

NLWJC - Kagan

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**Attorney General Memo -
Description of Programs**

BILLING CODE: 4410-01

DEPARTMENT OF JUSTICE

[AG Order No.]

Specification of Community Programs Necessary for
Protection of Life or Safety under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION OR TO PROVIDE COMMENT CONTACT: Lisalyn R. Jacobs, Counsel, Office of Policy Development, Department of Justice, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530, telephone (202) 514-9114.

SUPPLEMENTARY INFORMATION:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, which the President signed on August 22, 1996, vests in the Attorney General the authority to designate the kinds of government-funded community programs, services or assistance that are necessary for protection of life or safety and for which all aliens will continue to be eligible. This Order implements that authority.

Background

Section 401 provides a new rule that an alien who is not a "qualified alien," as defined in § 431 of the Act, is not eligible for any "Federal public benefit" -- which, in general, means

- (a) any grant, contract, loan, professional license, or commercial license provided by a federal agency or through appropriated federal funds; or
- (b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, households or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

In addition to certain statutory exceptions, the Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

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

This authority appears in several places in the Act, including: § 401(b)(1)(D), with respect to federal public benefits; § 403(c)(2)(G), with respect to the five-year limited eligibility for federal means-tested public benefits; and § 411(b)(4), with respect to state and local public benefits. (This authority also appears in § 423(d)(7) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from all appropriate federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a "provisional specification" of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This "provisional specification" is effective

immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the

assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

- (a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;
- (b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;
- (c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- (d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
- (e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;
- (f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and
- (g) Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in paragraphs 2 and 3 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification

if they condition (a) the provision of assistance, (b) the amount of assistance provided, or (c) the cost of the assistance provided on the individual recipient's income or resources.

August 23, 1996
Date


Janet Reno,
Attorney General

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Order No.

**SPECIFICATION OF COMMUNITY PROGRAMS
NECESSARY FOR PROTECTION OF LIFE AND SAFETY
UNDER WELFARE REFORM LEGISLATION**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, which the President signed on August 22, 1996, vests in the Attorney General the authority to designate the kinds of government-funded community programs, services or assistance that are necessary for protection of life and safety and for which all aliens will continue to be eligible. This memorandum implements that authority.

Background

Section 401 provides a new rule that an alien who is not a "qualified alien," as defined in § 431 of the Act, is not eligible for any "Federal public benefit" -- which, in general, means

- any grant, contract, loan, professional license or commercial license provided by a federal agency or through appropriated federal funds; or
- any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, households or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified

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aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

The Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

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

This authority appears in several places in the Act, among which are: § 401(b)(1)(D), with respect to programs, services or assistance that are funded by federal agencies or through federal appropriations; § 403(c)(1)(G), with respect to waivers of the five-year eligibility period for aliens' receipt of federal means-tested public benefits; and § 411(b)(4), with respect to programs, services or assistance that are funded by state or local agencies or through state or local appropriations. (This authority also appears in § 423(d)(5) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the legislation, the Department of Justice has conducted preliminary consultations with other federal

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agencies regarding the scope and interpretation of these provisions. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a "provisional specification" of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This "provisional specification" is effective immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from

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receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, more specifically to define the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

- Soup kitchens, community food banks, meals on wheels, and other such community nutritional services for persons requiring special assistance;
- Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;

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- Medical services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;
- Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- Activities designed to protect the life and safety of workers, at-risk children, or community residents; and
- Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in paragraphs 2 and 3 of this order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification if the individual recipient's income or resources are used as a condition to determine a) whether assistance is provided to the individual, b) the amount of assistance provided, or c) the cost of the assistance provided to the individual.

Date

Janet Reno
Attorney General



U.S. Department of Justice

Office of Policy Development

Washington, D.C. 20530

August 20, 1996

MEMORANDUM FOR SELECTED FEDERAL DEPARTMENTS AND AGENCIES

FROM: Kevin R. Jones *KRJ/SPS*
Deputy Assistant Attorney General

Lisalyn R. Jacobs *L RJ*
Counsel

SUBJECT: Implementation of the Welfare Reform Legislation;
Designation of Community Programs Necessary for
Protection of Life and Safety

Introduction

This memorandum is a request for your immediate assistance regarding provisions of the new welfare legislation which require a definition of government-funded community programs, services or assistance for which all aliens will continue to be eligible. Comments (oral or written) are due to the Office of Policy Development, U.S. Department of Justice no later than noon on Wednesday, August 21, 1996.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, as passed by Congress, contains a number of provisions limiting the eligibility of certain classes of aliens to receive certain federal, state and local benefits. Some of the provisions of this bill will take effect on enactment, and we are advised that the President may sign the bill as soon as Thursday, August 22.

Discussion of Relevant Provisions of the Bill

Section 401 of Title IV of H.R. 3734 provides a general rule that an alien who is not a "qualified alien," as defined in § 431, is not eligible for any "Federal public benefit" -- which, in summary, means any grant, contract, loan, professional license or commercial license provided by a federal agency or by appropriated federal funds. (Note: the term "Federal public benefit" does not apply to benefits to which lawfully admitted permanent resident aliens or work authorized nonimmigrant aliens are entitled under a U.S. reciprocal treaty agreement.) Similarly, § 411 provides that non-qualified aliens are also ineligible for state and local public benefits. In addition, § 403 of the Act makes aliens ineligible for specific means-tested federal benefit

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programs for a five-year period after their admission to the United States.

These general rules of ineligibility, however, are subject to several enumerated exceptions in certain circumstances for Social Security and housing benefits. The Act also provides exceptions for all aliens in specific circumstances, including: medical assistance for emergency medical conditions; short-term in-kind emergency disaster relief; and public health assistance for immunizations and communicable diseases.

In addition, § 401(b)(1)(D) provides a further exception covering all aliens in limited circumstances as defined by the Attorney General:

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

This provision relates to such activities that are funded by federal agencies or through federal appropriations. Section 411 (b)(4) of the legislation gives the Attorney General the same authority to designate such activities that are funded by state or local agencies or through state or local appropriations. Under the statute, the programs over which the Attorney General has "designation authority" must not be means-tested -- that is, they must be open to all individuals desiring to participate without regard to income or resources.

Request for Assistance

Although the Attorney General is responsible for designating such programs, services and assistance which all aliens will be eligible to receive, other federal, state and local agencies have the primary expertise regarding the nature and scope of such programs that may exist at the community level.

Accordingly, the Department of Justice is seeking recommendations from all interested federal, state, and local agencies regarding such programs, services or assistance within their responsibilities or which are conducted through federal, state or local grants, contracts or loans administered by them. Obviously, the kinds of non-means-tested community services to be

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included in this list should be as complete as possible to ensure that all individuals will continue to have access to such programs which are necessary for the protection of life or safety.

Although the Justice Department will formally solicit the advice of all relevant agencies before the Attorney General issues a final directive, we would like to be able to identify as many types of programs as possible in the initial directive which will likely be issued on Thursday August 22, 1996. Given the immediacy of this issue, we are seeking agency recommendations by tomorrow, Wednesday AUGUST 20, 1996.

Please direct your comments and responses to Lisa Jacobs in the Department's Office of Policy Development, telephone (202) 514-3824, fax (202) 514-5715.