

CENTER FOR HEALTH POLICY RESEARCH

JB-A

*Very interesting...
what do you as a
lawyer say? This
is only copy.*

CHR

MEMORANDUM

To: Dennis Hayashi, OCR *CH*
From: Sara Rosenbaum
Subject: Prohibitions on Aid to Non-Citizens under Welfare Reform
Date: September 13, 1996

The provisions of the Act that deny coverage for undocumented and future legal entrants (Sections 401 and 403) are drafted in such a way that most public health programs (and I would guess many social service programs) should not be affected because they do not serve individuals but instead are community-wide programs.

Despite this fact, HHS seems to be running into real problems with the justice department. As people from HHS have called me to get my read on the statute, I have suggested a "Law 101" approach that entails preparing a side-by-side chart which compares the language of section 401 and 403 to each program about which there is disagreement.

Section 401. Section 401 applies to federal public benefits that are furnished to individuals. Specifically, Section 401(a) provides that "[a]ny alien who is not a qualified alien is not eligible for any Federal public benefit." Section 401(c) defines a "Federal public benefit" as "any grant...provided by an agency...or by appropriated funds of the United States; and any***benefit for which payments or assistance are provided to an individual, household or family eligibility unit***". Thus, in order to be a prohibited federal public benefit, the benefit must flow to an individual via an individual grant or to an eligible assistance unit.

The exceptions list in 401 does not suggest a contrary result. In my opinion the exceptions list merely pulls out of the prohibited group those individual benefits that Congress either desired to exempt or that it authorized the Attorney General to exempt. The exceptions categories under section 402 add nothing to the meaning of the definition under section 403.

Section 403. Section 403 bars future legal entrants from receiving "federal means tested" benefits. There is no definition of what constitutes a federally means tested benefit. Therefore, the Attorney General must derive a meaning for the phrase based on a common-sense reading of the statute.

The purpose of this section of the statute appears to be to end aid to individuals who are not U.S. citizens (or who do not fall into classification exceptions for qualified aliens) under programs that are designed to assist eligible individuals. The Attorney General would be acting within her discretion if she were to derive a meaning based on existing welfare law. Under existing entitlement and welfare law, a federal means tested benefit would consist of benefits (whether cash or in-kind services) that are furnished to eligible individuals, families or household units, and for which individual eligibility is conditioned on income. Nothing about the exceptions list in Section 403 suggests a contrary result; once again, the list indicates exceptions to the individual benefit prohibition and does not provide direct aid in defining what constitutes a federal means tested benefit..

Programs under the Public Health Service Act (and I presume other federal programs as well) are aimed at communities not individuals. The aid flows to a community and not to any particular individual in the community. None of the programs creates any individual right or expectation of assistance in the sense of either Suter v Artist M. or Virginia Hospital Association v Wilder. In the absence of the ability of any individual to claim a right to assistance, coupled with a statutory structure that targets program aid to communities, I would conclude that the prohibitions do not reach these programs.

In sum, the wording of the statute and the sparse legislative history indicate that neither sections 401 nor 403 describe programs that are appropriated to communities rather than individuals. I can find nothing in the law that would prevent the Attorney General from drawing such a distinction under her administrative discretion. A side-by-side comparison of the eligibility requirements of laws aimed at communities of populations (e.g., health professions shortages, medical underservice, primary care underservice) would help the Justice Department distinguish between the two types of programs.

September 22, 1996

TO: Elena Kagan, Counsel's office
Keith Fontenot, OMB
Richard Green, OMB
Emily Bromberg

FROM: Diana Fortuna 

CC: Jeremy Ben-Ami
Steve Warnath
Lyn Hogan

Attached are several items I have received on welfare reform implementation that may be of interest to you.

1. Memo from La Raza arguing that it will be especially difficult to ensure that the 40 quarters calculation is done well for farmworkers who are legal immigrants. According to La Raza, most farmworkers are legal immigrants who have been here for many years, and food stamps is the benefit these workers are most likely to use.
2. A short summary of the 40 quarters issue from SSA.
3. A memo from Sara Rosenbaum of GW on how to define "means tested benefit." She suggests programs where money goes directly to an individual.
4. A note from SSA on whether members of the Hmong tribe who fought in Vietnam can be considered veterans.
5. Material on domestic violence that came via Carrie Wofford of the Women's office.

Hmong

ROUTING AND TRANSMITTAL SLIP

Date: 8/30/96

TO: Judy Chesser
Diane Garro

: Action	:XXXX:	FYI
: Approval	:	Investigate
: As Requested	:	Justify
: Circulate	:	Note and Return
: Comment	:	Per Conversation
: For Coordination	:	Prepare Reply
: File	:	See Me
: For Clearance	:	Signature
: For Correction	:	

REMARKS:

The attached note addresses the issue of whether Hmong tribesman who fought in Vietnam who are now in the United States can be considered veterans for SSI eligibility purposes under welfare reform.

Apparently there are a large number of Hmong in Wisconsin (30,000) and California (50,000) who were admitted as refugees longer than 5 years ago. Thus, those who are now eligible for SSI who have not earned or been credited with 40 quarters will become ineligible.

This may be an issue for the Domestic Policy Council.

FROM:


David Mattson

: Room	Bldg
: 3227	WHR
:	
: Phone Number	
: 52615	

NOTE FOR THE RECORD

SUBJECT: Are Individuals of the Hmong Tribe Who Fought for the United States in During the Vietnam War Considered Military Veterans?

Chicago Regional Office staff asked the subject question to OPBP in connection with the provision in P.L. 104-193 that exempts aliens who are veterans with honorable discharges from the general prohibition on aliens being eligible for SSI benefits. Based on contacts and sources (identified below), it is safe to conclude that members of the Hmong tribe who contracted with the U.S. government during the Vietnam War are not as a group considered veterans. However, individual tribe members who were inducted into the U.S. armed forces may be veterans.

Civilian personnel who fought for or provided military-related services to the U.S. armed forces may be granted veterans status in two ways. First, legislation can be enacted that gives the specific group or individual status. For example, Filipino guerrillas who fought for the United States during World War II are considered veterans under P.L. 85-857. Second, under P.L. 95-202 and DOD Directive 1020, a group may petition the Department of Defense's Civilian/Military Service Review Board for recognition of their service. Based on the Board's review and recommendation, and the Secretary of the Air Force's approval, such groups may be granted veterans status.

According to various staff of the Department of Defense and the Veterans Administration and a search of Internet data bases of enacted legislation and the U.S. Code, Hmong guerrillas have not been granted veterans status by specific legislation nor have they sought such status through the DOD review board.

On a related issue, the House-passed immigration bill, H.R. 2202, includes a provision--supported by the Administration--that would waive the English language portion of the citizenship test and the U.S. residency requirement to speed up the naturalization of Hmong guerrillas living in the United States. Senate-passed H.R. 2202 does not include a similar provision, and we do not know at this point whether the conference agreement will include it.



Tom Parrott
August 30, 1996

no external new by advices
 no timeline on bill
 ③ Outline of guidance - end of yr - WTH hrg mid-Sept.
 ⑤

	NEXT STEPS	TIMEFRAME	RESPONSIBLE	ISSUES
TA BLOCK GRANT	45 day consultation per (w/ states all done)			- Jim Chanos of Sept 4th Com
State Option to Implement pre-7/1/97	Guidance to States	early September '96?	HHS this wk?	- Secy report w/ 90 days in final
Waivers ④	Responding to Waiver Requests	Ongoing	HHS	1. How respond to new requests? 2. Pending Requests
Contingency Fund	Form Interagency Group Regs?		Treasury	
Performance Fund ⑦	other incentives, list of states doing a list	LD week		
Regulations	HHS to produce list of areas for proposed regulation	List produced by Labor Day? yes ①	HHS/ASPE?	Should there be any? OMB modifies
FOOD STAMPS	- Done w/ all waivers			
Benefit Changes	- Implem memo to states 3 days later	Effective October 1 Some on January 1	USDA/FNS	
Eligibility: 18-50 year olds	- Transition, no guidance - A month later - states this is how you let them know	Effective three months after effective date trans 13-14; - TA may be avail.	USDA/FNS	Key Issue: can states have systems ready to support change
Immigrants	- Regs: reg all; don't let flex - will get as close as possible	One year from enactment	USDA/FNS	Ties to verification issue below
SSI	- 2 mtg next wk: APW 50 states + 2 Sept 7 countries (Sept 4-5)			- Bonnie O'Neal

Tighter Eligibility for Children	Notices to children potentially affected	Notices by 1/1/97 Redeterminations within one year of enactment	SSA	
Immigrants <i>630,000 incl</i>		On enactment, applicants no longer eligible Notices for redetermination 3/31/97 Redeterminations within one year of enactment	SSA <i>Flag as critical issue</i>	Verification key issue Timing of notices
IMMIGRATION				
Naturalization <i>exhaustive timeline by June 9/1 - define lawfully pres't 90 days - promulgation of regs; new sponsorship - negs</i>			INS	What steps can INS take to increase naturalization levels
<i>Not -</i> Other Means Tested Benefits <i>comm-based</i> <i>Def of means tested - omb</i>	AG determination of which programs included	<i>18 month verif - deadline</i> <i>SAVE system - existing notice system</i> <i>let nat'zation system</i>	DOJ	How will this be done?
Regulation waiving requirements for immigrants with disabilities	Issue regulation <i>Potential reg: -> get details</i>	ASAP <i>Sept hrs - integ of nat'zation process</i>	INS/OMB <i>is there one</i>	What is holding the reg up?
Verification			Interagency Group	
MEDICAID	<i>- Pending waivers (NY) - rpt @ next wk</i>			
CHILD CARE	<i>- Def of eligibility</i> <i>- 50,000 kids * MA/SSA</i>			

Oct 1

Randy Mass + Kevin Jones - eff immed.
** Memo to agencies, GC's from DOJ on AG Mem - due ASAP*

CHILD WELFARE	a study			
CHILD SUPPORT ENFORCEMENT				

flag key issues, rather than millions of tasks

SSA - State supp
(letter to Gov)

Monitoring + Eval (Web Inst got \$ from Casey)

~~410-786-3230~~
~~Judy Moore~~

Lisa Jacobs
OPD 514-3824
514-5715 fax

WORK PRODUCTS DUE FROM AGENCIES TO IMPLEMENTATION SUBGROUP

In general:

- o Listings of all guidance, instructions, regs, notices to be sent out, with timelines: due by Thursday if possible; definitely by Labor Day
- o Any hearings or reports to Congress mandated by the law or that you know of → Memo w/ fixes
- o Any information on meetings with states or local governments must be directed to Emily Bromberg, Intergovernmental Affairs
- o Timeline should be 12 months, with extra focus and detail on the next 3 months; where dates are not known, give ranges

HHS:

- o Listing of all guidance or instructions to be sent to states: by Thursday
- o Listing of regulations, both definite and possible: by Labor Day
- o List upcoming hearings and reports (e.g., Ways and Means hearing, Secretarial report to Congress within 90 days; child welfare study): by end of week if possible
- o Waivers: rules that will govern approved waivers; number of pending waivers and their disposition: by Labor Day
- o Child support enforcement: flag key issues by Labor Day
- o HCFA reports on delinking eligibility; loss of Medicaid for SSI children losing benefits; effect on waivers: by Labor Day

USDA:

- o List of all regulations, with timing (by Thursday)
- o List of guidance, instructions, implementing memos to be sent to states (one 3 days after enactment, one a month later, etc.) (by Thursday)
- o Information to Intergovernmental on 2 meetings next week: APWA and 50 states and 25 largest counties: ASAP

SSA:

- o List of regulations, with timeline: by Thursday
- o List of notices, with timeline: by Thursday
- o Any other guidance, instructions: by Thursday

* Get DOJ immed paper
* Moeke re guidance on state plans
* FS ccj to Walman
* Get dates to Melissa for calendar (events, trips, hugs)
* FS - timeline needed, plus major items
* CC 60 mins

DOI/INS:

- o General timeline of activities (e.g., definition of lawfully present, promulgate affidavit of sponsorship, Sept. hearings on naturalization process, 18 months for verification, potential regs): by Thursday
- o Non-means-tested programs: immediate, with memo to follow
- o Regulation on disability and citizenship test requirements: immediate
- o Report on how to put naturalization information into notices sent to legal immigrants by USDA, SSA, others: Labor Day

10/10/10

~~Confidential~~

→ Meet Individually w/ agencies
→ 8 # SSI Immigs in memo
→ Send members to whole group

esp DOJ/INS -DK

SUBGROUP ON IMPLEMENTATION
WELFARE REFORM WORKING GROUP

AGENDA
August 19, 1996

I. Introductions; Purpose of Meeting

Jeremy Ben-Ami

II. Reports from Agencies

- o Tasks, timeline, issues to flag:
Identify missing tasks, issues
 - o HHS
 - o USDA
 - o SSA
 - o DOJ
 - o Treasury
- o Discussion of interagency process

III. Discussion of our role in
NGA/NCSL/APWA September meeting

Emily Bromberg

IV. Next Steps Friday 8/23
Day after Labor Day

→

~~* Page Steve Bach~~

~~* Clean Bach~~

* DOJ immed issue →

{ 5-31-52 Dennis
10-3-86 Anna D
Bob Bach

WORK PRODUCTS DUE FROM AGENCIES TO IMPLEMENTATION SUBGROUP

In general:

- o Listings of all guidance, instructions, regs, notices to be sent out, with timelines: due by Thursday if possible; definitely by Labor Day
- o Any hearings or reports to Congress scheduled
- o meetings w/states
- o Timeline should be 12 months, with extra focus on the next 3 months

Gerri Rathoff. 10.2.61

4-4-76

HHS:

- o Listing of all guidance or instructions to be sent to states, including timing: end of this week
- o Listing of regulations, both definite and possible, including timing: by Labor Day
- o Upcoming hearings and Secretarial reports to Congress
- o Waivers:

USDA:

- o List of all regulations, with timing
- o List of guidance, instructions, implementing memos to be sent to states (one 3 days after enactment, one a month later, etc.)
- o Information to Intergovernmental on 2 meetings next week: APWA and 50 states and 25 largest counties

SSA:

- o List of regulations, with timeline
- o List of notices, with timeline
- o Any other guidance, instructions

-90 day technical correction?

**SUBGROUP ON IMPLEMENTATION
WELFARE REFORM WORKING GROUP**

AGENDA
August 23, 1996

- I. Review of Schedule of External Contacts
- II. Review of Issues List
- III. Review of Work Products due to Implementation Subgroup

Note: please fax items to Jeremy Ben-Ami
and Diana Fortuna at 456-7028 or 7431
- IV. Discussion of NGA/NCSL/APWA September meeting
- V. Next Meeting
How to reach us next week

August 23, 1996

SCHEDULE OF EXTERNAL CONTACTS/HEARINGS:

This schedule is to include all letters, guidance, notices, hearings, reports, etc.

Note: List must include all items contemplated before the second week of September.

HHS:

- o Guidance on state plans: next week or week of Labor Day?
- o Letter from ACF to state commissioners: may be next week
- o Letter from ACF on child care: may be next week
- o Letter from Secretary to Governors: may be next week
- o Early read on regulations for states: week of Labor Day
- o Ways and Means hearing mid-September

USDA:

- o Waiver to delay recertification: today?
- o Implementing memo: early next week
- o When is next communication to states?

SSA:

- o Timing of notices, etc. to states: week of Labor Day?
- o Letter from Commissioner to Governor: sometime after Labor Day

DOJ/INS:

- o AG order on exempt programs: today?
- o Naturalization directive?
- o Regulation exempting certain disabled applicants from testing: next week
- o Interim verification/how to enroll in SAVE: week of Labor Day
- o Info on naturalization for other agencies' packets: when?
- o Hearing on naturalization: when?

August 23, 1996

ISSUES LIST:

Note: This is currently focused on immediate issues. We will need to add issues to create a more comprehensive list over time.

HHS:

- o Content of guidance on state plans
- o Regulations
- o Child care block grant deadlines
- o Clarification to states on how timing of state plan filing affects block grant
- o Existing waivers (includes USDA & HCFA)
- o New waivers
- o Performance bonus fund implementation

USDA:

- o 18–50 year–olds: States' ability to track work
- o State waiver options: are there issues here?
- o Implementation of waiver to delay recertification

SSA:

- o Appeal rights for children on SSI
- o 40 quarters calculation
- o Timing of notices to legal immigrants
- o Regulation for children's SSI changes

DOJ:

- o Interim verification
- o Final version on AG order
- o State reporting requirements 4x/year
- o Easing naturalization

Treasury:

- o How to do contingency fund

Government–wide:

- o Definition of means–tested program

August 23, 1996

WORK PRODUCTS DUE FROM AGENCIES TO IMPLEMENTATION SUBGROUP

HHS:

- o TANF and child care guidance; is there other guidance coming? Due 8/23
- o Listing of regulations, both definite and possible: by Labor Day -- DONE?
- o List upcoming hearings and reports (e.g., Ways and Means hearing, Secretarial report to Congress within 90 days; child welfare study): by end of week if possible -- DONE EXCEPT HEARINGS
- o Waivers: rules that will govern approved waivers; number of pending waivers and their disposition: due Labor Day
- o Child support enforcement: flag key issues by Labor Day, along with schedule of regs/guidance
- o HCFA reports on delinking eligibility; loss of Medicaid for SSI children losing benefits; effect on waivers: by Labor Day

USDA:

- o List of all regulations, with timing -- DONE EXCEPT FOR TIMING
- o List of guidance, instructions, implementing memos to be sent to states (one 3 days after enactment, one a month later, etc.): due today

SSA:

- o List of regulations and notices, with timeline: due today
- o Any other guidance, instructions: due today

DOJ:

- o General timeline of activities (e.g., definition of lawfully present, promulgate affidavit of sponsorship, Sept. hearings on naturalization process, 18 months for verification, potential regs): due today
- o Non-means-tested programs: ALMOST DONE?
- o Regulation on disability and citizenship test requirements: READY FOR FEDERAL REGISTER?
- o Report on how to put naturalization information into notices sent to legal immigrants by USDA, SSA, others: due Labor Day

Treasury:

- o General timeline, list of tasks, regs, notices, etc.: due ASAP

**SUBGROUP ON IMPLEMENTATION
WELFARE REFORM WORKING GROUP**

**AGENDA
September 3, 1996**

- I. Review of Schedule of External Contacts**
- II. Review of Issues List**
- III. Review of Work Products due to Implementation Subgroup**
- IV. Discussion of NGA/NCSL/APWA September meeting**
- V. Next Meeting**

September 3, 1996

SCHEDULE OF EXTERNAL CONTACTS/HEARINGS:

This schedule is to include all letters, guidance, notices, hearings, reports, major notices to field offices, etc.

Note: List must include all items contemplated before the end of September.

HHS:

- o Letter from ACF to state commissioners: went out?
- o Letter from ACF on child care: went out?
- o Letter from Secretary to Governors: went out?
- o Letter to State Medicaid Directors: went out?
- o Briefing of unions? this week
- o **Guidance on state plans: by NGA meeting 9/9**
- o State child care meeting Sept. 9-10
- o **Early read on regulations for states: after NGA meeting**
- o Congressional Black Caucus meeting: 9/11-15
- o Ways and Means hearing mid-September
- o Child support enforcement annual training institute: week of 9/16
- o Medicaid TAG meetings: on-going

USDA:

- o Implementing memo: went out?
- o Conference with states Sept. 4-5
- o **Guidance to states on 18-50 year olds: what date?**

SSA:

- o When is notice to states?
- o **Letter from Commissioner to states**

DOJ/INS:

- o Definition of lawfully present: done?
- o Interim verification/how to enroll in SAVE: done?
- o Info on naturalization for other agencies' packets: when?
- o Hearings on naturalization: give us all hearing dates

September 3, 1996

ISSUES LIST:

Note: This is currently focused on immediate issues. We will need to add issues to create a more comprehensive list over time.

HHS:

- o **Content of guidance on state plans; 45-day public comment period**
- o **Waivers (includes USDA & HCFA)**
- o **What to tell states that come in early**
- o **Regulations**
- o **Tracking system for time limits**
- o **Child care block grant deadlines**
- o **Performance bonus fund implementation**

USDA:

- o **18-50 year-olds: States' ability to track work**
- o **Implementation of waiver to delay recertification**
- o **California request on food stamp recertification**

SSA:

- o **Appeal rights for children on SSI**
- o **Regulation for children's SSI changes**
- o **40 quarters calculation**
- o **Timing of notices to legal immigrants**

DOJ:

- o **California Prop 187 directive**
- o **Interim verification**
- o **Final version on AG order**
- o **State reporting requirements 4x/year**
- o **Easing naturalization**
- o **Treaty issue**

Treasury:

- o **How to do contingency fund**

Government-wide:

- o **Definition of means-tested program**
- o **Gramm amendment**
- o **Discrimination complaints**

September 3, 1996

WORK PRODUCTS DUE FROM AGENCIES TO IMPLEMENTATION SUBGROUP

HHS:

- o TANF and child care guidance
- o Listing of regulations, both definite and possible
- o Child support enforcement: flag key issues by Labor Day, along with schedule of regs/guidance
- o HCFA reports on delinking eligibility; loss of Medicaid for SSI children losing benefits; effect on waivers: by Labor Day

USDA:

- o Need timing of potential regulations

SSA:

- o List of regulations and notices, with timeline

DOJ:

- o General timeline of activities (e.g., definition of lawfully present, promulgate affidavit of sponsorship, Sept. hearings on naturalization process, 18 months for verification, potential regs)
- o Non-means-tested programs: ALMOST DONE?

Treasury:

- o General timeline, list of tasks, regs, notices, etc.

ISSUES LIST (9/24/96)

Hot issues

(For each of these issues a process is in place to move forward to necessary decisions)

- o ✓HHS: state plan guidance; waivers; domestic violence exemptions
- o ✓Definition of means-tested programs
- o ✓USDA: California request on food stamp recertification
- o SSA: Definition of disability for children's SSI

Issues requiring further work

(For these issues, we want to review status and process for addressing)

- o USDA: 18-50 year-olds: is waiver guidance ready? def. of "able-bodied" —
- o USDA: Chiles letter on QC waiver

- o HHS/ACF: Progress w/NGA on regulatory/guidance process
- o HHS/ACF: Positions on NGA list of "technical amendments"
- o HHS/ACF: Flow of funds during 45 day comment period
- o HHS/HCFA: Medicaid delinking w/AFDC, SSI for children/immigrants; waivers; \$500m enhanced match funding; deadline is SMDA meeting 10/7
- o HHS: Mechanics of 1/1/97 state option on Medicaid, TANF, SSBG for legal immigrants
- o HCFA/SSA: Timing of legal immigrant cutoffs from SSI vs. Medicaid (nursing homes)

- o SSA: 40 quarters calculation -- meeting needed
- o SSA: Maintenance of effort for SSI state supplementation
- o SSA: How states w/state supps should report illegal aliens

- o INS: Interim verification -- meet by end of week
- o INS: Reg on testing requirements and disability
- o Other definitions (federal public benefit, affidavit of support, lawfully present)

Issues for future focus

- o HHS: Systems to track time limits and implement child support provisions
- o HHS: Performance bonus fund implementation
- o INS: Keeping pace with naturalization demand
- o INS: California executive order
- o DOJ: Final version of AG order
- o INS: State reporting requirements 4x/year on immigrants
- o DOJ: Treaty issue
- o VA involvement in legal immigrant changes
- o DOJ: reports on statutory rape, teen pregnancy
- o HHS: how to encourage states to use wage subsidies
- o Monitoring and evaluation
- o HHS: 15% cap on admin costs/MIS issue
- o INS: NYC lawsuit
- o How to re-do cost neutrality for existing waivers
- o Technical corrections by 11/22

USDA: Regional offices to do weekly report on state activities

ISSUE	PRODUCT	WHO	NEXT STEP
<u>Immediate</u>			
1. Food Stamp Recertification	Produce option that states can use to provide flexibility in meeting statutory mandate	Elena Kagan leading effort to sort through options	Options developed; under consideration; decision needed
2. Disability Regulation	Final rule ASAP	INS working with OIRA	Interim rule out for 30 day comment; OIRA trying to schedule interagency meeting week of 9/23
3. "Means Tested"	Government-wide definition of means tested must be developed ASAP – format and dissemination unclear	Elena Kagan and OMB working group	Coordinating Group will reconvene week of 9/23
4. SSA Process	Agree to timing and process for notice and recertification; operational questions on 40 quarters	SSA lead	DPC convening meeting with SSA week of 9/23 to review
5. "Lawfully Present"	DOJ regulation defining "Lawfully Present"	DOJ	Interim reg is out for 60 day public comment – ends 11/6/96
6. AG memo excepting programs	Memo from AG	DOJ/OPD	Initial memo out for comment.
7. Verification	(1) Options for interim verification; (2) Longer term: DOJ system	Steve Warnath/Elena/DOJ	Various memos being written; Steve to call interagency meeting by late week of 9/23 with DOJ, SSA, USDA, VA, HHS

8. Affidavit of Sponsorship	Develop new affidavit and address process issues	INS	New affidavit within 90 days; effective 60-90 days after
<u>Medium Term</u>			
9. Veterans	Need to ensure process for determining veteran status of various groups (Hmong, Filipinos) and process for determination generally	Steve Warnath/Elena	Meet with VA, DOD, DOJ, INS week of 9/30
10. Applicability to Cuban/Haitian entrants		NSC	Steve to check with NSC on timing/status
11. Treaty issues		INS and OPD	INS and OPD looking at issues; will report on status/timing
12. Reporting of Illegal Immigrants		INS	INS putting issue memo together; options. Will report on status/timing
13. Citizenship Materials	INS to produce materials agencies can use to inform regarding naturalization	INS	INS to report on status/timing of materials
14. "Federal public benefit"	Determine whether any flexibility in definition	Steve Warnath	Steve will explore what flexibility there might be
15. "State or Local Public Benefit"	Determine whether guidelines needed	DOJ	DOJ to report to Steve Warnath
16. Housing and Community Development Programs	Determine what programs covered by this exception	Steve Warnath/HUD	Steve to consult with HUD

17. U.S. Nationals	Determine how law applies to nationals	DOJ	DOJ to review and get back to Steve
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Longer Term

Redress for Improper Denial

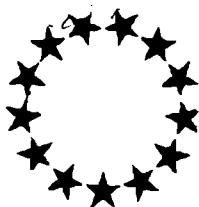
Medicaid

Civil Rights Enforcement

Long-term Legislative Fixes

September 1996
WELFARE REFORM IMPLEMENTATION

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4 National Food Stamp Conference (FSP) for Food Stamp managers, <i>MJB</i> remarks, Sept. 4-5 (Alexandria, VA) Southwest Regional Child Support Assoc. Annual State Child Support Conf., <i>David Ross, OCSE - Keynote speaker</i> , Sept. 4-6 (Oklahoma City, OK)	5	6	7
8 National Assoc. of Human Svcs. State Quality Control Directors Annual Meeting, Sept. 8-11 (Sacramento, CA)	9 State Child Care Administrators' Conf. Sept. 9-10 - George Washington University NGA, APWA, NCSL Welfare Reform Implementation Meeting, Sept 9-10 (Washington, DC); <i>MJB, Sally Richardson, HCFA</i> remarks	10	11 International Children's Conf. <i>FLOTUS</i> remarks Los Angeles, CA	12 APWA Regional Welfare Reform Seminar, Sept. 12-13 (Newark, NJ)	13	14 APWA Assoc. of Information Systems Management, Sept. 14-18 (Portland, OR)
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**NATIONAL
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ChairmanGeorge V. Voinovich
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Telephone (202) 624-5300

September 17, 1996

M E M O R A N D U M

To: Diane Fortuna
From: Evelyn Ganzglass and Susan Golonka
Re: Our Top Five Issues on Welfare Reform

1. Clarify which issues will be addressed through regulations and which not. Reach agreement on a timetable and process for consultation with the states regarding the development of federal regulations and the timely resolution of non regulatory issues such as the following:
 - State concerns about being penalized for actions taken prior to the promulgation of regulations or other federal guidance;
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5. Try to reach agreement on areas which require technical amendments. Our current list includes the following:
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 - Allow states the option to count as a single-parent family for purposes of the work requirement those two-parent families in which one spouse is incapacitated.
 - Modify the reconciliation and MOE provisions of the contingency fund so needy states will be able to access the fund.
 - Reconcile the effective dates for eliminating the federal contribution to the \$50 child support pass-through and repealing the actual pass-through.
 - Clarify that state spending on immigrant families who become ineligible for TANF will count as qualified spending for purpose of meeting the TANF maintenance-of-effort.
 - Permit adjustments in the maintenance of effort requirements for state SSI supplements when caseloads decline.
 - Reconcile the "look back" dates to state AFDC programs for child welfare and Medicaid eligibility.

We look forward to discussing these issues with you at our next meeting.

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- Speech
- News Test
- Melissa
- Tomorrow's agenda (+ calls)
- Dec memo



NATIONAL CONFERENCE OF STATE LEGISLATURES

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202-624-5400 FAX: 202-737-1069

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DEPUTY CONTROLLER GENERAL
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WILLIAM POUND
EXECUTIVE DIRECTOR

NATIONAL CONFERENCE OF STATE LEGISLATURES

Five Priorities from Welfare Briefing

I. Getting Started Issues

- A. State Plan vs. State Law
- B. "Completeness" of State Plan

II. Conflict Resolution Process

- A. Waivers
- B. Work Requirements
- C. Other Penalties

III. Legal Immigrants

- A. Clarifications
- B. Documenting Cost-Shifts
- C. Documenting Litigation
- D. Possible Regulatory Grace Periods
- E. Proposals for Legislative Change

IV. Consultation on Technical Corrections

- A. Legislation
- B. Regulation

V. Technical Assistance

- A. Child Support
- B. Immigration
- C. SSI
- D. Targeting Unique Policymaking Responsibilities of State Legislators and Staff



AMERICAN PUBLIC WELFARE ASSOCIATION

Gerald H. Miller, President
A. Sidney Johnson III, Executive Director

September 18, 1996

To: Sid Johnson

Fr: Elaine M. Ryan

Re: Top Five Implementation Issues Facing States

1. Medicaid

- Cost neutrality liabilities discontinuing Section 1115 welfare waivers
- Transitional waivers and cost neutrality liabilities
- HCFA, ACF, INS and SSA joint working group
- SSI for Children

2. State Plan

- TANF funding based on submission or deemed complete
- 45 comment period

3. Claims and Disallowances

- program close out
- reduction in TANF block grant allocations

4. Immigration

- definition of means tested benefit
- rules applied to current non-citizens
- application to child care and child welfare services

5. Penalties

- application
- inconsistencies
- data reporting
- work rates - two parents and all families

DPC followup from 9/12 implementation subgroup meeting:

- x1. Hold a meeting Monday with HHS on TANF regulations, in advance of next NGA/NCSL/APWA Wednesday meeting (include OIRA) -- we must react to their proposal
 - invite: ACF, Monahan
 - Us, Elena, Fontenot, OIRA, Emily
- x2. Meet internally on verification and definition of various terms on immigration changes
- x3. Advise CR, etc., on how we are implementing 18-50 food stamp work requirement?
- 4. How to advance Ken issue on sending out naturalization info to SSA's legal immigrants

Followup by others:

- 1. More from OIRA/Oliven on deadline for 6 month government-wide listing of regs
- 2. Food stamps to share next time draft on waiver from 18-50 work requirements
- x3. Monahan to get back to Diana shortly about HCFA meeting and paper for next week
- 4. HHS to do briefing on systems for tracking time limits and child support enforcement in a few weeks
- 5. SSA to give us paper on 40 quarters next week (Elena needs to weigh in here)
- x6. OIRA to set up meeting on disability naturalization reg with DOJ, INS, OMB, us
- x7. Steve on Hmong?
- x8. Steve on Cuban/Haitian (keep Emily involved)

Other items for DPC follow-up:

- 1. Create new timeline (w/OMB) and distribute to group
- x2. Get event dates to Melissa: by Monday
- x3. HHS testimony: clear by Friday
- 4. Get clearance on documents submitted by SSA: should do by Friday
- x5. Update CR; prep for Thurs. meeting: CR wants agenda by Monday
- 6. Push on HHS decision memo: due Monday
- 7. California food stamps: keep up w/Elena
- 8. Wisconsin waiver: Monahan has proposal for BR
- x9. Do agenda for Wednesday NGA/etc. meeting by COB Tuesday (CR asked for 5 top issues list)

ISSUE	PRODUCT	WHO	NEXT STEP
<u>Immediate</u>			
1. Food Stamp Recertification	Produce option that states can use to provide flexibility in meeting statutory mandate	Elena Kagan leading effort to sort through options	Options developed; under consideration; decision needed
2. Disability Regulation	Final rule ASAP	INS working with OIRA	Interim rule out for 30 day comment; OIRA trying to schedule interagency meeting week of 9/23
3. "Means Tested"	Government-wide definition of means tested must be developed ASAP – format and dissemination unclear	Elena Kagan and OMB working group	Coordinating Group will reconvene week of 9/23
4. SSA Process	Agree to timing and process for notice and recertification; operational questions on 40 quarters	SSA lead	DPC convening meeting with SSA week of 9/23 to review
5. "Lawfully Present"	DOJ regulation defining "Lawfully Present"	DOJ	Interim reg is out for 60 day public comment – ends 11/6/96
6. AG memo excepting programs	Memo from AG	DOJ/OPD	Initial memo out for comment.
7. Verification	(1) Options for interim verification; (2) Longer term: DOJ system	Steve Warnath/Elena/DOJ	Various memos being written; Steve to call interagency meeting by late week of 9/23 with DOJ, SSA, USDA, VA, HHS

8. Affidavit of Sponsorship	Develop new affidavit and address process issues	INS	New affidavit within 90 days; effective 60–90 days after
<u>Medium Term</u>			
9. Veterans	Need to ensure process for determining veteran status of various groups (Hmong, Filipinos) and process for determination generally	Steve Warnath/Elena	Meet with VA, DOD, DOJ, INS week of 9/30
10. Applicability to Cuban/Haitian entrants		NSC	Steve to check with NSC on timing/status
11. Treaty issues		INS and OPD	INS and OPD looking at issues; will report on status/timing
12. Reporting of Illegal Immigrants		INS	INS putting issue memo together; options. Will report on status/timing
13. Citizenship Materials	INS to produce materials agencies can use to inform regarding naturalization	INS	INS to report on status/timing of materials
14. "Federal public benefit"	Determine whether any flexibility in definition	Steve Warnath	Steve will explore what flexibility there might be
15. "State or Local Public Benefit"	Determine whether guidelines needed	DOJ	DOJ to report to Steve Warnath
16. Housing and Community Development Programs	Determine what programs covered by this exception	Steve Warnath/HUD	Steve to consult with HUD

17. U.S. Nationals	Determine how law applies to nationals	DOJ	DOJ to review and get back to Steve
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Longer Term

Redress for Improper Denial

Medicaid

Civil Rights Enforcement

Long-term Legislative Fixes

ISSUES LIST (9/24/96)

Hot issues

(For each of these issues a process is in place to move forward to necessary decisions)

- o HHS: state plan guidance; waivers; domestic violence exemptions
- o USDA: California request on food stamp recertification
- o SSA: Definition of disability for children's SSI

Issues requiring further work

(For these issues, we want to review status and process for addressing)

- o USDA: 18-50 year-olds: is waiver guidance ready? def. of "able-bodied"
- o USDA: Chiles letter on QC waiver
- o HHS/ACF: Progress w/NGA on regulatory/guidance process
- o HHS/ACF: Positions on NGA list of "technical amendments"
- o HHS/ACF: Flow of funds during 45 day comment period
- o HHS/HCFA: Medicaid delinking w/AFDC, SSI for children/immigrants; waivers; \$500m enhanced match funding; deadline is SMDA meeting 10/7
- o HHS: Mechanics of 1/1/97 state option on Medicaid, TANF, SSBG for legal immigrants
- o HCFA/SSA: Timing of legal immigrant cutoffs from SSI vs. Medicaid (nursing homes)
- o SSA: Maintenance of effort for SSI state supplementation
- o SSA: How states w/state supps should report illegal aliens

Issues for future focus

- o HHS: Systems to track time limits and implement child support provisions
- o HHS: Performance bonus fund implementation
- o VA involvement in legal immigrant changes
- o DOJ: reports on statutory rape, teen pregnancy
- o HHS: how to encourage states to use wage subsidies
- o Monitoring and evaluation
- o HHS: 15% cap on admin costs/MIS issue
- o How to re-do cost neutrality for existing waivers
- o Technical corrections by 11/22 - ~~1-45~~ + SSA?? assume ?? ck law

USDA: Regional offices to do weekly report on state activities

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September 1996

WELFARE REFORM IMPLEMENTATION

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- Reconcile the "look back" dates to state AFDC programs for child welfare and Medicaid eligibility.

We look forward to discussing these issues with you at our next meeting.



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NATIONAL CONFERENCE OF STATE LEGISLATURES

Five Priorities from Welfare Briefing

WILLIAM POUND
EXECUTIVE DIRECTOR

I. Getting Started Issues

- A. State Plan vs. State Law
- B. "Completeness" of State Plan

II. Conflict Resolution Process

- A. Waivers
- B. Work Requirements
- C. Other Penalties

III. Legal Immigrants

- A. Clarifications
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To: Sid Johnson

Fr: Elaine M. Ryan

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- application
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- work rates - two parents and all families

	SSI	Food Stamps	TANF/SSBG/ Medicaid	Means Tested Benefits	State and Local Benefits
Effective Date	Now – new apps By 8/23/97 for current recipients	Now – new apps Current recips start 4/1/97 done by 8/23/97	State option to exercise as of 1/1/97	Applies to new entrants to the country after 8/23/96	State option to impose as of 1/1/97
Who administers/ what regulations govern/what level federal authority	Social Sec Admin	Federal program/ State-run under USDA regs	Federal/State programs run under HHS regs	Federal programs to be defined – run by many different actors – often w/ fed regs	Generally speaking no federal dollars or direct control
1) Status Determination: citizen, qualified alien	SSA has regs on citizenship determination (1)	Food Stamps also has a reg that governs this determination (1)	No existing regs or guidelines (2)	No existing regs or guidelines (2)	(3)
2a) 40 Quarters Exception – the Social Security information process	Pre 1/1/97 -- SSA needs interim system (4) to provide 40 quarters info. Post 1/1/97 -- SSA to provide overnight batch turnaround. This simply answers question of whether SSA records confirm 40 quarters.			Not applicable	See SSI/Food Stamps/TANF
2b) 40 Quarters Exception – SSA info incomplete	SSA needs procedures (5)	USDA needs procedures to deal with appeals (5)	Guidance/regs? needed (2)	Not applicable	Guidance? (3)
3) Refugees and Asylees Exception	INS to prepare and disseminate guidance on how to determine refugee/asylee status. Guidance to be available to all federal, state and local programs needing to make such determinations. (6)				
4) Veterans Exception	VA needs to prepare and disseminate similar guidance on how to determine veteran status. Guidance to be available to all federal, state and local programs needing to make such determinations. (7)				

Issue 1: Are the regs USDA and SSA have in place to answer question 1 appropriate/sufficient? What's their potential as a model for other programs, agencies?

Issue 2: For other federally funded programs that do not currently have guidelines or regs to govern the citizenship/status determination, what process should be used? Same question for dealing with administering the 40 quarters exception. Should there be uniform federal guidelines established? By whom? How?

Issue 3: For state/local programs, what authority does the federal government have to provide guidance in this determination?

Issue 4: SSA is proposing POMS to deal immediately with new applicants. Awaiting review and clearance.

Issue 5: SSA and Food Stamps need to work out process immediately and provide guidance to field. Meeting to take place by 10/4 and proposal to be developed.

Issue 6: INS developing guidance on refugee/asylee determination. By when? Dissemination process?

Issue 7: VA to develop such guidance. Dissemination process also an issue here? Should there be a single dissemination with all pieces of this guidance? Perhaps an AG memo?

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget
Associate Director for Human Resources
260 Old Executive Office Building
Washington, DC 20503

Fax #: 395-5730

Phone #: 395-4844

FACSIMILE COVER SHEET

TV-D Child Spt

DATE:

10-23

TO:

Jeremy Ben Ami

Emily Prohman

Elena Kagan

Fax Number:

Number of pages (including cover sheet):

8

FROM:

Ken Apfel

REMARKS:

Draft paper. —

Friday 11th**DRAFT****DRAFT COST NEUTRALITY POLICY FOR CURRENT WELFARE WAIVERS AND FOR FUTURE FOOD STAMP AND MEDICAID WELFARE WAIVERS****ISSUE**

As States adopt their new TANF rules, they are also assessing their desire to continue their existing welfare reform waivers which were granted in three programs: AFDC/JOBS, Food Stamps and Medicaid. The welfare bill forgives past cost overruns for the components of AFDC waivers the State ends. States want to know whether cost neutrality will continue to apply to waivers they seek to continue and, if so how cost neutrality would work if it applies. The issue needs to be addressed separately for past cost overruns, and future cost overruns. This paper lays out a draft policy proposal for cost neutrality for both circumstances.

BACKGROUND ON MULTI-PROGRAM WAIVERS

Currently, over 40 States have approved welfare reform research and demonstration waivers. AFDC changes directly affect both Food Stamps and Medicaid costs, so all of these waivers have tracked costs in those programs, and many have included Medicaid and Food Stamp components. Under these waivers States have been permitted to vary the statutory requirements of the former AFDC/JOBS program, Medicaid and Food Stamps to test whether alternative approaches increased employment and reduced time on AFDC.

All waivers have been granted with the condition that the flexibility granted to States not increase net Federal costs across the AFDC, Medicaid, and Food Stamp programs. States were allowed some modest cost increases early in the demonstrations to invest in enhanced work programs, with procedures to ensure that cost neutrality was achieved by the end of the demonstration. If the State did not achieve programmatic savings, the waiver agreement called for AFDC funding to be reduced to make up the difference. While cost neutrality is an administrative, not statutory, policy, it has allowed the federal government to be much more flexible in waivers that would otherwise increase costs in one program alone.

Generally, States have opted to improve work programs, implement AFDC time limits, and sometimes tighten AFDC eligibility in order to offset Medicaid and Food Stamp expansions. When States were allowed to increase costs early in the waiver period, they had to demonstrate that these work programs and time limits would offset these costs prior to the end of the demonstration. Now that AFDC is a block grant, no savings can accrue in that program to offset cost increases due to waivers of Medicaid and Food Stamp statutes. None of the waiver provisions that affect only Medicaid or Food Stamps save money -- they are either cost-neutral or increase costs. *As a result, most welfare waivers will start increasing federal costs as soon as States put their TANF program into place.*

DRAFT***COST OVERRUNS INCURRED TO DATE***

The welfare bill forgives increases in federal costs for those components of AFDC waivers which States elect to terminate -- and almost all States will terminate parts of their waivers. Since those AFDC waivers also affected Food Stamps and Medicaid, the bill forgives some cost increases in those programs as well. States have been careful to maintain cost neutrality; it appears that total Food Stamps and Medicaid expenditures related to waivers so far -- including those the statute forgives -- are probably less than \$100 million in total. (More detailed estimates are necessary.) States carefully phase implementation to spend savings, but not incur overruns.

The original welfare budget neutrality agreements were based on a control group comparison. States had five years to determine if initial costs would results in savings later on. For waivers that were only a few years old, only the costs of the Medicaid transitional benefits would be measurable, while the AFDC savings might not have been realized yet. In addition, States can no longer use future AFDC savings to pay for past cost increases in Medicaid and Food Stamps. Practically, HHS and USDA cannot separate out most costs due to waivers which are terminated vs. those that are continued. As a result, it is recommended that States be held harmless for any federal costs already incurred as a part their existing welfare reform waivers (AFDC, Medicaid or Food Stamps). -- including cost overruns from Food Stamp waivers, Medicaid waivers, and AFDC waivers States do not want to terminate. (This recommendation is based on the assumption that the budget impact is not prohibitively high. They would be held harmless as of the later of January 1, 1997 or the date their TANF plan is determined to be "complete."

FUTURE COSTS

Cost neutrality must be revised. The Food Stamp and Medicaid pieces of the old welfare waivers -- including cost neutrality provisions -- need to be renegotiated. The waiver agreements call for waivers to be renegotiated if there is a substantial change in law. Under TANF, the AFDC changes that cost or saved money are now State options, and there will not be any Federal savings. (Actually, good State work programs will increase Federal costs through the EITC.) Since AFDC has been block granted and can no longer offset Food Stamp and Medicaid cost increases, cost-neutrality provisions of existing waivers must be renegotiated. It is recommended that States be provided with guidance on how cost neutrality will be work under future Medicaid and Food Stamp waivers.

Food Stamp and Medicaid waivers should be considered separately. In the past, Medicaid and Food Stamps have been included in AFDC waiver packages because of (a) the financial implications of AFDC changes on Food Stamps and Medicaid, (b) policy linkages between AFDC and Medicaid and (c) policy linkages between AFDC and Food Stamps. States have also sought and received waivers that involved only Food Stamps or only Medicaid. These one-

** 19316 - Can expand
to any level w/o waiver - How a Δ?*

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program waivers should be the model for the future. TANF has broken all the linkages that held Medicaid and Food Stamp waivers together. Also, Food Stamp changes (discussed below) make many of the Food Stamp waivers operational options for States. As a result of these factors, there no longer is any reason to package Medicaid and Food Stamp waivers together, and efficiency reasons to separate them.

Why rule out?

Timing. The Medicaid and Food Stamp waivers could be renegotiated at the same time States decide whether to continue AFDC waivers that are inconsistent with TANF requirements. States are already expected to include in their TANF plans information on which component of their AFDC waivers they intend to maintain under TANF. The statute gives States up to 90 days after the end of their next legislative session to terminate AFDC waivers and receive forgiveness of costs for the waivers they terminate.

*no diff - state share
- off of TANF*

FUTURE MEDICAID-SPECIFIC WAIVERS

No state evgs
As of the enactment date of PRWORA, 20 states had welfare waivers with Medicaid demonstration authority included and another 6 had applications pending. The Medicaid pieces of the welfare waivers typically extend transitional benefits, in some cases for up to 36 months instead of the normal 12 months.

States should be held accountable for cost neutrality for current transitional benefit waivers that continue or new waivers that are granted. Cost neutrality will have to be newly established given the change in the law which eliminated the AFDC program and block grants the TANF program. Cost neutrality ensures that the federal government will not spend more than it would have without the waiver. If a policy was to be adopted that no longer required budget neutrality for Medicaid extended transitional benefits in the future, federal costs over a seven year period (assuming half the states implemented an additional 12 months of coverage) could be as high as \$2 billion.

With no change in federal policy, a state could terminate its transitional benefits waiver and apply for an amendment to their current Medicaid-only waiver, if they have one. (Alternatively, States could apply for a Medicaid-only waiver that includes extended transitional benefits.) These costs could then be subject to the Medicaid without-waiver baseline and paid for with managed care savings. Only 4 states have both a welfare waiver with transitional benefits and a Medicaid-only waiver. Another 6 states have either a waiver pending or have an approved, but not yet implemented Medicaid-only waiver.

not waiver law, no \$
Alternatively, if the state does not have -- or seek -- a Medicaid-only waiver, the Medicaid/welfare waiver could exist as a stand-alone waiver. Because there are no longer any savings to be found from AFDC, it is recommended that the federal government pay 0% of the costs (i.e. provide no federal match) for the extended transitional benefits for the following reasons:

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Effectively No Change from Current Policy. Before welfare reform the federal government was *effectively* paying 0% FMAP if the waiver was cost neutral. Should the waiver not have been cost neutral, the state would have received reduced matching under AFDC (i.e. 0% FMAP for some AFDC costs). This is similar to the proposed policy.

State Savings. It can be argued that States will only continue the transitional benefits waivers if they believe there are savings to be gained on the TANF side. However, the state will keep all TANF savings due to the block grant, which could offset the costs at the State level. Thus, a 0% FMAP ensures that the federal government is not paying for services which reap savings only to the state.

Equity to non-waiver states. An inequity would exist if the future costs of the transitional benefits were forgiven for states with current waivers, while new states that want to extend transitional benefits had to pay all the costs themselves.

There has been some discussion of establishing a new control group to determine whether transitional benefits can keep people off the Medicaid rolls in the long run. To be able to measure these long-run savings, the control group would have to be maintained over a time period longer than the life of the waiver. To guard against attrition over this long time period, the control group which would not receive the transitional benefits would have to be quite large. For these reasons, it is possible that a control group might never show savings.

FUTURE FOOD STAMP SPECIFIC WAIVERS

As States review their current waivers in conjunction with developing their TANF plan, they will discover that many of their food stamp waivers are no longer necessary due to the 20 State options now allowed under the program and the new Simplified Food Stamp Program. For example, wage supplementation, cooperation of child support and increasing the asset limits for TANF households are policy options which no longer require waivers. Furthermore many of the food stamp waivers which States were denied in the past are also allowable State options. These include policies like tougher employment and training requirements and sanctions. Another critical factor in this new State flexibility is the link between TANF and Food Stamps. TANF households are categorically eligible for Food Stamps. If the TANF rules are vastly more liberal than Food Stamps, those households will remain eligible for Food Stamps. This means States will no longer need to receive food stamp waivers when they alter their TANF programs.

However, there are policies which will continue to require statutory waivers. *In particular, States will want to be able to apply similar food stamp rules to their non-TANF households as they do their TANF households for administrative ease and household equity.* For example, if the TANF program allows a household to own a vehicle valued at up to \$10,000, a State might want to increase the current Food Stamp vehicle asset limit from \$4,550 to \$10,000 for non-TANF households. This change would require a waiver under the Food Stamp Act. This raises the possibility of increased costs but also raises a question of whether waivers which seek only to

inc'g car to \$10K/
 ↳ no state has this S-W

AFDC + FS	other FS
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2K → 5K

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modify the Food Stamp Program to individual State designs are appropriate. This issue is discussed further below.

Cost Neutrality Should Continue to Apply. Many of the waivers which States are likely to want to continue or to seek in the future are policies which expand Food Stamp eligibility. Based on conversations with State Directors and a sampling of current waivers, these "new" waivers would be designed to expand eligibility rules increasing the amount of allowable cash and the value of automobiles as well as changing the treatment of earned and unearned income. Preliminary estimates indicate that if all States raised their non-TANF vehicle asset limit to \$10,000 the annual federal cost would be approximately \$200 million. If the cash resource limit were waived nationwide from \$2,000 to a limit of \$4,000 the annual federal cost would be approximately \$300 million. Not all States would take such a waiver if it were granted. However if it were granted the Administration would face enormous pressure to continue applying the same fiscal policy for all States and it is not hard to imagine that States will find ways to expand the Food Stamp Program. Food Stamps benefits are 100% federally financed; States have no financial incentive to keep expenditures down. The following table lays out several preliminary estimates of scenarios based on popular State asset waivers:

Waiver for non-TANF Households	Annual Cost of Such a Waiver Nationwide
Vehicle Asset Limit at \$10,000	\$200 million
Vehicle Asset Limit at \$ 8,000	\$135 million
Vehicle Asset Limit at \$6,000	\$70 million
Cash Resources at \$4,000	\$300 million
Cash Resources at \$3,000	\$180 million

The ramifications of eliminating the cost neutrality requirement are much larger than the figures represented above. USDA was able to deny a State waiver request which would have lifted the cap off of the excess shelter deduction on the basis of cost neutrality. While this policy is something to which the Administration is sympathetic, it could increase federal costs in excess of \$3 billion dollars over the next six years and approximately \$750 million in FY2002 if applied nationwide. The Administration was successful, with support from the States, in fending Congressional attempts to place a hard appropriations cap on the Food Stamp Program. The Agriculture Committees felt that food stamp expenditures were "out of control" and that the program was "on automatic pilot." Administrative actions which would re-raise the specter of the annual spending cap on Food Stamps should be avoided.

In order to avoid such increases in this 100% federally financed program, it is recommended that the Administration's policy of cost neutrality continue to apply to all future food stamp waivers.

1 - To-date costs forgiven for all ~~to~~ waived

2 - MA

3 - FS

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States will have the ability to achieve cost neutrality within the Food Stamp Program due to the newly expanded authority which allows waivers which reduce benefits. It is recommended that the current cost neutrality standard be modified to require annual cost neutrality rather than cost neutrality over the life of the waiver in order to remain consistent with the Simplified Food Stamp Program.

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Is there a TANF component?

Annual Cost Neutrality. The welfare reform bill expanded the ability of States to align their TANF and Food Stamp rules for those households in which all or some members are TANF and Food Stamp recipients under the "Simplified Food Stamp Program". Non-TANF households are precluded from participating in the program. This new authority creates a new precedent for annual federal cost neutrality within the Food Stamp Program. *The legislative language for the Simplified Program requires that these programs be cost neutral at least on an annual basis.* If USDA determines that the program is increasing federal costs under the normal Food Stamp Program and the State is unable to adjust the program to lower costs, "the Secretary shall terminate the approval" of the program. If the Administration applies a less restrictive cost neutrality policy to food stamp waivers than that which is required under the Simplified Program, States may seek to align their TANF and Food Stamp rules via the waiver authority rather than the Simplified Program. Such a policy would appear to circumvent the intent of the Simplified Program authority.

Recent waivers have been granted for as long as 12 years. States have been allowed to incur modest added costs up front. The theory was to invest in AFDC-to-work programs. While there were decreasing annual caps on cumulative cost overruns, States were able to stretch repayment of those amounts over the entire waiver. Under the revised Food Stamp statute, most of the waivers will be for benefit increases that have no long term savings potential. As a result, the concept of up-front investment does not apply. The longer a State has to achieve federal cost neutrality, the more likely it will pursue proposals that promise a short-term rise in Food Stamp benefits with the possibility of long term payoff. USDA's experience with large State liabilities is that they are uncollectible. We believe a multi-year cost neutrality policy would put the Department in the position of approving waivers which are known to increase federal costs several years out. It is recommended that cost neutrality be applied on an annual basis in the Food Stamp Program -- at a minimum we suggest that waivers prove themselves to be cost neutral by the second year of implementation of the waiver. This would be consistent with the Food Stamp-only waivers granted to Oregon in late 1995.

State Reaction. Our belief is that States are generally pleased with the newly expanded program and waiver flexibility. Many of the waivers they currently have and even those they were denied in the past are now allowable options under the Food Stamp Program and the Simplified Food Stamp program. States probably expect cost neutrality to continue to apply to food stamp waivers within the Food Stamp Program. This policy makes sense given States new availability of offsets due to the authority which permits waivers which reduce benefits. However, it is reasonable to assume that States would prefer cost neutrality to continue to be applied over the life of the waiver rather than on an annual basis.

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Over time, States may find the new waiver authority less flexible than it currently appears. States's ability to find offsets within the Food Stamp program may not be easy. The Administration and Congressional Democrats were successful in placing limits on the restrictions and benefit reductions States can place on recipients -- the State can't apply a waiver statewide which would lower benefits by 20% for more than 5% of households. In addition, the welfare bill includes language which should narrow the focus of future waivers. The new waiver authority is more clear that the waivers are for time-limited experimental projects rather than efforts to modify the Food Stamp Program in each State -- one could interpret the intent of this language to mean that waivers should not be granted to simply conform the food stamp rules for TANF households with non-TANF households

While States may want to redesign the Food Stamp Program to their own specifications, the Administration fought tenaciously and successfully against such a policy -- the Food Stamp Block Grant and all other measures which would have undermined the national benefit structure. Much of the tenor of the debate around the food assistance programs centered on the very issue of whether national nutrition and benefit standards should remain. The Administration and Congress have acted to expand State flexibility while preserving the Food Stamp Program. It is recommended that USDA work proactively with States to assist them in taking full advantage of the flexibility provided under the law, however the waiver authority should not be used as a mechanism to undermine the Administration's firm commitment to maintaining a national Food Stamp Program.