

NLWJC - Kagan

Counsel - Box 035 - Folder 005

Means – Testing Definitions



BENAMI_J @ A1
12/17/96 06:05:00 PM

Record Type: Record

To: Kenneth S. Apfel
cc: Elena Kagan, Keith J. Fontenot, FORTUNA_D @.A1@CD@LNGTWY, WARNATH_S @
A1@CD@LNGTWY
Subject: ONE LAST ISSUE TO CLOSE WITH YOU

Ken: I know how busy you are, but. . .

We are trying to finalize the interim verification guidance -- including finalizing the issue of the definition of Means Tested Benefits.

The definition is to be "attachment 6" in this guidance -- and I am forwarding it to you for your and your staff's review.

DOJ and the rest of our working group (Elena, me, other agencies) strongly believe that the definition to be useful MUST list the programs we are defining as means-tested federal benefits. You will see the logic when you read the paper I am sending over to you.

You and I had spoken about pulling this list together, and you had said that your staff would pull this together, but I think your staff feels they don't have the go-ahead to actually collect this list.

We need to resolve this now so the guidance can be issued in December as promised. Can a few of us get five minutes with you to discuss?

Thanks - and sorry, I know that this is the craziest possible time.

Chamberlain
887-5310
887-5310
887-5310

E-mail to
TQ m
turning up
mod. 11/17
+ covered team



CRAFT_D @ A1
12/18/96 12:16:00 PM

Record Type: Record

To: Elena Kagan

cc:

Subject: friday 11:00 meeting

Should I invite Randy Moss and DOJ folks to this meeting? Jeremy thought I should ask you. Thanks.



BENAMI_J @ A1
12/18/96 11:01:00 AM

Record Type: Record

To: Deborah F. Kramer
cc: See the distribution list at the bottom of this message
Subject: five minutes with Ken

Debbie

Can you see if we can get five minutes on Ken's schedule maybe Friday to discuss this. That is Elena's and my last day and I think we both want to see this settled so new people don't waste time getting up to speed.

Can you coordinate with Dorothy five minutes? Maybe even by phone?

Thanks.

Message Copied To:

Kenneth S. Apfel
Elena Kagan
Emily Bromberg
FORTUNA_D @ A1@CD@LNGTWY
CRAFT_D @ A1@CD@LNGTWY

From: Kenneth S. Apfel on 12/17/96 10:59:54 PM

Record Type: Record

To: BENAMI_J @ A1 @ CD @ LNGTWY

cc: Elena Kagan/WHO/EOP, Keith J. Fontenot/OMB/EOP, fortuna_d @ a1 @ cd @ lngtwy, warnath_s @ a1 @ cd @ lngtwy

Subject: Re: ONE LAST ISSUE TO CLOSE WITH YOU 

I really don't agree on having a definitive list. Let's get 5 minutes to discuss

Jeremy question - call Randy.

403 - equal alien not entitled to ^{m-t ben} [Medicaid] for 5 yrs
from entry (for new aliens)

no state option here

Is medicaid an m-t ben as we are defining
that term?

Jeremy

Medicaid/m-t

state option 402b -
only for those who in country
otherwise - 403?

lengthy disc

Tuesday

can def-include medicaid?

65584

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Oct-1996 03:45pm

TO: BENAMI_J
FROM: Kenneth S. Apfel

CC: bromberg_e
CC: fortuna_d
CC: kagan_e
CC: warnath_s

SUBJECT: Re: Top Ten List

Message Creation Date was at 25-OCT-1996 15:42:00

on means tested definition, I talked to kevin and everything appears to be on track. Elena was going to touch base one last time with harriet to confirm. The only question in my mind at this point is when Justice takes action. I still think later is better.



Office of Policy Development
United States Department of Justice
10th and Constitution Ave. NW
Washington, D. C. 20530

TO: Diana Fortuna, DPC
Elena Kagan, Wh. House Counsel
Emily Bromberg, Intergovernmental Affs.

FAX: 456-7028
456-1647
456-6220

FROM: Lisalyn R. Jacobs
Sr. Counsel

VOICE: (202) 514-3824
FAX: (202) 514-5715

Total Pages (excluding this cover): 1

Additional Message: Attached is a draft "place-holder" to housing groups on the issue of the definition of federal means-tested benefits. Please get any comments to me by 1 p.m., November 1.

Thanks,

LRJ



U.S. Department of Justice

Office of Policy Development

Assistant Attorney General

Washington, D.C. 20530

Dear :

Thank you for your letter to the Attorney General expressing your concerns about the definition of "federally means tested public benefits" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and its possible impact on affordable housing and community development programs. As you recognize, this is an important task with a number of serious consequences. Accordingly, several federal agencies are proceeding carefully and consulting widely to arrive at an appropriate definition of this term. Just as soon as the question has been resolved, we shall advise you and the many others who have also written regarding what the federal government believes to be the correct definition of this term.

Again, thank you for your interest and views.

Sincerely,

Eleanor D. Acheson

Chris
Dawn
Randy
URSULA



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

Chris,

The Departments involved in this issue are HUD, DoEd, Ag, Labor and SSA. All with SSA have been meeting on this. Have discussed the matter. Call with any questions.

Arrick





DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

Christopher Schroeder
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

Dear Mr. Schroeder,

My office has prepared an interpretation of the term "Federal means-tested public benefit," as that term is used in Sections 403 and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). I seek your Office's concurrence with our interpretation.

In sum, the interpretation explained in the memo is as follows: Section 403 of PRWORA denies qualified aliens who enter the United States on or after August 22, 1996, "any Federal means-tested public benefit" (with specified exceptions) for five years after entry. In addition, section 421 applies new immigrant deeming rules for all "Federal means-tested public benefit" programs. The legislation, however, does not define the term "Federal means-tested public benefit." A proposed definition of the term was deleted from the bill as a result of a Byrd rule objection.

The deleted definition was essentially a catch-all for any federally funded, means-tested benefit program. The Byrd Rule protects the reconciliation process by allowing the Senate to strike, by point of order, certain "extraneous provisions." A provision will be considered "extraneous" if, among other criteria, it does not produce a change in outlays or revenues or it produces changes in outlays or revenues that are merely incidental to the nonbudgetary components of the provision. In the case of sections 403 and 421, the Senate invoked the Byrd Rule on the ground that the definition would have included non-mandatory spending programs, i.e., programs whose inclusion would not change outlays or revenues. The Parliamentarian upheld the Byrd Rule, the definition of the term was deleted and no effort to restore the definition was made.

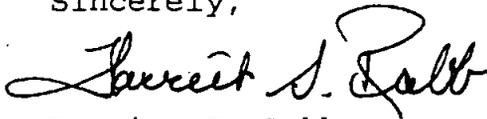
As Senator Chaffee explained in the Congressional Record, when the bill was considered in conference, "I understand that there was an intentional effort to ensure this provision complied with the Byrd Rule by omitting the definition of that particular term.

In other words, then, the term 'Federal means-tested public benefit' . . . does not refer to discretionary programs." 142 Cong. Rec. S9,403 (daily ed. August 1, 1996).

As a result of the foregoing events, interpreting the term more broadly, i.e., to include discretionary programs, would flout the Byrd Rule and be inconsistent with Congressional intent.

If you have any questions about the analysis set forth in this opinion, please contact me or my Deputy, Anna Durand, at 690-6318.

Sincerely,



Harriet S. Rabb

Enclosure

DEFINITION OF "FEDERAL MEANS-TESTED PUBLIC BENEFIT"

Section 403 of the bill denies future immigrants "any Federal means-tested public benefit" (with specified exceptions) for five years after entry. Also, the new deeming rules in section 421 apply to "any Federal means-tested public benefits program" as provided in section 403. The legislation, however, does not define the term "Federal means-tested public benefit." An earlier draft of the bill contained a definition of the term, but that definition was deleted due to the Byrd Rule. As a result, the final legislation contains no clear guidance regarding which programs will be affected by the 5-year eligibility ban on future immigrants and the new deeming rules.

We recommend that, for purposes of this legislation, the term "Federal means-tested public benefit programs" be interpreted to include only Federal means-tested, mandatory spending programs. This interpretation is supported by the legislative history.

The original definition, which was essentially a catch-all for any benefit program funded with federal dollars that determined eligibility or amount of assistance on the basis of income or resources, was deleted due to the Byrd Rule. Congress adopted the Byrd Rule, codified as Section 313 of the Congressional Budget Act, 2 U.S.C. § 644, "to address growing concerns that it was being forced to consider nonbudgetary (and potentially controversial) matters under the expedited reconciliation procedures rather than under its regular procedures." S. Rep. No. 103-297, 103rd Cong., 2nd Sess. (1994). It thus protects the reconciliation process by allowing the Senate to strike, by raising a point of order, certain "extraneous provisions." The Byrd Rule may be waived by a three-fifths vote in the Senate.

A provision will be considered "extraneous" if, among other criteria, it does not produce a change in outlays or revenues or it produces changes in outlays or revenues that are merely incidental to the nonbudgetary components of the provision. In the case of sections 403 and 421, the Senate invoked the Byrd Rule on the grounds that the definition of "Federal means-tested public benefit program" would have included non-mandatory spending programs, i.e., programs that would not change outlays or revenues. The Parliamentarian upheld the Byrd Rule objection, the definition was deleted, and no attempt was made to waive the Byrd Rule.

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Senator Chafee stated on the Senate floor the significance of striking the definition:

"According to the Parliamentarian, that inclusion caused the definition to violate Section 313(b)(1)(D) of the Byrd Rule, which prevents reconciliation legislation from extending its scope to items that provide merely incidental deficit reduction, that is, discretionary programs.

Therefore, when the bill was considered in conference, I understand that there was an intentional effort to ensure this provision complied with [the] Byrd Rule by omitting the definition of that particular term.

In other words, then, the term 'Federal means-tested public benefit' . . . does not refer to discretionary programs. I would assume that programs such as funding for community health centers, as well as the maternal and child health block grant, would not be impacted."

142 Cong. Rec. S9,403 (daily ed. August 1, 1996). Therefore, to be affected by section 403 (and, by reference, section 421) the programs must be mandatory spending programs. This is the logical conclusion, notwithstanding the conference report's statement that the broad definition of "Federal means-tested benefit" that was stricken from the bill was consistent with Congressional intent. Interpreting these sections of the bill to include discretionary programs would openly flout the Byrd Rule.¹

Furthermore, to be affected by sections 401 and 421, the mandatory spending programs must also be "means-tested", i.e., a program that is statutorily required to establish eligibility or amount of assistance based on an individual's, household's, or eligibility unit's income or resources. For example, certain mandatory spending programs such as Title XX and Family Preservation are not affected since they are not means-tested.

Congress takes the Byrd Rule seriously. The Committee on Rules and Administration explained that the Byrd Rule "is vital to making reconciliation work as a tool for reducing the deficit, and entirely consistent with the general proposition that the Senate should be restrictive in the matters it considers while operating under expedited procedures." S. Rep. No. 103-297, 103rd Cong., 2nd Sess. (1994).

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We have identified the following HHS programs as means-tested, mandatory spending programs affected by section 403: TANF and Medicaid. Although Foster Care and Adoption Assistance is a means-tested, mandatory spending program, it is explicitly exempted under section 403(c)(2)(F). Child Care assistance presents a unique issue, in that it is funded from both mandatory and discretionary parts of the budget. However, since the funds are operationally commingled at the state and local level, we recommend as a practical matter treating Child Care assistance as a discretionary program for purposes of sections 403 and 421.

Other Option: Define "Federal means-tested benefit" as provided in the deleted definition, but specify that both income and resource eligibility determinations are necessary to constitute a "means-tested" program. This approach would include more programs within the 5-year ban and new deeming rules and would present administrative difficulties in identifying unambiguously which programs conformed to such a definition.

Other Possible Administrative Actions

The following ideas may warrant further exploration and development:

- Ensure that disabled immigrants currently receiving SSI and/or Medicaid who are qualified to naturalize (i.e., with 3 or 5 years residence, no criminal convictions, etc.) and who submit a bona fide, non-frivolous application for naturalization (as determined by INS), are considered naturalized citizens solely for purposes of benefit eligibility (SSI, Food Stamps, AFDC, Medicaid, Title XX). This status shall be in effect until citizenship or until the application is rejected by INS. This option may be possible within the regulatory authority of INS to implement section 312(b) of the INA (which essentially waives the English and civics requirement for people who are too disabled to comply).
- Ensure that applicants are treated fairly under new rules that may require information that is simply unavailable. For example, the exemption from the eligibility bans for

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immigrants who have 40 quarters of coverage for social security may be difficult -- if not impossible -- for some elderly immigrants to establish. It is not likely that such immigrants have maintained such information, and the Government may also not have such information available in a timely manner. In such cases, an immigrant should be allowed to present a prima facie case for eligibility, with the burden of proof placed on the Government to affirmatively establish ineligibility.

- Increase the administrative support for the naturalization process by: (1) making available to INS additional personnel to help process naturalization applications and to administer naturalization exams (e.g., redeploy DoEd. or HHS personnel); and (2) increasing the number of Judges and ceremonies available for swearing-in of new citizens. This action may require appropriations or reprogramming of funds in order to reach the goal of 6 months between application and naturalization.
- Launch a proactive community-based campaign to educate legal immigrants about the new welfare eligibility laws, and naturalization requirements and opportunities.
- Clarify that the requirement for states, SSA, and housing agencies to report quarterly to INS those immigrants they know are unlawful only applies in those cases where the state can affirmatively establish the unlawful immigration status of an individual.



Nelson A. Díaz

General Counsel

U.S. Department of Housing and Urban Development

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FACSIMILE TRANSMISSION COVER SHEET

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Σ



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-0500

October 3, 1996

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Henry G. Cisneros, Secretary, S

FROM: Nelson A. Díaz, General Counsel, C

SUBJECT: Effect of Immigration Provisions of Welfare Reform Legislation and the Immigration Act on HUD Programs

This memorandum reflects OGC's efforts to coordinate with the Department of Justice and other executive agencies on the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Responsibility Act of 1996 on the programs of these agencies. The Office of General Counsel has reviewed the immigration provisions of the first Act, Pub.L. 104-193 ("welfare reform legislation"), enacted on August 22, 1996, and the provisions of the second Act ("immigration act"), which was included as Division C of the Omnibus Appropriations Act, enacted on September 30, 1996. The immigration act was the subject of a conference report, H. Rep. No. 863, 104th Cong., 1st Sess., 137 Cong. Rec. H11787 (daily ed., September 28, 1996).

The Office of General Counsel has reached the following conclusions: The welfare reform legislation, as amended, affects not only the assisted housing programs that are currently subject to immigration status verification, in accordance with section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a, "Section 214"), but also probably the Section 221(d)(3) Below Market Interest Rate program and several CPD programs. Section 577 of the immigration act requires HUD's regulations implementing Section 214 (24 CFR part 5, subpart F) to be revised by November 29, 1996, to reflect changes in verification and eligibility requirements. That section also provides that HUD's current regulations will cease to be effective on November 30, 1996, if they have not been so revised.

For reference to the actual provisions of the welfare reform legislation, a previous memorandum summarizing the Act (September 10, 1996) is attached. For reference to the actual provisions of the immigration act, a summary comparing the final version of the legislation to a prior draft is attached. The key provisions of that legislation for HUD are Sections 501, 504, 508, 553, and 571-577.

I. Applicability to Assisted Housing Programs

A. General restriction against noncitizens

Section 401 of the welfare reform legislation does not override Section 214, and the restrictions already in place with respect to public housing, Section 8 housing assistance, the Section 236 program, the Rent Supplement program, the Section 202 program, and the Section 235 program of homeownership assistance remain in place. (See 24 CFR Part 5, Subpart F.) The basis for concluding that Section 214 is not overridden by this provision is that the welfare reform legislation (in Section 441) and the immigration act (in Sections 571 through 577) include revisions to Section 214, to expand its scope to cover rural housing programs (and the National Homeownership Trust program, which expired 9/30/94), to require verification of citizenship and modify procedures applicable to verification, and to modify the level of benefits for which families containing ineligible members are eligible. These amendments recognize the continued vitality of Section 214.

B. Five year restriction

Section 403 of the welfare reform legislation prohibits the provision of "Federal means-tested public benefits" to even a "qualified" noncitizen for a period of five years after the person enters the United States on or after 8/22/96 -- except for persons who are refugees, asylees, Cuban or Haitian entrants, or have a family member who is a veteran or member of the U.S. Armed Forces. Persons currently receiving benefits generally are not affected by this restriction.

The Department of Justice will rule on the scope of the restriction's coverage and, specifically, whether Section 403 applies only to entitlement programs or also to discretionary programs. Only if Section 403 is construed to apply to discretionary programs, would the HUD programs be covered by the provision and affected by the restriction. There is a strong argument to support a restrictive construction of Section 403 that will exclude coverage of HUD programs.

If Section 403 were interpreted to cover discretionary programs, Section 403 would prohibit the provision of assisted housing benefits for a period of five years to new applicants who are noncitizens otherwise eligible for all these programs. If an ineligible person (qualified noncitizen who entered the U.S. on or after 8/22/96) joins a family receiving housing assistance after that date, however, the immigration act requires assistance to be reduced, pro-rated based on the number of eligible persons in the household.

The welfare reform legislation is reconciliation legislation. (H.R. 3734, June 27, 1996) Reconciliation legislation is governed by procedural and other provisions of the Congressional Budget Act of 1974. Under section 313 of the Budget Act (known as the "Byrd Rule"), a point of order lies against provisions of reconciliation legislation that are extraneous to achieving a budgetary goal. The rule does not lie against "mandatory" spending legislation -- which is virtually synonymous with "entitlement" legislation -- but would lie against "discretionary" spending legislation. As a floor colloquy between Senators Graham, Chafee and others makes clear, if "Federal means-tested public benefit" does refer to discretionary programs, the legislation would violate the Byrd rule. See S9403 of the Congressional Record on August 1, 1996. Thus, the term should be construed as excluding "discretionary" programs.

With trivial exceptions (e.g., claims payments from FHA Funds), HUD programs are categorized as discretionary. See pp. 454-474 of the joint statement of managers accompanying the conference report on the Budget Enforcement Act, H.R. Conf. Rep. No.101-964, 101st Cong., 2d Sess. 1180-218 (1990). HUD programs are, therefore, excluded from coverage of the restrictions imposed on Federal means-tested public benefits under Section 403 of the welfare reform legislation.

There is some legislative history that could be construed to undermine the conclusion that Section 403 does not apply to "discretionary" programs. The conference report stated that although the definition of "Federal means-tested public benefit" that specifically included housing assistance was removed from the legislation because of the Byrd rule, "[i]t is the intent of conferees that this definition be presumed to be in place for purposes of this title." H. Rep. No. 725, 104th Cong., 1st Sess. 381-382 (1996).

The fact that both the welfare reform legislation and the immigration act left Section 214 operative to govern HUD's assisted housing programs, without adding a reference to the restrictions of Section 403 or adding a modification that would impose a five-year limitation on eligibility for benefits under Section 214, lends support for the argument that Section 403 was not intended to affect the programs governed by Section 214.

The amendment of the welfare reform legislation by the immigration act does not change the conclusion that Section 403 does not apply to HUD programs. The immigration act uses the term "means-tested public benefit" instead of "Federal means-tested public benefit" in connection with such provisions as an amendment to the welfare reform legislation's provision dealing with a sponsor's affidavit (section 551 of the immigration act) and a requirement that GAO undertake a study of current practices of providing benefits to noncitizens who are not "qualified" (section 509). It does not impose other, separate restrictions with respect to this class of benefits. Therefore, it leaves any conclusion based on Section 403's coverage unchanged.

When the Department of Justice confirms that Section 403 does not apply to discretionary programs, HUD must notify housing providers of that decision to forestall improper denial of housing assistance. (See Section 404 of the welfare reform legislation.)

C. Attribution of income

If the Department of Justice rules that Section 403 does apply to discretionary programs, then HUD's assisted housing programs will be affected by the requirements for attributing the income and resources of a sponsor to the noncitizen (Section 421 of the welfare reform legislation). The attribution of income provision has a grandfather clause, however: it would not affect noncitizens participating in these programs before 8/22/96, because it is to be applied "as provided under section 403", and section 403 applies only to noncitizens entering the U.S. after 8/22/96. With respect to applicants, the provision would apply to applicants after 8/22/96 whose applications are processed on or after 2/19/97, and to participants at income reexaminations after 2/19/97. If the attribution of the sponsor's income and resources increased the noncitizen's income significantly, it might make the applicant ineligible or decrease the applicant or participant's level of benefits under a HUD program.

D. Reporting information to other government entities

Two information reporting requirements apply to the public housing and Section 8 housing assistance payments programs under provisions of the welfare reform legislation. There is a requirement, applicable to HUD and to each housing agency (but not to private housing owners administering assisted housing), to report information about applicants and tenants to the INS when HUD or the housing agency "knows [that the individual] is unlawfully in the United States" (Section 404(d)), and there is a further requirement that a housing agency must supply the address of an individual sought for apprehension for a criminal violation to criminal justice authorities (Section 903(b)).

II. FHA Programs

In general, FHA programs would be covered only under Section 401 of the welfare reform legislation. Section 401(c)(1)(A) describes the coverage of the section as extending to Federal public benefits, defined to include a "grant, contract, loan, . . . or . . . license". The only possible way that FHA programs could be covered by that definition would be through the term "contract", since FHA conducts its programs under contracts. Such a construction, however, would distort the evident meaning of the term in context. In this regard, the list of assistance in the definition of "Federal public benefit" is comprised of direct financial assistance and does not extend to credit enhancement. Were that intended, "guarantee" (which includes guarantees and insurance) would have been in that list.

In addition, the contract between HUD and the lending institution (mortgagee) is only a device for administering mortgage insurance, where the nature of the "benefit" is the insurance, not a contract by which appropriated funds are channeled to an individual beneficiary. The "contract" that would form the basis of the "benefit" is with the mortgagee, which is a legal entity recognized under the law of a state of the United States, and under no circumstances could that mortgagee be an "alien."

Therefore, there is no basis on which to reach beyond the actual parties to the contract to affect the rights of tenants or owners with respect to unsubsidized FHA mortgage insurance programs in general. Nevertheless, subsidized FHA programs would be affected, as noted below.

Although Section 401 of the welfare reform legislation does not override Section 214, Section 401 apparently covers one additional housing program. Among the FHA multifamily and single family insurance programs, there are those with which a subsidy contract or interest reduction contract is associated. All of those programs, except for the Section 221(d)(3) Below Market Interest Rate program, are currently covered by the restrictions of Section 214.

The Section 221(d)(3) Below Market Interest Rate program involves HUD acquisition of a mortgage at a market interest rate and reducing the interest rate to 3 percent. At final endorsement of the mortgage, appropriated funds are committed to reduce the interest rate as the inducement for the mortgagor to limit occupancy in the housing development to persons who are income eligible under the program. BMIR is a type of program that makes it possible for tenants in the BMIR project to pay a below market rent. As a result, this program falls within the scope of the requirement that a noncitizen applying to participate in the program after the effective date of the Act must fall into one of the categories of "qualified" noncitizens.

To implement this broader coverage, a notice to owners of Section 221(d)(3) BMIR projects should be issued to require them to determine the immigration status of noncitizens who apply for admission after 8/22/96. Owners can apply the procedures used under the current rule, as modified to comply with the provisions of the immigration act.

To the extent that FHA subsidized programs are covered by Section 401, they also would be subject to the restrictions of Section 403 to the extent that the Department of Justice determines that assisted housing programs generally are covered, since their subsidy is based on a means test for the tenants and homeowners who are the ultimate beneficiaries.

III. CPD Programs

The definition of "Federal public benefit" in Section 401(c) of the welfare reform legislation appears to cover CPD programs. Section 401 appears to limit the provision of benefits under such programs as HOME, CDBG Work Study, and Shelter Plus Care, for persons applying for benefits after 8/22/96 to the six categories of "qualified alien" described in Section 431 (i.e., lawful immigrants). The Department of Justice notice dated 8/23/96 concerning exceptions from the coverage of the Section 401 restrictions exempts HUD's Emergency Shelter Grants program, under the exemption for short-term assistance for persons regardless of income or resources to protect life or safety. (See attached notice published in the Federal Register on August 30, 1996.) Some other elements of CPD programs may also be exempt under the notice. (See the attached list of CPD programs.)

In addition to the restrictions of Section 401, even "qualified aliens" would be disqualified from being admitted to certain CPD programs that prescribe means tests (i.e., income eligibility standards) for five years after their entry into the United States after 8/22/96, if the Department of Justice determines that discretionary programs are covered by Section 403.

The result appears to be that HUD will have to require that information be obtained concerning immigration status from all applicants for participation in the CPD programs. Since many CPD programs do not require the submission of an application from an individual as a prerequisite for receiving a benefit, it is unclear how this type of requirement can be applied. (Previous limits on provision of assistance under these programs to newly amnestied noncitizens were applied only to programs where an application form was already used as a condition of receiving a benefit.)

Unlike the assisted housing programs, the CPD programs are not subject to a requirement that such information concerning noncitizens who are unlawfully present in the U.S. be provided to the INS.

IV. Conclusion

If Section 403 is determined not to apply to HUD programs, the changes to HUD regulations will be confined to the expansion of the regulations implementing Section 214 to cover the Section 221(d)(3) BMIR program, and to reflect changes in verification procedures applicable to all the covered programs, as well as issuance of a new rule to cover CPD programs that come within the reach of Section 401 to apply the restrictions to programs using an application to qualify individuals or families for benefits.

If Section 403 is determined to apply to HUD programs, housing agencies and project owners must be informed to discontinue admitting applicants who are noncitizens, unless they are refugees, asylees, Cuban or Haitian entrants, or families who have a member who is a veteran or an active duty member of the Armed Forces. In this case, the regulations implementing Section 214 restrictions should be expanded to include this five-year restriction and the accompanying attribution of income requirement.

The provisions concerning HUD and housing agency duties to supply information to other government entities appear straightforward and may be able to be implemented by notice rather than rulemaking.

The Department of Justice is authorized to specify the verification procedures to be used to implement the restrictions of Section 401 of the welfare reform legislation, by issuing regulations by March 30, 1997. When those regulations are issued, HUD may have to make conforming changes to the rule implementing Section 214, as well as to any new rule issued to cover the CPD programs.

Notes for meeting on meaning of means-tested lens

1. HHS def -

only applies to mand spending

2. Other possible definitions

a) any spending dependent on income or resources

b) " " " " " and resources

3. DOT conclusion

HHS position will probably lose - but is not lawless -
in resp. + can be defended.

(2a) def above is better.

4. DOT reasoning

a. Why not the best reading

i. Plain language

ii. Conf report

iii. Unprecedented interp of phrase (related to i)

iv. Exceptions to 403 are discretionary props (why
except if not included in (it place))

b. Why a possible reading

Byrd rule objection to definition ^{new} (in conf rep)

As a result, the def dropped out

→ bec. applied to disc props

any thus should be seen to have HHS meaning of phrase
to mand lens.

But: can find no case where proced.
rules used as aid to substantive meaning.

5. Politics of This

- a. could be slammed - plain meaning! unprecedented!
- b. But part of bill has objects to anyway
and there are mostly good-sounding proposals.

6. Note possibility of non-uniform definition -

But: invites litigation / undermines credit of our Fed.
and looks like we can't get our act together.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

10-Oct-1996 04:19pm

TO: Kenneth S. Apfel

FROM: Jeremy D. Benami
 Domestic Policy Council

CC: Stephen C. Warnath
CC: Elena Kagan

SUBJECT: means tested benefits

Elena and I just spoke. She has reviewed the proposed course of action re "means tested benefits" with Jack. While taking this seriously and expressing the appropriate level of concern, he felt that if both Carol and Frank were comfortable with this course of action on policy grounds, there was no need to review with Leon.

My hope is that we can get the write up of the proposal from Jack S/Steve either end of day today or first thing Friday -- then Ken you can review with Frank and Steve/I will review with Carol -- hopefully getting signoffs by cob Friday. That will let us get this back on track Tuesday morning with calls to HHS as appropriate.

Ken: Is this schedule/process ok with you?

TO: JBA
Steve W.
Diana
Elena

September 20, 1996

The Honorable Janet F. Reno
Attorney General
Department of Justice
Constitution Avenue & 10th Street, NW
Washington, DC 20530

FYI Molly

Dear Attorney General Reno:

The undersigned national organizations, and the thousands of local groups and individuals with whom we work, are dedicated to providing affordable housing and promoting community development for our nation's low-income families.

We are concerned that the recently-enacted "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (PL 104-193) could have devastating consequences for poor families by limiting their access to scarce housing resources. Specifically, we are concerned with how the new law will define "federal means tested public benefits." Most qualified immigrants would be denied such benefits for five years after legally entering the country.

We strongly urge you to omit federal housing assistance from the definition of means-tested programs. Housing is a basic human need without which poor families and individuals cannot hope to achieve self-sufficiency. Like the other non-cash programs that are explicitly exempted from the definition – such as emergency Medicaid, education, job training, and child nutrition – housing programs provide a sorely needed minimal safety net for families. Without access to affordable housing, the families that we welcome to this country will further strain our other public resources and struggle longer and harder to make ends meet.

The original definition of "federal means tested public benefits" was struck from the new law because it violated the Byrd rule, which prohibits legislating on other than direct spending programs in a budget bill. The fact that the definition was removed, combined with the absence of other statutory definitions, means that the executive branch will be required to make a determination based on the intent of Congress. Congress' expressed desire to abide by the Senate's rules is the best gauge of that intent. The Administration's decision should reflect Congress' evident desire to exclude programs that do not entail direct spending. HUD housing programs that assist low income persons are subject to annual appropriations, so they are not direct spending programs as defined in the Budget Act. Therefore, housing programs must be excluded from the definition of federal means-tested programs.

Thank you for considering these views.

Sincerely,

ACORN
AFL-CIO Housing Investment Trust
Alliance to End Childhood Lead Poisoning
American Association of Homes and Services for the Aging
American Network of Community Options of Resources
America Works Partnership
The Arc
Association of Local Housing Finance Agencies
Bazelon Center for Mental Health Law
B'nai Brith
Center for Community Change
Church Women United
Consortium for Services to Homeless Families
Council of Jewish Federations
General Board of Church and Society, United Methodist Church
Lutheran Office for Governmental Affairs, ELCA
McAuley Institute
National Alliance to End Homelessness
National Association of Affordable Housing Lenders
National Association of Area Agencies on Aging
National Association of Counties
National Association of Protection & Advocacy Systems
National Community Development Association
National Council of Senior Citizens
National Foundation for Affordable Housing Solutions Inc.
National Housing Conference
National Housing Law Project
National Housing Trust
National Law Center on Homelessness and Poverty
National Leased Housing Association
National Low Income Housing Coalition
National Neighborhood Coalition
NETWORK: A National Catholic Social Justice Lobby
Presbyterian Church USA
The Schuyler Company
Seedco
Simon Publications
Union of American Hebrew Congregations
United Church of Christ, Office for Church in Society
United Way of America

For further information contact:

Debra Austin, National Low Income Housing Coalition (202) 662-1530 x227
Nancy Bernstine, National Housing Law Project (202) 783-5140
Lisa Ranghelli, Center for Community Change (202) 342-0567

EXECUTIVE OFFICE OF THE PRESIDENT

10-Oct-1996 07:11pm

TO: (See Below)
FROM: Kenneth S. Apfel

SUBJECT: Definition of Means Tested Benefits

Message Creation Date was at 10-OCT-1996 19:03:00

Below is my staff's draft of a summary of this issue.

DEFINITION OF MEANS-TESTED BENEFIT PROGRAM IN WELFARE REFORM

The Personal Opportunity and Work Responsibility Reconciliation Act of 1996 bans all new immigrants from receiving Federal means-tested public benefits for the first five years they are in the country. After the five year ban, Federal means-tested benefit program are required to deem the income of sponsors for new immigrants. Earlier versions of the bill defined Federal means-tested benefits, however, the definition was deleted on the Senate floor prior to Conference due to the Byrd rule. This memo addresses the key issue in implementing a definition -- whether to include discretionary programs.

~~The Department of Health and Human Services and a number of advocacy groups (see attachment 1) argue that the definition should be limited to mandatory programs as defined under the BEA. HHS points to the fact that the definition was deleted due to the Byrd rule, which prohibits provisions that don't have an effect on direct spending in a reconciliation bill. The definition that was deleted was expansive, it defined a means-tested benefit as:~~

&a public benefit (including cash, medical, housing, and food assistance and social services) of the Federal Government in which the eligibility of an individual, household, or family eligibility unit for benefits, or the amount of such benefits, or both are determined on the basis of income, resources, or financial need of the individual, household, or unit. 8

The Conference Report repeats this definition and states &it is the intent of conferees that this definition is presumed to be in place for purposes of this title. 8

At our request, Department of Justice Office of Legal Counsel and Elena Kagen in White House General Counsel have reviewed the legislative history. They have concluded that a definition that is limited to mandatory programs would not be outside the legal parameters. The General Counsels of affected agencies have indicated that they would accept a definition limited to mandatory programs. Attachment 2 is a summary of the largest legal arguments for including or excluding discretionary programs from the definition.

While we are continuing to survey OMB branches, a definition that is limited to mandatory programs would affect very few programs. The key mandatory means

tested programs (Food Stamps, SSI, Medicaid, TANF, SSBG) are addressed in another section of the Act and some other important mandatory programs (foster care, adoption assistance, benefits to almost all veterans, higher education assistance) are exempted by the Act.

ATTACHMENT: LEGAL ISSUES REGARDING DEFINITION
OF FEDERAL MEANS-TESTED BENEFITS
IN IMMIGRANTS TITLE OF WELFARE REFORM ACT

Arguments for the Exclusion of Discretionary Programs

The Senate signaled its intent to limit the provision to discretionary programs by deleting a broad definition that would have included mandatory and discretionary programs.

This interpretation is supported by a colloquy by Senator Chaffee in which he indicated that the Byrd Rule exclusion was appropriate because the definition extended to discretionary programs and therefore should be excluded from the bill because, to the extent that it did, there was no scorable cost effect.

While the statute includes exemptions for discretionary programs, these exemptions predate the Byrd rule action.

No legal precedents can be found to indicate that the Byrd rule action cannot be used to determine Congressional intent.

Arguments Against the Exclusion of Discretionary Programs

The plain language of the law suggests a broad reading of the term Federal means-tested benefits. Nothing in the language suggests that discretionary programs be excluded.

The statute lists specific programs exempted from the ban, including discretionary programs. This suggests that Congress intended for non-exempted discretionary programs to be included in the ban.

The Conference report states that the conferees intend that the definition deleted by the Byrd rule be presumed to be in place for the purposes of this title. 8 There was no objection to the statement during final deliberations on the bill in the House and the Senate.

An exhaustive review of federal statutory, regulatory and judicial contexts yielded few uses of the term; however, the citations found suggested a broad definition which includes mandatory and discretionary programs.

The Byrd Rule deletion of the definition occurred under procedural grounds. A search of judicial cases failed to identify any precedents where a court determined Congressional intent based on application of the Byrd Rule.

Distribution:

TO: BENAMI_J
TO: FORTUNA_D
TO: KAGAN_E
TO: WARNATH_S
TO: KAGAN_E
TO: WARNATH_S



Office of Legal Counsel

Washington, D. C. 20530

DATE: 9/25/96

FACSIMILE TRANSMISSION SHEET

FROM: Ursula Werner

OFFICE
PHONE: _____

TO: Elena Kagan

OFFICE
PHONE: _____

NUMBER OF PAGES: 2 PLUS COVER SHEET

FAX NUMBER: 456-1647

REMARKS:

Here's the list of programs HHS identified as
"means-tested."

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057

**OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563**

HHS PROGRAMS

Medicaid
SSA Title XIX

Medicare -- Parts A and B
SSA Title XVIII

Supplemental Security Income (SSI)
SSA Title XVI

Old-Age, Survivors, and Disability Insurance (OASDI)
SSA Title II

Community Health Service Program
PHS Act Sec. 330

Migrant Health Centers
PHS Act Sec. 329

Low-Income Home Energy Assistance
(LIHEAP)

Social Services Block Grant
PHS Act Title XX

Family Planning Services
PHS Act Title X

Temporary Assistance to Needy Families (TANF, formerly AFDC)
SSA Title IV-A

Foster Care and Adoption Assistance
SSA Title IV-E

Job Opportunities and Basic Skills Training Program (JOBS)
SSA Title IV-F

Head Start
42 U.S.C. § 9831

Developmental Disabilities
42 U.S.C. § 6000

Child Support Enforcement
SSA Title IV-D

Child Welfare Services
SSA Title IV-B, subpart 1

Family Preservation and Support Services
SSA Title IV-B, Subpart 2

Child Abuse and Neglect
42 U.S.C. § 5101

Runaway and Homeless Youth
42 U.S.C. 5701 et seq.; 42 U.S.C. 5714-1 et seq. 42 U.S.C. §
11821 et seq.

Abandoned Infants
42 U.S.C. § 670 note

Family Violence Prevention and Services
42 U.S.C. 10401

Family Support Center or Gateway Programs
42 U.S.C. 11481

Comprehensive Child Development Program
42 U.S.C. § 9881

Older Americans Act, Title III
42 U.S.C. §§ 3021-3030r

Older Americans Act, Title VII
42 U.S.C. 3058

National Health Service Corps Scholarship Program
42 U.S.C. 254

National Health Service Corps Loan Repayment Program
42 U.S.C. 254

Health Education Assistance Loan Program
42 U.S.C. 292-292p

Grants for Scholarships and Student Loans
42 U.S.C. 292q

National Research Service Awards
42 U.S.C. 2891-1(a)(1)(A)

NIH and National Library of Medicine Traineeships
42 U.S.C. 216, 241, 282, 283, 242a, 287a, 288a, 289c

Regular Fellowship Awarded Under PHS Act & Clean Air Act
42 U.S.C. 241, 282, 287a, 288a, 289c, 242f, 289g

DRAFT

Outline of Status of "Federal Means-Tested" Definition

I. Scope of Definition

We have closely examined, and remain unconvinced by, the Byrd Rule argument proposed by HHS that the definition should be limited to mandatory spending programs.

- Language and structure of statute suggest broad reading of definition.
- Conference Report states committee intended definition to apply; no objection to this statement.
- Byrd Rule deletion of definition was based upon procedural grounds; insufficient basis to read substantive congressional intent.
- Isolated statements of Senators carry little weight in statutory interpretation.

II. Other Federal Contexts

We have thoroughly reviewed the use of the term "federal means-tested" in other federal statutory, regulatory, and judicial contexts. This search yielded surprisingly few incidences of this term; it suggests, however, a broad definition that includes both mandatory and discretionary benefit programs and that is based upon both income and resources.

- Statutes: Agent Orange Settlement Fund Act (Pub. L. 101-201) (definition applies to broad universe of federal benefits programs); 42 U.S.C. § 1314a(d) (definition includes AFDC, food stamps, SSI); 26 U.S.C. § 32(k) (definition includes Housing Act of 1937, title V of Housing Act of 1949, § 101 of HUD Act of 1965, various sections of National Housing Act, and food stamps)
- Agency Interpretations: HHS and Agriculture proposed rules include AFDC, Medicaid, SSI among programs defined as "federal means-tested"; rulemaking notices define "means-tested" in terms of income and resources.
- Cases: Passing references to "federal means-tested" programs such as SSI, Medicaid, AFDC, veterans benefits, food stamps.

III. Agency Input

We have contacted affected federal agencies such as HHS, Education, HUD, Labor, and Agriculture, for their surveys of which programs they believe would be categorized as "federal means-

tested." At this point, we have received a preliminary survey of such programs from some of these agencies, but still await lists from others. Once we receive the agencies' interpretations of the kinds of programs that would fall under this definition, we can look at the programs to determine how the term "means-tested" is defined and applied.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

20-Sep-1996 02:02pm

TO: Elena Kagan

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Keith J. Fontenot

SUBJECT: means tested benefits

I will forward to you a memo from Sara Rosenbaum that has another idea on how to define a Federal means-tested benefit: things that go directly to individuals, but not things that go to communities.

Don't know if this is better than any of the competing theories out there.

Memorandum

DRAFT



Subject
Definition of "Means-Tested Program" in Other
Federal Contexts

Date
September 5, 1996

To
Chris
Randy

From
Ursula

This memorandum summarizes various uses of the term "means-tested program" -- in other federal statutes, federal regulations and agency actions, and court cases -- to provide some context for a definition of the term in the welfare reform legislation.

Statutes

The most useful statute, for purposes of providing some idea of what Congress intends by the phrase "means-tested" in other contexts, is a public law, Pub. L. 101-201, which was never codified. Pub. L. 101-201, 103 Stat. 1795 (1989), provides for the exclusion of payments made from the Agent Orange Settlement Fund from countable income and resources under "any Federal or federally assisted program." (The caption refers to "federal means-tested programs," while the text of § 1(a) of the law refers to "Federal or federally assisted program.") The legislative history of this public law makes clear that Congress intended the exclusion to apply to "all 'means-tested' Federal programs: including Medicaid, Supplemental Security Income, Child Support, Guaranteed Student Loans, Pell Grants, Food Stamps, Low-Income Home Energy Assistance, and low-income housing assistance programs under the Department of Housing and Urban Development." 135 Cong. Rec. H8928. (An alternative version of this law was passed as part of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239. Section 10405 of OBRA 89 also provided for exclusion of Agent Orange settlement payments from federal means-tested programs, but rather than referring generally to the universe of "federally assisted programs," Pub. L. 101-239 listed 13 specific federal programs: SSI, AFDC, Medicaid, title XX of the SSA, food stamps, § 17 of the Child Nutrition Act of 1966, § 336 of the Older Americans Act, the National School Lunch program, low-income housing assistance programs, the Low Income Home Energy Assistance program, the Energy Conservation in Existing Buildings program, educational assistance programs, and state plans under titles I, X, XIV or XVI of the SSA. This provision of OBRA 89, like Pub. L. 101-201, was never codified.)

Two other statutes offer minimal guidance with respect to the definition of "means-tested," by setting forth examples of the types of programs understood to be included under this label. 42 U.S.C. § 1314a(d) requires the Secretary of HHS to prepare annual reports on welfare receipt in the United States. Subsection (d)(2) requires this report to "include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. § 601 et seq.), the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.), and the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. § 1381 et seq.), or as general assistance under programs administered by State and local governments.

The Earned Income Tax Credit statute, 26 U.S.C. § 32(k), includes a provision which ensures that refunds made through the EITC program are not treated as income or resources for purposes of "certain means-tested programs." The "means-tested programs" listed are: (1) the United States Housing Act of 1937, (2) title V of the Housing Act of 1949, (3) section 101 of the Housing and Urban Development Act of 1965, (4) sections 221(d)(3), 235, and 236 of the National Housing Act, and (5) the Food Stamp Act of 1977.

Finally, two statutes refer to "means-tested" programs but offer no definition or example. See 31 U.S.C. § 3716(c)(3)(B) (allowing Secretary of Treasury to exempt from provision allowing for collection of federal government claims through administrative offset "payments under means-tested programs when requested by the head of the respective agency"); 42 U.S.C. § 1758(b)(2)(C)(iii)(II)(cc) (limiting the disclosure of information contained in applications for free school lunch program to persons "connected with the administration or enforcement of a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the program under this section").

Agency Interpretations

In the few notices of rulemaking and other agency actions that make reference to "means-tested programs," the Department of Agriculture and HHS consistently use that phrase in a broad sense, to include programs such as AFDC, SSI, Food Stamps, and Medicaid. See, e.g., 49 Fed. Reg. 48677, 48678 (1984) (Agriculture final rule prohibiting increase in Food Stamp benefits to households with decreased incomes from penalties imposed under "other means-tested assistance programs such as AFDC, Medicaid, SSI, and General Assistance programs"); 47 Fed. Reg. 6720 (1982) (HHS call for grant applications to study income transfer under means-tested programs, including AFDC, SSI, Medicaid, and Low Income Energy Assistance Program); see also 7

C.F.R. § 250.41(a) (Agriculture rule defining eligibility of charitable and other institutions for food stamp distribution; subsection (a)(v) cites Medicaid as example of "means-tested program"); 7 C.F.R. § 253.5 (Agriculture rule governing food stamp distribution on Indian reservations; subsection (a)(2)(vii) restricts disclosure of information from applications to persons involved in administration of "means-tested assistance programs," listing AFDC, Medicaid, SSI, and general assistance programs subject to joint processing as examples).

Other rulemaking notices by Agriculture and HHS define "means-tested" in terms of income and resources. For example, in its promulgation of a final rule redefining the limit on resources under the SSI program, HHS states: "The statutory limits on resources (as well as on income) reflect congressional intent that the SSI program be means-tested, providing benefits only to those who have limited resources (and income) to meet their current basic needs." 52 Fed. Reg. 31757, 31758 (1987). Similarly, in amending the disability evaluation and determination process for SSI claims of children based on disability, HHS distinguishes between an entitlement program and a means-tested program, using the income and resources definition:

Part B [of the Education of Handicapped Children Act] is an entitlement program, whereas title XVI [of the Social Security Act] is a means-tested program; while all school-age children with qualifying handicapping conditions are to be served under part B, only those children who meet both the disability and income and resource tests under title XVI may become eligible for SSI benefits.

56 Fed. Reg. 5534 (1991).

In a proposed rule implementing portions of the Mickey Leland Memorial Domestic Hunger Relief Act, the Department of Agriculture also used the income/resource definition of "means-tested," to ensure that households receiving food stamps under state or local general assistance programs were indeed "categorically eligible" for food stamps. The legislative history of the Leland Act made clear Congress' concern that food stamps only be distributed under general assistance programs that were indeed needs-based: "'To ensure that a State general assistance program is indeed a true means-tested program, USDA is required to certify that the program serves a population appropriate for categorical eligibility.'" 56 Fed. Reg. 40156, 40158 (1991) (citing H.R. Rep. No. 101-569, at 430). The Department of Agriculture proposed to implement this directive by establishing "specific income and resource limits that a GA program must include." It proposed two standards:

1. The program must not serve a population whose gross income exceeds 130 percent of the [federal] poverty level

2. The program must not serve a population whose resources, as determined by the program, exceed \$2,000

56 Fed. Reg. at 40158-59.

Cases

Courts have used the phrase "means-tested" to refer to a variety of federal public benefit programs, including AFDC, SSI, Medicaid, Food Stamps, veterans benefits, and General Assistance programs. The cases below use the phrase "means-tested" in their description of the programs at issue, but do not offer any further analysis of what "means-tested" means. Judge Easterbrook, in Vaughn v. Sullivan, offers the following interesting, but not particularly helpful, definition of means tested:

Means-tested public assistance programs place a tax on earnings. Not a direct tax, after the fashion of the Internal Revenue Code, but an indirect one. Greater earnings yield less assistance. This is what it means to say that a program is means-tested, with benefits concentrated on persons with lower incomes or wealth.

83 F.3d at 908.

<u>Case</u>	<u>Program</u>
<u>Vaughn v. Sullivan</u> , 83 F.3d 907 (7th Cir. 1996)	SSI, Medicaid
<u>Gamboa v. Rubin</u> , 80 F.3d 1338 (9th Cir. 1996)	AFDC
<u>Pottgieser v. Kizer</u> , 906 F.2d 1319 (9th Cir. 1990)	SSI
<u>Noble v. Shalala</u> , 870 F. Supp. 304 (D. Colo. 1994)	AFDC Medicaid
<u>Hazard v. Sullivan</u> , 827 F. Supp. 1348 (M.D. Tenn. 1993), <u>rev'd</u> , 44 F.3d 399 (6th Cir. 1995)	AFDC Medicaid
<u>Mitson v. Coler</u> , 670 F. Supp. 1568 (S.D. Fla. 1987)	VA ben.

Griffin v. Coler, 667 F. Supp. 1233 (C.D. Ill. 1986)

"such as
but not
limited to
SSI, AFDC,
GA"

In re. Dr. Jenaro Collazo, 527 F. Supp. 972
(D. P.R. 1981)

AFDC, SSI,
Medicaid,
Food
Stamps

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Sep-1996 03:42pm

TO: KAGAN_E

FROM: Keith J. Fontenot

CC: Deborah F. Kramer
CC: Jack A. Smalligan

SUBJECT: Meeting with OLC on Means Tested Definition & related issues

Message Creation Date was at 6-SEP-1996 15:42:00

When last we talked with Chris Schroeder (sp?) in your office, we agreed to get back together with Ken Apfel to explore policy options and further steps on this question. Debbie Kramer has been trying to set up something, but is not getting a response. Could you help facilitate Ken and Chris getting together? Thanks.

Chris - You might want to take a look at the attached prior to our meeting this afternoon.

FAX COVER

Elena

Date/Time:



Income Maintenance Branch



Executive Office of the President
Office of Management and Budget
Washington, DC 20503

TO: ELENA KAGAN

FROM: RICHARD GREEN / LEITH F.

Fax Destination

Organization:

Fax Number:

Number of Attached Pages: Cover + 4

Notes: NRAM-TESTED DEFINITION
THE HLIS "Byrd Rule" Discussion

DEFINITION OF "FEDERAL MEANS-TESTED PUBLIC BENEFIT"

Section 403 of the bill denies future immigrants "any Federal means-tested public benefit" (with specified exceptions) for five years after entry. Also, the new deeming rules in section 421 apply to "any Federal means-tested public benefits program" as provided in section 403. The legislation, however, does not define the term "Federal means-tested public benefit." An earlier draft of the bill contained a definition of the term, but that definition was deleted due to the Byrd Rule. As a result, the final legislation contains no clear guidance regarding which programs will be affected by the 5-year eligibility ban on future immigrants and the new deeming rules.

We recommend that, for purposes of this legislation, the term "Federal means-tested public benefit programs" be interpreted to include only Federal means-tested, mandatory spending programs. This interpretation is supported by the legislative history.

The original definition, which was essentially a catch-all for any benefit program funded with federal dollars that determined eligibility or amount of assistance on the basis of income or resources, was deleted due to the Byrd Rule. Congress adopted the Byrd Rule, codified as Section 313 of the Congressional Budget Act, 2 U.S.C. § 644, "to address growing concerns that it was being forced to consider nonbudgetary (and potentially controversial) matters under the expedited reconciliation procedures rather than under its regular procedures." S. Rep. No. 103-297, 103rd Cong., 2nd Sess. (1994). It thus protects the reconciliation process by allowing the Senate to strike, by raising a point of order, certain "extraneous provisions." The Byrd Rule may be waived by a three-fifths vote in the Senate.

A provision will be considered "extraneous" if, among other criteria, it does not produce a change in outlays or revenues or it produces changes in outlays or revenues that are merely incidental to the nonbudgetary components of the provision. In the case of sections 403 and 421, the Senate invoked the Byrd Rule on the grounds that the definition of "Federal means-tested public benefit program" would have included non-mandatory spending programs, i.e., programs that would not change outlays or revenues. The Parliamentarian upheld the Byrd Rule objection, the definition was deleted, and no attempt was made to waive the Byrd Rule.

Page 2

Senator Chafee stated on the Senate floor the significance of striking the definition:

"According to the Parliamentarian, that inclusion caused the definition to violate Section 313(b)(1)(D) of the Byrd Rule, which prevents reconciliation legislation from extending its scope to items that provide merely incidental deficit reduction, that is, discretionary programs.

Therefore, when the bill was considered in conference, I understand that there was an intentional effort to ensure this provision complied with [the] Byrd Rule by omitting the definition of that particular term.

In other words, then, the term 'Federal means-tested public benefit' . . . does not refer to discretionary programs. I would assume that programs such as funding for community health centers, as well as the maternal and child health block grant, would not be impacted."

142 Cong. Rec. S9,403 (daily ed. August 1, 1996). Therefore, to be affected by section 403 (and, by reference, section 421) the programs must be mandatory spending programs. This is the logical conclusion, notwithstanding the conference report's statement that the broad definition of "Federal means-tested benefit" that was stricken from the bill was consistent with Congressional intent. Interpreting these sections of the bill to include discretionary programs would openly flout the Byrd Rule.¹

Furthermore, to be affected by sections 401 and 421, the mandatory spending programs must also be "means-tested", i.e., a program that is statutorily required to establish eligibility or amount of assistance based on an individual's, household's, or eligibility unit's income or resources. For example, certain mandatory spending programs such as Title XX and Family Preservation are not affected since they are not means-tested.

Congress takes the Byrd Rule seriously. The Committee on Rules and Administration explained that the Byrd Rule "is vital to making reconciliation work as a tool for reducing the deficit, and entirely consistent with the general proposition that the Senate should be restrictive in the matters it considers while operating under expedited procedures." S. Rep. No. 103-297, 103rd Cong., 2nd Sess. (1994).

Page 3

We have identified the following HHS programs as means-tested, mandatory spending programs affected by section 403: TANF and Medicaid. Although Foster Care and Adoption Assistance is a means-tested, mandatory spending program, it is explicitly exempted under section 403(c)(2)(F). Child Care assistance presents a unique issue, in that it is funded from both mandatory and discretionary parts of the budget. However, since the funds are operationally commingled at the state and local level, we recommend as a practical matter treating Child Care assistance as a discretionary program for purposes of sections 403 and 421.

Other Option: Define "Federal means-tested benefit" as provided in the deleted definition, but specify that both income and resource eligibility determinations are necessary to constitute a "means-tested" program. This approach would include more programs within the 5-year ban and new deeming rules and would present administrative difficulties in identifying unambiguously which programs conformed to such a definition.

Other Possible Administrative Actions

The following ideas may warrant further exploration and development:

- Ensure that disabled immigrants currently receiving SSI and/or Medicaid who are qualified to naturalize (i.e., with 3 or 5 years residence, no criminal convictions, etc.) and who submit a bona fide, non-frivolous application for naturalization (as determined by INS), are considered naturalized citizens solely for purposes of benefit eligibility (SSI, Food Stamps, AFDC, Medicaid, Title XX). This status shall be in effect until citizenship or until the application is rejected by INS. This option may be possible within the regulatory authority of INS to implement section 312(b) of the INA (which essentially waives the English and civics requirement for people who are too disabled to comply).
- Ensure that applicants are treated fairly under new rules that may require information that is simply unavailable. For example, the exemption from the eligibility bans for

Page 4

immigrants who have 40 quarters of coverage for social security may be difficult -- if not impossible -- for some elderly immigrants to establish. It is not likely that such immigrants have maintained such information, and the Government may also not have such information available in a timely manner. In such cases, an immigrant should be allowed to present a prima facie case for eligibility, with the burden of proof placed on the Government to affirmatively establish ineligibility.

- Increase the administrative support for the naturalization process by: (1) making available to INS additional personnel to help process naturalization applications and to administer naturalization exams (e.g., redeploy DoEd. or HHS personnel); and (2) increasing the number of Judges and ceremonies available for swearing-in of new citizens. This action may require appropriations or reprogramming of funds in order to reach the goal of 5 months between application and naturalization.
- Launch a proactive community-based campaign to educate legal immigrants about the new welfare eligibility laws, and naturalization requirements and opportunities.
- Clarify that the requirement for states, SSA, and housing agencies to report quarterly to INS those immigrants they know are unlawful only applies in those cases where the state can affirmatively establish the unlawful immigration status of an individual.

FAX COVER

Date/Time:

**Income Maintenance Branch**Executive Office of the President
Office of Management and Budget
Washington, DC 20503TO: Steve Aitken/Elena Kasin ^{x61647}

FROM: Keith Fontenot

Fax Destination

Organization:

Fax Number:

Number of Attached Pages: Cover +

Notes:

The only similar thing I remember to this
 §403 ^{"means tested" issue} ~~program~~ appeared in IRCA 1986.
 (One of colleagues who handled the program
 at the time brought this up and provided
 the attached. Note the last page of the
 INS reg.)

Income Maintenance Fax Number:
Voice Confirmation:202/395-0851
202/395-4686

federal register

**Wednesday
July 12, 1989**

Part II

**Department of
Justice**

Immigration and Naturalization Service

8 CFR Part 100 et al.

Temporary Disqualification From Financial Assistance, Applicant Processing for Legalization Program, and Temporary/Permanent Residence Status Adjustment for Allens; Final Rules and Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245A

(INS No. 1038-89)

RIN 1115-AA55

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("IRCA"). Section 245A(h) provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to 245A(a) ("legalization") are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act, to identify such programs after consultation with other appropriate heads of the various departments and agencies of government. The intended effect is to lessen the impact of legalization on benefit programs.

EFFECTIVE DATE: July 12, 1989. The compliance date of the rule will be determined by each of the administering Federal agencies for its programs, but in no event later than October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Virtue, Deputy General Counsel, Immigration and Naturalization Service, Room 7048, 425 I Street, NW., Washington, DC 20530, (202) 633-3195.

SUPPLEMENTARY INFORMATION:

Section 245A(a) of the Immigration and Nationality Act as amended by Pub. L. 99-603, 100 Stat. 3359, provides for the legalization of status of certain individuals who have been residing illegally in the United States since before January 1, 1982. Section 245A(h) of the Act provides that, with certain exceptions, aliens legalized under section 245A will be ineligible for five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the

various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of Title IV of the Social Security Act)." Section 245A(h)(2) of the Act provides that such temporary ineligibility does not apply (A) to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 510(e) of Pub. L. 98-422, 94 Stat. 1799, as in effect on April 1, 1983), or (B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, Pub. L. 74-271, 49 Stat. 620). The five-year period of eligibility begins on the date an alien is granted lawful temporary resident status under section 245A(a) of the Act.

Section 245A(h) of the Act also provides that, subject to the same exceptions, aliens legalized under section 245A of the Act will be temporarily ineligible for medical assistance under a State plan approved under Title XIX of the Social Security Act (Medicaid), Pub. L. 74-271, 49 Stat. 620 (except certain emergency services and services to pregnant women or aliens who are under 18 years of age) and for benefits financed by the Food Stamp Act of 1977, as amended by Pub. L. 95-400, 92 Stat. 856 (which includes, but is not limited to, section 19 therein, the Puerto Rico Block Grant).

It is also noted that a different provision, section 210(f) of the Act, provides that, with certain exceptions, aliens granted lawful temporary resident status under section 210 of the Act (Lawful Residence for Certain Special Agricultural Workers) are temporarily ineligible for aid under a State plan approved under part A of Title IV of the Social Security Act (aid to families with dependent children), Pub. L. 74-271, 49 Stat. 620, or for Medicaid. It is further noted that section 210A(d)(6) of the Act provides in effect that an alien granted lawful temporary resident status under section 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) shall be subject to the same ineligibility rules as aliens legalized under section 245A of the Act except that the provision in section 245A(h) relating to assistance under the Food Stamp Act of 1977, Pub. L. 95-400, 92 Stat. 856, shall not apply, and assistance furnished under the Legal Services Corporation Act, Pub. L. 98-452, 78 Stat. 508, or Title V of the Housing Act of 1949, 63 Stat. 413, shall not be construed to be financial assistance for which such additional

special agricultural workers are temporarily ineligible.

No such temporary ineligibility is in effect for: (1) aliens granted the status of an alien lawfully admitted for permanent residence pursuant to section 249 of the Act (Record of Admission for Permanent Residence in the Case of Certain Aliens who Entered the United States Prior to July 1, 1924 or January 1, 1972); (2) a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 98-422, as in effect on April 1, 1983); or (3) assistance (other than aid to families with dependent children) which is furnished to an alien who is aged, blind, or disabled (as defined in section 1614(a)(1) of the Social Security Act).

In addition, State and local governments may, at their discretion, provide that aliens legalized under section 245A or 210A of the Act are ineligible for certain other programs. Section 245A(h)(1)(B) of the Act states that a State or political subdivision therein may, to the extent consistent with sections 245A(h)(1)(A), (2), and (3) of the Act, provide that such legalized aliens are ineligible for a period of five years, for the programs of financial assistance or for certain medical assistance which are furnished under the law of that State or political subdivision therein.

Criteria Used To Identify Programs

The Department of Justice, after consulting with representatives of various appropriate departments and agencies of the Federal Government has developed a list of programs of financial assistance furnished under Federal law on the basis of financial need for which newly legalized aliens are ineligible for a period of five years.

The criteria used by the Department of Justice to identify programs of financial assistance furnished under Federal law are as follows:

1. Federal financial assistance is furnished for the benefit of individuals in financial need.

(A) Financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers.

(B) Benefits under the program are targeted to individuals in financial need. Either (1) in order to be eligible,

individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (ii) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

2. The financial assistance is not furnished under a Federal disaster relief program.

3. Eligibility does not require United States citizenship.

4. Assistance under the program is not expressly precluded from being construed as financial assistance by section 245A(h)(4) of the Act. This paragraph provides that assistance furnished under the following provisions of law shall not be construed to be such financial assistance:

(A) The National School Lunch Act, 60 Stat. 230.

(B) The Child Nutrition Act of 1960, Pub. L. 89-642, 88 Stat. 885.

(C) The Vocational Education Act of 1963, Pub. L. 88-210, 77 Stat. 403.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 95 Stat. 358.

(E) The Headstart-Follow Through Act, Pub. L. 88-452, 78 Stat. 508.

(F) The Job Training Partnership Act, Pub. L. 97-300, 98 Stat. 1322.

(G) Title IV of the Higher Education Act of 1965, Pub. L. 89-329, 79 Stat. 1219.

(H) The Public Health Service Act, 37 Stat. 309.

(I) Titles V, XVI, and XX, and parts B, D, and E of Title IV, of the Social Security Act, 49 Stat. 620 (and Titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

Some of the programs that are listed in § 245a.5(c) of this final rule provide for Federal financial assistance to intermediate State or local government agencies or private entities. In several programs of this kind, the intermediate government agency or private entity uses the funds for many different programs of its own. Only some of these private or State or local government programs provide benefits for which aliens legalized under section 245A or 210A of the Act are, with certain exceptions, temporarily ineligible, specifically those programs having both of the following characteristics: (A) The distribution of financial assistance directly or indirectly (through

intermediate public or private entities) to eligible individuals or to private suppliers of goods or services to such individuals, or the distribution to such individuals of goods or services of a kind that is offered by private suppliers, and (B) targeting to individuals in financial need.

Analysis of Comments

A Proposed Rule was published on August 24, 1987 (52 FR 31764-31768) adding 8 CFR 245a.4, which sets forth a proposed list of programs of Federal financial assistance identified by the Attorney General. Interested persons were given the opportunity to submit written comments on the Proposed Rule on or before September 23, 1987. Forty-six comments were received within that period.

Most of the commenters stated their belief that the list in the Proposed Rule was overbroad in that it included programs that were not furnished "on the basis of financial need" or were not programs of "financial assistance furnished under Federal law." Other issues raised by the comments related to the application of the ineligibility provisions to families where not all members are newly legalized aliens (the "family issue"), and whether to "grandfather in" newly legalized aliens who are currently receiving benefits under a program on the ineligible list. These concerns will be addressed in turn.

A. Financial Assistance Furnished on the Basis of Financial Need

Many commenters objected to a portion of the criterion included in the Proposed Rule for use in determining whether Federal assistance programs involve "financial assistance furnished . . . on the basis of financial need." In particular such commenters disagreed that programs should be included if benefits under the program are "targeted to individuals in financial need" in the sense that "distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation."

These commenters believe that only programs applying an individual means test should be covered. They believe that section 245A(h) does not contemplate disqualification of persons from programs of Federal financial assistance aimed at the development or rehabilitation of property in low-income neighborhoods. The programs at issue include the Urban Development Action Grants, Operating Assistance for Troubled Multifamily Housing Projects

(Flexible Subsidy Program), and Rental Housing Rehabilitation administered by HUD.

The Department of Justice remains of the opinion that these programs are appropriately listed. The statutory language directs the Attorney General to designate programs of financial assistance furnished on the basis of financial need. Each of the three programs at issue requires the applicant (State or local government, or property owner) to show that the Federal funds will be used to benefit economically depressed areas. To the extent such funds are used to provide housing to low-income individuals, they constitute Federal financial assistance furnished on the basis of financial need. Nothing in the statutory language or the legislative history suggests that only programs using an individual means test can be programs of financial assistance furnished on the basis of financial need must use.

Our review of the legislative history of this section indicates that Congress intended to minimize two potential adverse impacts of legalization: (a) The financial burden of newly legalized aliens on U.S. taxpayers, and (b) the reduction of benefits to disadvantaged citizens and lawful permanent residents ("LPRs") under Federally funded programs because of the participation of newly legalized aliens.

The effect of making legalized aliens eligible to receive benefits under an entitlement program, i.e., an assistance program not subject to a fixed annual spending limit, would be higher program cost and hence a heavier burden on the taxpayers of this country (unless the funding for one or more other programs, which might well be more in the national interest, were reduced or eliminated). With respect to a non-entitlement program, the effect of making legalized aliens eligible would depend on whether the program's annual spending limit is reached. If not, then the effect would be the same. If, however, there is excess demand for the benefits of a non-entitlement program, that is, the program's annual spending limit would be exceeded should all persons meeting the minimum eligibility requirements receive the benefits for which they would be eligible if such spending limit were not in effect, then permitting legalized aliens to receive benefits would force American taxpayers and their elected representatives to choose one or a combination of three possibilities: (a) Letting some citizens and LPRs be deprived of the benefits of the program, or increasing the annual cost of the

program through (b) increasing the burden on taxpayers, or (c) reducing or eliminating one or more other, possibly more beneficial, Federal programs.

It is true that a certain portion of funds for Urban Development Action Grants is expended for projects which benefit the public at large, e.g., sewers, roads, sidewalks, parks. However, a significant percentage of the funds is directed toward providing housing for low and moderate income persons. It is this portion of the assistance which is intended to be covered by the rule. Accordingly, in the final rule the Urban Development Action Grant Program is marked with an asterisk (*) to clarify the extent to which financial assistance provided under that program is covered by the rule.

B. Program of Financial Assistance Furnished Under Federal Law

A majority of the comments were directed at the Proposed Rule's interpretation of the statutory term "program of financial assistance furnished under Federal law." The most frequent objection raised concerned the inclusion of the Legal Services Corporation on the ineligible list because, these commenters believe, legal advice and assistance received from the Legal Services Corporation cannot reasonably be classified as "financial assistance furnished under Federal law." Many of these same commenters also pointed out that, by its own enabling legislation, the Legal Services Corporation is not an agency or instrumentality of the Federal Government, as they believe the statute requires. Finally, many commenters stated their belief that to make newly legalized aliens ineligible for services provided by the Legal Services Corporation would be to effectively deny access to the courts for many low income newly legalized aliens.

The Department of Justice believes that it is irrelevant that legal services are not financial assistance. The statute provides that legalized aliens are not eligible for certain kinds of programs, namely, those involving "financial assistance furnished on the basis of Federal law . . . on the basis of financial need." Legal services provided to individuals by the Legal Services Corporation do constitute benefits from such a program. Indeed, the language of section 210A(d)(6) of the Act specifically provides that the provisions of section 245A(h), making newly legalized aliens ineligible for financial assistance furnished under Federal law, apply to an alien legalized under section 210A—

In the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2000 *et seq.*) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

Applying standard rules of statutory construction, this language implies the Congress believed that assistance furnished by the Legal Services Corporation is a benefit of a "program of financial assistance furnished under Federal law" within the meaning of section 245A(h). Otherwise this language would be mere surplusage. There is no reason to believe that such benefits were regarded differently from benefits under the housing programs that this same section also exempts from the ineligibility rule and that the legislative history clearly shows were understood by the Congress to be covered by section 245A(h).

Neither is the Department of Justice persuaded by the objection that the Legal Services Corporation is not technically an agency or instrumentality of the Federal Government. Many of the recipients of Federal monies are State and local government agencies, quasi-governmental, charitable or private entities which use such funds to finance benefits to individuals in financial need. It is the Department's view that the focus of the inquiry as to whether a benefit comes from a "program of financial assistance furnished under Federal law . . . on the basis of financial need" should not be either (a) the public or private legal status of the entity that distributes the benefit to the ultimate recipient, or (b) the form the benefit to the ultimate recipient takes, whether a cash grant (or loan, loan guarantee, etc.) or goods or services, but rather that the benefit is financed with Federal funds that are targeted to those in financial need.

The Department also notes that although Legal Services Corporation is a private organization, it is described as a "quasi-official agency" in The United States Government Manual, the "official handbook of the Federal Government" (see the preface of such manual, at iii), published by the Office of the Federal Register. It is so described because it is required by statute to publish in the Federal Register certain information about its programs and activities.

The comment that inclusion of Legal Services Corporation on the list of programs will effectively deny access to the courts by newly legalized aliens is unfounded. Pro bono and low cost programs, not supported by Federal

funds under the Legal Services Corporation, are available through local bar associations nationwide. Furthermore, although newly legalized aliens would undoubtedly benefit if they were eligible for such program during the ineligibility period, the same is true with respect to the other programs from which Congress believed it necessary to exclude them temporarily. Finally, regardless of the policy issues involved, the Department does not have the discretion to exempt legalized aliens from section 245A(h) with respect to any program covered by the statutory language unless an explicit exception is provided.

Another frequent objection to the Proposed Rule's application of "financial assistance furnished under Federal law" was the inclusion on the proposed list of employment and job training programs administered by the Department of Labor (Senior Community Service Employment Program) and the Office of Personnel Management Federal Employment for Disadvantaged Youth—Part-time (Stay-in-School) and Summer (Summer Aides) programs. The issue raised was whether wages paid for services rendered could legitimately be considered "financial assistance furnished under Federal law" since consideration was exchanged for payment. It is the position of the Department of Justice that the employment opportunities are made available through Federal funds and are filled on the basis of financial need. The inclusion of these programs on the list is consistent with the Congressional intent of preventing the displacement of citizens and lawful permanent residents from Federal programs by newly legalized aliens.

In addition, the Department of Energy has pointed out that one of the programs included on the proposed list, the Minority Honors Vocational Training Program, is limited to United States citizens. Accordingly, the program has been removed from the list.

C. The Family Issue

Another frequently expressed concern was how to administer the ineligibility provisions of the Proposed Rule to prevent the receipt of assistance by newly legalized aliens without applying the ineligibility to other members of the same family who may not be ineligible; that is, family members who are U.S. citizens or lawful permanent resident aliens. This situation is most likely to arise in the case of assistance which benefits, and is based upon, the income of all members of a household (e.g., fuel assistance payments under the Low-

Income Home Energy Assistance program administered by the Department of Health and Human Services).

The Department of Justice understands the concerns raised by these comments. However, Congress did not statutorily exempt those newly legalized aliens who are members of "mixed" families from the ineligibility provisions of section 245A(h). Nor did it give the Department any authority to do so by regulation. It should also be noted that the Attorney General's statutory obligation under section 245A(h)(1)(A)(i) is only to "identify" the programs of Federal financial assistance from which newly legalized aliens are ineligible to receive benefits. The programs are actually administered by various other Federal agencies, which must comply not only with this statute and regulation, but with the programs' authorizing statutes, and the agencies' own regulations and responsibility to administer programs efficiently. Consequently, the Department suggests that these concerns be expressed to the appropriate administering agency.

D. Grandfathering Benefits

The Department has no authority to "grandfather in" newly legalized aliens who are currently receiving benefits under a program listed in this rule. Although it is possible that efficient administration of certain programs may require a limited amount of "grandfathering," this would be a decision for the agency administering such programs.

The Housing Act of 1987

Following publication of the Proposed Rule and prior to publication of this Final Rule, Congress amended section 214 of the Housing and Community Development Act of 1980, to provide:

Sec. 214(a) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is

(b) an alien lawfully admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act.

(b) For purposes of this section the term "financial assistance" means financial assistance made available pursuant to the United States Housing Act of 1937, section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1985.

Housing and Community Development Act of 1987, Pub. L. 100-242 section 104 (1988) (codified as amended at 42 U.S.C. 1430a). The programs referred to in

section 214(b) and administered by the Secretary of Housing and Urban Development have been eliminated from the list included in § 245a.5(c) of this Final Rule.

Pub. L. 100-242 also amended Title V of the Housing Act of 1949 (Farm Housing), 42 U.S.C. 1471-1490o, to provide eligibility for lawful temporary residents for certain programs administered by the Secretary of Agriculture. Section 302 provides, in pertinent part, as follows:

(a) Resident Aliens.—Section 501 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

(h)(1) The Secretary may not restrict the availability of assistance under this title for any alien for whom assistance may not be restricted by the Secretary of Housing and Urban Development under section 214 of the Housing and Community Development Act of 1980.

The Title V programs which were included in the list in the Proposed Rule have been eliminated from the Final Rule.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12012.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for Part 245a continues to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359; 6 U.S.C. 1101 note.

2. Part 245a is amended by adding the following section:

§ 245a.5 Temporary disqualification of certain newly legalized aliens from receiving benefits from programs of financial assistance furnished under Federal law.

(a) Except as provided in § 245a.5(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor

Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.5(c) of this chapter.

(b)(1) Section 245a.5(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2096, et seq.) or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance referred to in § 245a.5(a).

(3) Section 245a.5(a) shall not apply to benefits financed through the programs identified in § 245a.5(c), which are marked with an asterisk (*), except to the extent that such benefits:

(i) Consist of, or are financed by, financial assistance in the form of grants, wages, loan, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need; either (A) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.5(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers

set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1988.

	GSA Program Numbers
Department of Agriculture:	
Farm Operating Loans.....	10.406
Farm Ownership Loans.....	10.407
Department of Health and Human Services:	
Assistance Payments—Maintenance Assistance (Maintenance Assistance; Emergency Assistance; State Aid; Aid to Families with Dependent Children).....	13.780
Low-Income Home Energy Assistance.....	13.789
*Community Services Block Grant.....	13.792
*Community Services Block Grant—Discretionary Awards.....	13.793
Department of Housing and Urban Development:	
Mortgage Insurance—Housing in Older, Declining Areas (223(0)).....	14.123
Mortgage Insurance—Special Credit Risks (237).....	14.140
Operating Assistance for Troubled Multifamily Housing Projects (Troubled Projects (Flexible Subsidy) Program).....	14.164
*Community Development Block Grants/Entitlement Grants.....	14.218
*Community Development Block Grants/Small Cities Program (Small Cities).....	14.219
Section 312 Rehabilitation Loans (312).....	14.220
*Urban development action grants.....	14.221
*Community Development Block Grants/State's Program.....	14.226
Section 221(d)(3) Mortgage Insurance for Multifamily Rental Housing for Low and Moderate Income Families (Below Market Interest Rate).....	14.136
Department of Labor:	
Senior Community Service Employment Program (SCSEP).....	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School Program).....	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aides).....	27.004
Small Business Administration:	
Small Business Loans (7(e) Loans).....	59.012
Department of Energy:	
Weatherization Assistance for Low-Income Persons.....	81.042
Department of Education:	
Patricia Roberts Harris Fellowships (Graduate and Professional Study; Graduate and Professional Study Opportunity Fellowships; Public Service Education Fellowships).....	84.094
Legal Training for the Disadvantaged (The American Bar Association Fund for Public Education).....	84.136
Allen J. Ellender Fellowship Program (Ellender Fellowship).....	84.148

Legal Services Corporation: Payments to Legal Services Corporation	GSA Program Numbers
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Dated: June 21, 1989.
Alan C. Nelson,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 89-15789 Filed 7-11-89; 8:45 am]
BILLING CODE 4410-10-M

8 CFR Parts 100, 103, 242, 264, and 299
(INS No. 1020R-89)
RIN 1115-AA39

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to make final the provisions set forth in the interim rule concerning changes to the regulations brought about by the Service's processing of applications for adjustment of temporary resident aliens for lawful permanent residence status.

EFFECTIVE DATE: July 12, 1989.
FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786-3050.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, enacted on November 8, 1986, provided for the legalization program. Under the first phase of the program, eligible aliens were afforded temporary resident status. This rule finalizes the interim rule that described the permanent resident application process of the legalization program, which was published at 53 FR 43984 on October 31, 1988, with request for comments. Forty-eight responses representing 71 individuals and interested organizations, were received. The Service wishes to thank the many interested parties for their useful

comments regarding the October 31, 1988 regulations. All comments were reviewed and, as a result, several changes were incorporated into this final rule.

This rule changes the list of legalization offices; deletes the reference to the appellate authority concerning the application (I-695) for replacement of Form I-688 (Temporary Resident Card); makes editorial changes; and provides the display control numbers and edition dates for Form I-698, Application to Adjust Status from Temporary to Permanent Resident, Form I-699, Certificate of Satisfactory Pursuit; and Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization; Phase II.

Summary of the Final Rule

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. The Service wishes to assure interested parties that it will continue to carefully consider decisions to close legalization offices. The Service will continue to strive to keep the maximum number of legalization offices open within funding constraints.

In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

Eastern Region

District offices—Baltimore, MD; Boston, MA; Buffalo, NY; Philadelphia, PA; Portland, ME; and San Juan, PR; Sub-offices—Albany, NY; Charlotte Amalie, VI; Christiansted, VI; Camden, NJ; Hartford, CT; Norfolk, VA; Pittsburgh, PA; St. Albans, VT; and Syracuse, NY.

Northern Region

District offices—Anchorage, AK; Cleveland, OH; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NE; Portland, OR; Seattle, WA; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WI; Salt Lake City, UT; St. Louis, MO; and Yakima, WA.

Southern Region

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL; Louisville, KY; Memphis, TN; Oklahoma City, OK; and Tampa, FL.

Western Region

District offices—Honolulu, HI; Sub-offices—Agona, GU; Reno, NV; and Tucson, AZ.

(g) IMPLEMENTATION OF SECTION.—

(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

(A) **PERIODS OF CONTINUOUS RESIDENCE.—**The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) **ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—**The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) **WAIVERS OF CERTAIN ABSENCES.—**The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) **USE OF CERTAIN DOCUMENTATION.—**The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the 1 the date an alien was granted law under subsection (a), and notwithstanding of law—

(A) except as provided in alien is not eligible for—

(i) any program of fi under Federal law (whett antee, or otherwise) on t such programs are identi in consultation with oth various departments and in any event including t with dependent children Social Security Act),

(ii) medical assistar proved under title XIX o

(iii) assistance under and

(B) a State or political si extent consistent with subp:

(2) and (3), provide that the programs of financial assista described in subparagraph (of that State or political subc

Unless otherwise specifically pro law, an alien in temporary lav under subsection (a) shall not t any law of a State or political si gram of financial assistance) to l United States under color of law.

(2) EXCEPTIONS.—Paragraph

(A) to a Cuban and H paragraph (1) or (2)(A) of se 422, as in effect on April 1, 1

(B) in the case of assiste with dependent children) w who is an aged, blind, or dis section 1614(a)(1) of the Soc

(3) RESTRICTED MEDICAID BE

(A) **CLARIFICATION OF** restrictions under subpara providing aliens with eligib ance—

(i) paragraph (1) sh (ii) aliens who woul ance but for the provis deemed, for purposes of Act, to be so eligible, an

(iii) aliens lawfully dence under this sec changed, shall be consi ing in the United State

(B) RESTRICTION OF BEI

ION.—
 Attorney General, after consulta-
 the Judiciary of the House of Rep-
 e, shall prescribe—
 blishing a definition of the term
 used in this section, and the evi-
 h that an alien has resided con-
 States for purposes of this section,

lations as may be necessary to

prescribing regulations described

CONTINUOUS RESIDENCE.—The Attor-
 individual periods, and aggregate
 the United States which will be
 iod of continuous residence in the
 take into account absences due
 il trips abroad.

ED BY DEPORTATION OR ADVANCED
 general shall provide that—

not be considered to have resided
 United States, if, during any pe-
 nuous residence is required, the
 United States as a result of a de-
 er of deportation, and

if time during which an alien is
 ates pursuant to the advance pa-
 e Service shall not be considered
 of time during which an alien is
 tates for purposes of this section.

RETAIN ABSENCES.—The Attorney
 a waiver, in the discretion of the
 periods specified under subpara-
 n absence from the United States
 mporary trip abroad required by
 g circumstances outside the con-

DOCUMENTATION.—The Attorney

idence and physical presence in
 ust be established through docu-
 independent corroboration of the
 l in such documents, and

its provided under clause (i) be
 if employment-related documents
 ien are available to the applicant.

ATIONS.—Regulations prescribed
 escribed to take effect on an in-
 ey General determines that this
 lement this section in a timely

ICATION OF NEWLY LEGALIZED
 PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on
 the date an alien was granted lawful temporary resident status
 under subsection (a), and notwithstanding any other provision
 of law—

(A) except as provided in paragraphs (2) and (3), the
 alien is not eligible for—

(i) any program of financial assistance furnished
 under Federal law (whether through grant, loan, guar-
 antee, or otherwise) on the basis of financial need, as
 such programs are identified by the Attorney General
 in consultation with other appropriate heads of the
 various departments and agencies of Government (but
 in any event including the program of aid to families
 with dependent children under part A of title IV of the
 Social Security Act),

(ii) medical assistance under a State plan ap-
 proved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977;

and

(B) a State or political subdivision therein may, to the
 extent consistent with subparagraph (A) and paragraphs
 (2) and (3), provide that the alien is not eligible for the
 programs of financial assistance or for medical assistance
 described in subparagraph (A)(ii) furnished under the law
 of that State or political subdivision.

Unless otherwise specifically provided by this section or other
 law, an alien in temporary lawful residence status granted
 under subsection (a) shall not be considered (for purposes of
 any law of a State or political subdivision providing for a pro-
 gram of financial assistance) to be permanently residing in the
 United States under color of law.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in
 paragraph (1) or (2)(A) of section 501(e) of Public Law 96-
 422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families
 with dependent children) which is furnished to an alien
 who is an aged, blind, or disabled individual (as defined in
 section 1614(a)(1) of the Social Security Act).

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the
 restrictions under subparagraph (B), for the purpose of
 providing aliens with eligibility to receive medical assist-
 ance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assist-
 ance but for the provisions of paragraph (1) shall be
 deemed, for purposes of title XIX of the Social Security
 Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary resi-
 dence under this section, such status not having
 changed, shall be considered to be permanently resid-
 ing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) **LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.**—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) **NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.**—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) **DEFINITION OF MEDICAL ASSISTANCE.**—In this paragraph, the term “medical assistance” refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

(4) **TREATMENT OF CERTAIN PROGRAMS.**—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) The Vocational Education Act of 1963.

(D) Title I of the Elementary and Secondary Education Act of 1965.^{185a}

(E) The Headstart-Follow Through Act.

(F) The Job Training Partnership Act.

(G) Title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) **ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.**—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) **DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.**—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

^{185a} Subparagraph (D) was rewritten by § 894(g) of Improving America's Schools Act of 1994 (P.L. 103-382, Oct. 20, 1994, 108 Stat. 4028).

RESCISSION OF ADJUSTM

SEC. 246. [8 U.S.C. 1256] (a) ¹⁸⁶ years after the status of a person under the provisions of section 245 or provision of law to that of an alien law residence, it shall appear to the satisfaction that the person was not in fact e status, the Attorney General shall reing an adjustment of status to such p tion in the case of such person if that thereupon be subject to all provisions as if the adjustment of status had not

(b) Any person who has become United States upon the basis of a re permanent residence, created as a re for which such person was not in fact quently rescinded under subsection (ject to the provisions of section 340 naturalization was procured by con by willful misrepresentation.

ADJUSTMENT OF STATUS OF CEF
NONIMMIGRAN

SEC. 247. [8 U.S.C. 1257] (a) ' admitted for permanent residence i ney General, under such regulation of a nonimmigrant under paraprag section 101(a), if such alien had ; quently acquires an occupational s seeking admission to the United immigrant status under such sectio ney General's order making such i ney General shall cancel the record manent residence, and the immig thereby be terminated.

(b) The adjustment of status not be applicable in the case of an permitted to retain his status as form as the Attorney General may the Attorney General a written w: emptions, and immunities under which would otherwise accrue to l an occupational status entitling under paragraph (15)(A), (15)(E), c

^{186a} The previous first 3 sentences of this subsection and Nationality Technical Corrections Act 1994, effective as of October 26, 1994.

9/25/96

R. Moss

Means-testing -

Mand/disc disc isn't best reading
pub loss

But not lawless or irresponsible position.

(All mand prog's
addressed otherwise -

Then 403 becomes

The skill - 1st
5 yrs - takes →
away or
choice

almost meaningless)

Income bill - makes arg harder

But doesn't change bottom line.

Difficulties

1. No cert decision applying preced rule to as aid to
subst meaning.
2. Plain language.
3. Unprecedented reading of phrase (tho not all
that common)
4. Conf report
5. Exceptions to 403 are discretionary programs.

Basic HHS arg -

Payrol rule objection to the def of fed m-T -

↓ Let in There at The time.

a) Let tell outside juris of Fin Bill

b) ?

Cong should im be need to have the meaning, ?

phrase to laws that have more than incid.

and y. effect - i.e., its mand bend.

9/24/96

Means-testing

Randy Moss

DOT/DPC/OMB mtg.

NOT committed selves to any position.

Outlined: poss reading.

Central issue - only to mandatory spending?

hard arg to make

not closed the door.

Best reading - quite expansive term -

any ben awarded or measured on
income or resources or financial ability.

Fairness arg -

income and resources

~~if~~ otherwise would be called income-tested

Assume 1 def:

All ags promulgate same reg
w/ same def?

Pres direction

from 2.

1986 back-see

1. Income, bill - def
There of int benefit -
re illegal / deeming
Gray arg that same
def should apply - similar
issues / same time
2. Direction from me.

each
Let ag come up w/ own?
uncount - exec br. - define diff'ly -
invites litigation / undermines
credibility of any def

Time tab 6 - 88/87.

Implementation -
why SP.

1. Def. of means-tested benefits

S. 403 - p. 9

uniform definition across govt?

a) conf. report definition

income, resources or fin need

b) HHS view-def. doesn't include discretionary programs.

c) IRS guidance on old law

What's process for doing this?

Set up process -
identifying generic,
across-the-board issues.

Need bifurcate - diff kind of SP
1) govt-wide
2) agency-specific

"M-tested"

1. income/resources
2. "unit" —

FS - mandatory
a
+
m
T
S

Steve Aitken -

AG programs -

What's subj. to general bar in 403a

- Mandatory
- Discretionary

Definition hopped -
included both

Byrd rule - in habe,
someone lodged B. rule
objective - to this.

You would need a supermaj. if applied to
discretionary.

Part in Court Report - def deleted due to B. Rule.
Intent - def. presumed

402/
403

In discussions w/ HHS.

Also - exceptions in (c) -
include some discretionary
programs

402 -
403 - 5a

But (g) (ii) - non-meas tested.
~~exception to rule~~
~~exception to rule~~

What programs?

Hearing programs
Child care etc.
~~Real~~