due to the constantly changing nature of the numerous Federal, State and local benefits for which you may be eligible, it is not possible to give a complete listing of such benefits that could be considered for public charge purposes. If, within 5 years of your entry into the United States, you have received any public benefit that is provided in the form of cash (as that term is described in § 237.12(b)(2) of this part) for purposes of maintaining your income, it may serve as a basis for your deportation on public charge grounds, provided that all of the requirements of section 237(a)(5) of the Act and the other conditions for deportation described in §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 applies to your case) have been satisfied.

(c) Some forms of cash benefits are not intended for income maintenance, and therefore, will not be considered for public charge purposes under §§ 237.10 through 237.18 of this part. Examples of such cash benefits that are supplemental in nature include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 et seq.; the Child Care and Development Block

Grant Program (CCDBGP), 42 U.S.C. 9858 et seq.; Food Stamp benefits issued in cash (see, e.g., 7 U.S.C. 2026(b)); certain educational assistance benefits; and non-recurrent, short-term crisis benefits, and other services funded in cash by the TANF program that do not fall within the TANF program's definition of "assistance," as described in paragraph (a)(2) of this section.

(d) Cash benefits that have been earned continue to be irrelevant to the public charge ground of inadmissibility. A few examples of such earned benefits that will not be considered include benefits under Title II of the Social Security Act, 42 U.S.C. 401 et seq., government pension benefits, and veterans' benefits.

<u>§ 237.14 Are there any forms of public benefits that I can receive without becoming deportable as a public charge?</u>

(a) The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense. Institutionalization for short periods for rehabilitation purposes will not be considered. Non-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government for subsistence.

(b) Although it is not possible to list all of the non-cash public benefits that will not be considered, you will not risk being found deportable as a public charge by receiving non-cash benefits under the following programs or benefit categories:

(1) The Food Stamp program, 7 U.S.C. 2011, et seq.,

(2) The Medicaid program, 42 U.S.C. 1396, et seq. (other than payments under the Medicaid program for long-term institutional care);

(3) The Children's Health Insurance Program (CHIP), 42 U.S.C. 1397aa, et seq.;

(4) Health insurance and health services (other than public benefits for costs of institutionalization for long-term care), including, but not limited to, emergency medical services, public benefits for immunizations and for testing and treatment of symptoms of communicable diseases, and use of health clinics;

(5) Nutrition programs, including, but not limited to, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), 42 U.S.C. § 1786; and programs that operate under the National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act, 42 U.S.C. 1771 et seq.; and the Emergency Food Assistance Act, 7 U.S.C. 7501 et seq.;

(6) Emergency disaster relief;

(7) Housing benefits;

(8) Child care services;

(9) Energy benefits, such as LIHEAP, 42 U.S.C. 8621 et seq.;

(10) Foster care and adoption benefits;

(11) Transportation vouchers or other non-cash transportation services;

(12) Educational benefits, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;

(13) Non-cash benefits or services funded by the TANF program;

(14) Job training programs;

(15) State and local supplemental, non-cash benefits that serve purposes similar to those of the Federal programs listed in this paragraph;

(16) Any other Federal, State, or local public benefit program, under which benefits are provided in-kind, through vouchers, or any other medium of exchange other than payment of cash benefits for income maintenance to the eligible person.

§ 237.15 What other conditions must be met for me to be deportable as a public charge?

(a) In addition to the requirements of section 237(a)(5) of the Act, and except as provided in paragraph (b) of this section, you are not deportable as a public charge unless the Service shows that:

(1) The Government entity that provided, or is providing, either the public cash assistance for your income maintenance as

described in §§ 237.12 and 237.13 of this part or the costs of institutionalization for your long-term care as described in § 237.12, has a legal right to seek repayment of those benefits against either you or another obligated party, such as a family member or a sponsor; and

(2) Within 5 years of your entry to the United States, the public entity providing the benefit demanded that you or another obligated party repay the benefit; and

(3) You or another obligated party failed to repay the benefit demanded;

(4) There is a final administrative or court judgment obligating you or another party to repay the benefit. (As long as the demand for repayment under paragraph (a)(2) of this section occurred within 5 years of your entry, the final judgment may be rendered against you or another obligated party at any time thereafter);

(5) The benefit-granting agency, or other applicable Government entity, has taken all actions necessary to enforce the judgment, including all collection actions.

(b) If a legal right to seek repayment of the public benefits described in §§ 237.12 and 237.13 of this part is established, but the Service proves that there was no one against whom repayment could be enforced, thereby making a demand for repayment futile, then the Service need not show that a demand was made and a final judgment for repayment of the public benefits rendered.

§ 237.16 Is the "Affidavit of Support Under Section 213A of the Act" (Form I-864) relevant to removal on public charge grounds of deportation?

(a) The "Affidavit of Support Under Section 213A of the Act" (Form I-864) required under section 213A of the Act and 8 CFR part 213a is relevant to removal on the public charge grounds for deportation in certain circumstances. Section 213A of the Act provides that the Affidavit of Support may support a legally enforceable claim against your sponsor(s) for repayment of certain Federal, State, or local means-tested public benefits provided to you. You may be found deportable on public charge grounds if the Service proves that:

(1) An Affidavit of Support under Section 213A of the Act and 8 CFR part 213a was filed on your behalf and is currently in effect; and

(2) Within 5 years after your admission to the United States, you

(i) Obtained SSI, cash TANF benefits, or other Federal, State, or local public benefits that were cash assistance for income maintenance purposes and that, at the time the Affidavit of Support was signed, had been designated as "means-tested public benefits" by the Government entity responsible for administering the benefit; or

(ii) Were institutionalized for long-term care at Government expense (other than imprisonment for conviction of a crime); and

(3) Such benefits have not been repaid as provided in § 237.15.

<u>§ 237.17 Does the 5-year period in section 237(a)(5) of the Act run only from my first entry into the United States?</u>

(a) The 5-year period begins again each time you enter the United States, unless you are a returning alien lawfully admitted for permanent residency (an "LPR") who is not considered an applicant for admission as described in paragraph (b) of this section.

(b) If you have been lawfully admitted for permanent residence (LPR status), you are not considered an applicant for admission upon return to the United States after a trip abroad unless you are covered by one of the categories specified in section 101(a)(13)(C) of the Act, including an absence of 180 days or more from the United States. If you are not covered by one of the categories listed in section 101(a)(13)(C) of the Act, the 5-year period for public charge deportation purposes would still be counted from your last entry to the United States.

§ 237.18 Will I be considered a public charge because my spouse, parent, child, or other relative has accepted public benefits or has become a public charge?

(a) The fact that one, or all, of your close relatives has received public cash benefits for income maintenance, or has become a public charge, will not make you deportable as a public charge, unless the evidence shows that you, individually, have become a public charge.

(b) Public cash benefits for income maintenance received by your relatives will not be attributed to you for deportation purposes, unless they also represent your sole support. If such benefits are attributed to you because they are your sole support, all of the requirements of §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 is applicable to your case) must also be met before you may be found deportable as a public charge.

Subpart B [Reserved]

Dated:

Janet Reno
Attorney General

Appendix to Preamble

The following are the texts of letters received by Immigration and Naturalization Service officials from officials from the Department of Health and Human Services, the Social Security Administration, and the Department of Agriculture.