

**NLWJC - Kagan**

**Counsel - Box 036 - Folder 017**

**California Food Stamp Proposal**

October 2, 1996

Dear:

The Omnibus Consolidated Appropriations Act, which the President signed September 30, 1996, makes a significant change to implementation of the food stamp eligibility provisions for noncitizens of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

Under Public Law 104-193, all currently participating noncitizens were to have the new provisions for food stamps applied at the time of the household's next recertification. The Omnibus Consolidated Appropriations Act delays these new eligibility provisions (Section 402(a)(1) of Public Law 104-193) until April 1, 1997, for individuals who were receiving benefits on August 22, 1996. The Act requires State agencies to redetermine the eligibility of all noncitizen recipients between April 1, 1997, and August 22, 1997.

This new provision is retroactive to August 22, 1996. Thus, any immigrant who was determined ineligible at recertification on or after August 22, 1996, as a result of the application of P.L. 104-193 shall be reinstated to eligibility and any household containing a reinstated alien is entitled to restored benefits for the period during which benefits were denied.

I also want to respond to questions about the 120-day "hold harmless" period provided for quality control error measurement purposes under the Food Stamp Act which applies whenever there are changes in program policy, such as those enacted in Public Law 104-193.

Since the Omnibus Consolidated Appropriations Act did not change the effective date of the noncitizen eligibility provisions for new applicants, the State is entitled to the 120-day hold harmless if it implemented on or before September 23. If it implemented after September 23, its 120-day hold harmless period would be reduced by one day for each day beyond September 23.

Enclosed are a copy of the relevant provision of the appropriations act and a description of how the quality control hold harmless works. The FCS regional office staff will be able to answer any questions specific to your State.

Sincerely,

Bonny O'Neil

for Yvette S. Jackson  
Deputy Administrator  
Food Stamp Program

Enclosures

Sec. 510.       TRANSITION FOR ALIENS CURRENTLY RECEIVING BENEFITS  
                  UNDER THE FOOD STAMP PROGRAM

Effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, subclause (I) of section 402(A)(2)(d)(ii) (8 U.S.C. 1612(a)(2)(D)(ii)) is amended to read as follows:

"(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on the date of enactment of this Act, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997."

## 120-DAY QC VARIANCE EXCLUSION PERIOD

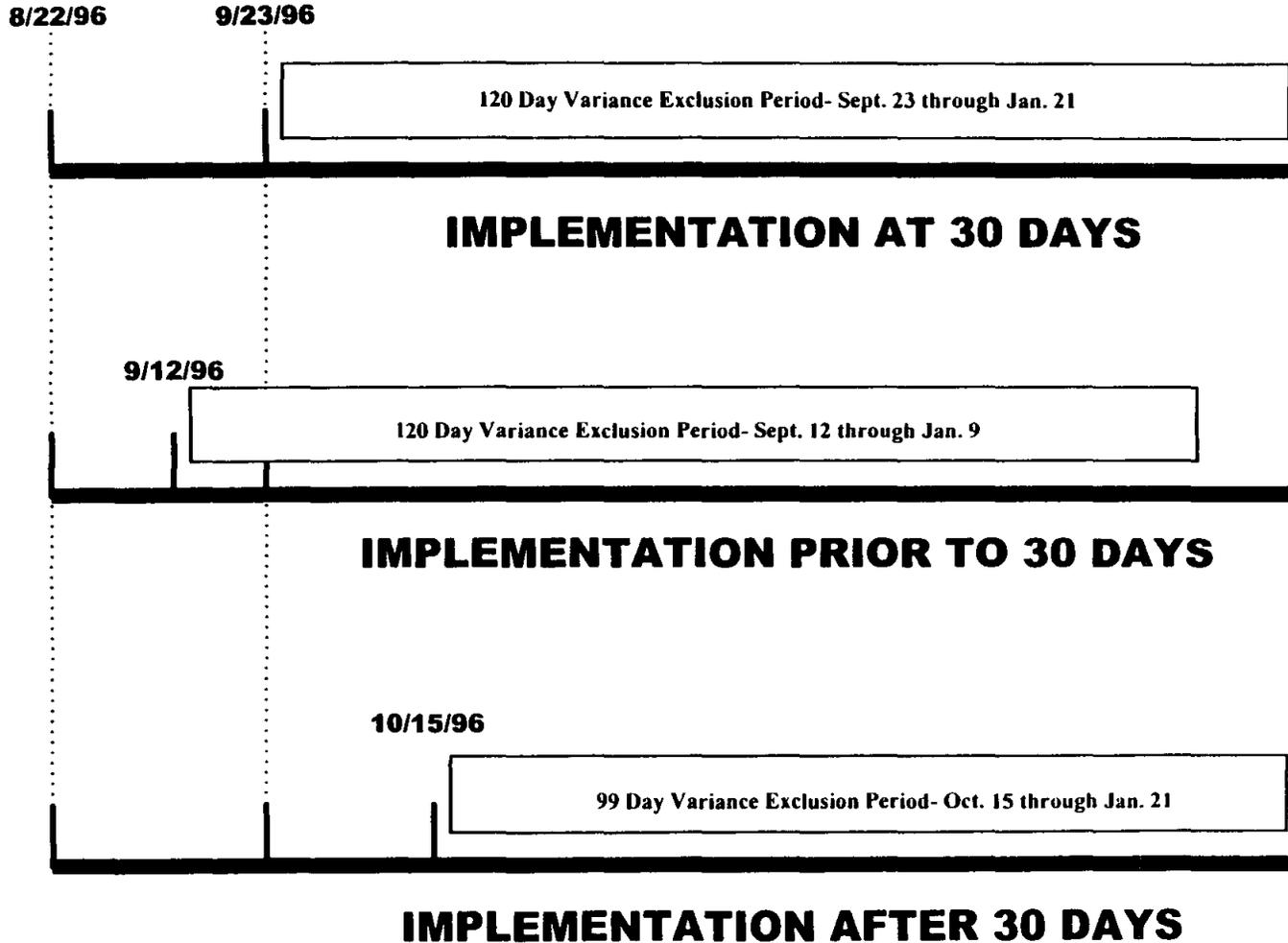
Attached is a one-page chart depicting the 120-day “hold harmless” period that is provided for QC under the Food Stamp Act.

- ◆ The top line shows the time frame if a State implements timely and gets the full 120 days.
- ◆ The middle line shows that if a State implemented earlier, the 120 days would begin when it actually implemented.
- ◆ The bottom line shows that if a State is late in implementing, it loses part of the 120 days.
- ◆ In summary, if a State implements these PRWORA provisions, which are effective upon enactment on or before September 23, it would be “held harmless” for any errors resulting from those provisions for any cases certified or recertified during a 120 day period following implementation. The “hold harmless” would end for a case once it is certified or recertified outside of the 120 day period.
- ◆ Several of the provisions of the PRWORA, including the updating of the Thrifty Food Plan (to be implemented October 1, 1996) and the adjustment to the cap for the Excess Shelter Deduction (to be implemented January 1, 1997) are mass changes. *There is no 120 day variance exclusion period for provisions which must be implemented as mass changes.*

This provision went into effect in 1990.

# 120 DAY QC VARIANCE EXCLUSION PERIOD

(Example For Provision Effective Upon Enactment)



EXECUTIVE OFFICE OF THE PRESIDENT

30-Sep-1996 06:18pm

TO: (See Below)  
FROM: Kenneth S. Apfel  
SUBJECT: Re: means tested

Message Creation Date was at 30-SEP-1996 18:19:00

The wonderful news is that jack and matt got the Congress to drop the means tested definition in the immigration bill- - a good story in itself- - so now we can really get to work. I want a very limited definition. I tihink debbie is setting up a meeting for mid-week on this- - after Justice has a chance to look over the new bill and floor statements.

Distribution:

TO: BROMBERG\_E  
CC: kagan\_e  
CC: fortuna\_d  
CC: Keith J. Fontenot  
CC: Jack A. Smalligan  
CC: Matthew McKearn  
CC: Deborah F. Kramer  
CC: kagan\_e  
CC: fortuna\_d

**DRAFT**

**Implementation of Ineligibility Provisions for Aliens Participating in the  
Food Stamp Program  
(April 1, 1997-March 31, 1998)**

Title IV, Subtitle A, section 402(a)(2)(D)(ii)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (110 Stat. 2105), is amended to read as follows--

**"(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who receives benefits under such program continuously during the period beginning on August 22, 1996, and ending on March 31, 1997. During the period beginning on April 1, 1997, and ending on March 31, 1998, the State agency shall recertify the eligibility of all such aliens at the time of recertification and no later than March 31, 1998, for all such aliens whose certification periods do not end during such period."**

**DRAFT**

**Proposed Amendments to Extend Eligibility of Participating Aliens**

**Section 3(c) of the Food Stamp Act of 1977 (7 U.S.C. 2012(c)) is amended by inserting before the period as the end the following—**

**“and except that the certification period for an alien who receives food stamp benefits continuously during the period beginning on August 22, 1996, and ending on March 31, 1997, shall not end before April 1, 1997”.**

**OR**

**Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended by inserting after the second sentence the following new sentence—**

**“Notwithstanding any other provision of law, an alien who receives food stamp benefits under this subsection continuously during the period beginning on August 22, 1996, and ending on March 31, 1997, shall remain eligible, if otherwise eligible, until April 1, 1997.”.**

✓

**FAX COVER**

Date/Time:

**Income Maintenance Branch**

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

TO: *Elana Kagan*FROM: *Keith Fontenot / Matthew McLean***Fax Destination**

Organization:

Fax Number: *61647*Number of Attached Pages: *Cover + 5***Notes:**

*Attached are supporting materials for an option to delay the effective date of FSP legal immigrant ban until April 1, 1997.*

*Also attached are supporting materials and legislative language to extend FSP and SSI benefits to legal immigrants who apply to naturalize.*

*Both options may be discussed tomorrow.*

Income Maintenance Fax Number:  
Voice Confirmation:

202/395-0851  
202/395-4686

## **Extend Food Stamp Benefits to Legal Immigrants**

### **Background**

- Under enacted Welfare Reform legislation over 1 million legal immigrants will lose food stamp benefits at the end of their current period of certification. Some individuals will lose benefits as soon as October 1. All legal immigrants that don't meet one of the law's exemption provisions will lose benefits within one year of the law's enactment date, August 22, 1996.
- On August 23 the President directed USDA to provide States with an option to extend the certification periods of participating households. The waiver is intended to diminish the number of eligible aliens that would lose their benefits incorrectly. To date 17 States have implemented the waiver provisions and another 10 are considered likely to do so.
- The waiver provides no relief for households certified for 12 months, the maximum time period allowed by law. California, which has 40% of the Nation's legal immigrants, primarily uses 12 month certification periods.

### **Proposal**

**Include a provision in the C.R. to delay implementing the Food Stamp bans until April 1, 1997.**

- Extends benefits for approximately 1 million currently participating legal immigrants, allowing legal immigrants eligible to naturalize to initiate the process.
- Provides States and the Federal government time to develop and implement procedures to determine if legal immigrants are exempt from the ban because they have 40 qualifying quarters of work.
- Makes the effective date of legal immigrant bans parallel the timing of SSA's announcement of redeterminations for legal immigrants receiving SSI.
- States are unlikely to take full advantage of administrative waivers to extend certification periods. The legislative proposal guarantees that legal immigrants will not lose benefits before April 1, 1997.
- All legal immigrants (wouldn't meet other exemptions) would lose benefits by August 22, 1997, as under current law.

## **PROPOSAL TO EXTEND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS**

Under the welfare reform law, enacted on August 22, 1996, most immigrants receiving food stamps will lose their eligibility for benefits at the end of their current certification period.

Many legal immigrants who would lose benefits under the welfare reform law have applied or are eligible, because they have lived in the United States five years or more, to apply to become naturalized citizens. However, the welfare reform law would deny benefits to immigrants that are eligible to become citizens and have taken steps to do so. The Immigration and Naturalization Service estimates that it takes an average of six months to process an application for citizenship. Many of the individuals denied benefits will eventually become U.S. citizens--the Congressional Budget Office estimates that nearly half of all immigrants that will lose benefits under the welfare reform law will become citizens within seven years.

Legal immigrants that have worked 40 qualifying quarters retain their eligibility to receive food stamps. However, there currently is no mechanism to accurately and quickly determine if a legal immigrant has met this requirement.

This proposal would delay the effective date of the food stamp immigrant bans until April 1, 1997. This date parallels the requirements for SSA to notify all legal immigrants receiving SSI that their benefit status will be redetermined. The proposal would only extend eligibility for current recipients, and benefits would cease no later than August 22, 1997, as under current law.

It provides time for currently participating immigrants who are eligible to apply for naturalization, and gives States and the Federal Government time to implement a system to determine if legal immigrants are eligible for benefits based on their previous work history.

The proposal would extend eligibility for approximately 1,000,000 individuals receiving food stamps.

## **EXTEND SSI AND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS IN THE PROCESS OF BECOMING NATURALIZED CITIZENS OF THE UNITED STATES**

### **Impact of Welfare Bill Bans on Legal Immigrants**

- Under the welfare reform law, enacted on August 22, 1996, over 1 million legal immigrants would lose their SSI benefits or food stamps within a year. Some households receiving food stamps will lose their benefits as early as next month (October, 1996).
- The welfare reform law denies benefits to legal immigrants who have lived in the country for five years or more. It would even deny benefits to those legal immigrants that have applied to naturalize, but have not yet been approved. It takes INS an average of six months to approve applications for naturalization. Consequently, a disabled, elderly or poor working family could lose safety net support only because the INS has not had sufficient time to process their application.
- Many legal immigrants who lose benefits intend to become United States citizens. The Congressional Budget Office estimated that nearly half of all legal immigrants denied benefits would become citizens within seven years.

### **Proposal to Extend Benefits for Legal Immigrants Applying for Naturalization**

- This proposal allows currently participating immigrants, who take specific steps to naturalize, to receive SSI and food stamps for an additional 12 months beyond the time that they would have lost benefits under the welfare reform law. This will provide reasonable time for legal immigrants currently receiving SSI or food stamps to naturalize without losing their eligibility.
- While this provision would not help all individuals affected by the legal immigrant bans, it will extend food stamp and/or SSI eligibility for approximately 200,000 persons who soon could become United States citizens.
- This provision would also prevent the unnecessary disruption and administrative burden of denying benefits to individuals, then restoring their eligibility when they naturalized a short time later. Under this proposal, benefits would terminate if the INS denied an individual's application for citizenship.

**EXTEND SSI AND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS THAT  
DECLARE AN INTENT TO BECOME NATURALIZED CITIZENS OF THE UNITED  
STATES**

Under the welfare reform bill, an immigrant who was receiving SSI payments at the time of enactment of the bill and is redetermined to be ineligible shall no longer receive benefits for months beginning on or after the date of the redetermination with respect to such individual. An immigrant who was receiving food stamps and is determined to be ineligible at recertification shall no longer receive benefits for months after the end of the individual's current certification period.

Under the amendment, an immigrant who was receiving SSI payments at the time of enactment of the bill and is redetermined to be ineligible shall no longer receive benefits for months beginning on or after one year after the date of the redetermination with respect to such individual, provided that, prior to such redetermination, such individual has:

- (a) achieved the residency requirement for applying for United States citizenship, and
- (b) filed a declaration of intention to become a citizen of the United States or a naturalization application pursuant to section 334 of the Immigration and Nationality Act, as amended.

For individuals participating in the food stamp program at the time of the effective date of this amendment, the additional 12 months of eligibility shall begin on the date of the end of their current certification period. These individuals must have met criteria (a) above at the time of recertification and criteria (b) within 60 days of recertification.

Benefits for such individual shall cease in the month beginning on or after the issuance of a denial of the application for naturalization by the Immigration and Naturalization Service, if such denial should occur prior to one year after the date of the redetermination or recertification.

All other provisions of the bill, including the requirement to complete all redeterminations or recertifications within one year of enactment of the bill, continue to apply.

**STATUTORY LANGUAGE**

Section 402(a) (2) (D) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) is amended --

(a) in subparagraph (i)(III) by striking "The provisions" and inserting "(aa) Except as provided in division (bb), the provisions"; and by adding at the end the following:

"(bb) In the case of an individual described in subclause (I) who, prior to the redetermination of such individual's eligibility under such subclause--

(AA) meets the requirements respecting residence within the United States for application for naturalization as a citizen of the United States that are applicable to such individual under the Immigration and Nationality Act, and

(BB) has filed with the Attorney General a declaration of intention to become a citizen of the United States or an application for naturalization as a citizen of the United States pursuant to section 334 of the Immigration and Nationality Act,

the provisions of this subsection and the redetermination under subclause (I) shall only apply with respect to the benefits of such individual for months following the twelfth month that begins after the date of such redetermination or, if earlier, for months following the month in which the Attorney General denies such individual's application for naturalization."

(b) in subparagraph (ii)(III), to read as follows:

"(III) GRANDFATHER PROVISION. -- The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on the date of enactment of this Act the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment: Provided, That ineligibility under paragraph (1) shall not apply for 1 additional year to an alien subject to such recertification who has achieved or will achieve the residency requirement for application for naturalization as a citizen of the United States within the period for recertification set forth in subclause (I) and who files with the Attorney General a declaration of intention to become a citizen of the United States or an application for naturalization as a citizen of the United States pursuant to section 334 of the Immigration and Nationality Act, as amended, by 60 days after such recertification. This exception shall become void upon the issuance of a denial of the application for naturalization by the Immigration and Naturalization Service. Nothing in this subclause is intended to prevent a finding of ineligibility as provided under any other provision of law."

**FAX COVER**

Date/Time: 9-25

**Income Maintenance Branch**

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

TO: Elena Kagan, Jeremy Gar-Ami, Diana Fortuna, Steve Warrath  
Emily Bromberg

FROM: Ken Appel / Matthew McKearn

**Fax Destination**

Organization:

Fax Number:

Number of Attached Pages: Cover + 6

CLOSE WOLD

**Notes:**

Attached are supporting materials for two legislative options to extend benefits to legal immigrants losing benefits under welfare reform. The first option extends SSI and food stamps to legal immigrants that take steps to naturalize. The second option delays the implementation date for the food stamp ban.

Included are talking points, a brief description and draft legislative language. The materials are for use in the 12:00 meeting with Len Pankratz.

cc: Barry White  
Keith Farlenot

EK 61647  
EB 62889  
DPC 67028

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

## **EXTEND SSI AND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS THAT DECLARE AN INTENT TO BECOME NATURALIZED CITIZENS OF THE UNITED STATES**

- Under the welfare reform law, enacted on August 22, 1996, over 1 million immigrants would lose their SSI benefits or food stamps within a year. Some households receiving food stamps will lose their eligibility beginning this month.
- The welfare reform law denies benefits to immigrants who have lived in the country for five years or more and have applied to naturalize, but have not yet been approved. These individuals would be denied benefits only because the INS has not had sufficient time to process their application. INS estimates that it takes an average of six months to complete the naturalization process. Consequently, a disabled, elderly or poor working family could lose safety net support even after taking all the steps within their power to become a citizen.
- Many immigrants who lose benefits will become United States citizens. The Congressional Budget Office estimated that nearly half of all legal immigrants denied benefits would become citizens within seven years.
- This proposal provides reasonable time for individuals to complete the requirements for naturalization and for INS to process the application. Benefits would be terminated if the INS denied an individual's application for citizenship. It prevents the disruption and administrative burden of denying benefits to individuals, and subsequently restoring their eligibility a short time later.
- While this provision would not help all individuals affected by the legal immigrant bans, it will extend food stamp or SSI eligibility for approximately 200,000 persons who soon could become United States citizens.

**EXTEND SSI AND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS THAT DECLARE AN INTENT TO BECOME NATURALIZED CITIZENS OF THE UNITED STATES**

Under the welfare reform bill, an immigrant who was receiving SSI payments at the time of enactment of the bill and is redetermined to be ineligible shall no longer receive benefits for months beginning on or after the date of the redetermination with respect to such individual. An immigrant who was receiving food stamps and is determined to be ineligible at recertification shall no longer receive benefits for months after the end of the individual's current certification period.

Under the amendment, an immigrant who was receiving SSI payments at the time of enactment of the bill and is redetermined to be ineligible shall no longer receive benefits for months beginning on or after one year after the date of the redetermination with respect to such individual, provided that, prior to such redetermination, such individual has:

- (a) achieved the residency requirement for applying for United States citizenship, and
- (b) filed a declaration of intention to become a citizen of the United States or a naturalization application pursuant to section 334 of the Immigration and Nationality Act, as amended.

For individuals participating in the food stamp program at the time of the effective date of this amendment, the additional 12 months of eligibility shall begin on the date of the end of their current certification period. These individuals must have met criteria (a) above at the time of recertification and criteria (b) within 60 days of recertification.

Benefits for such individual shall cease in the month beginning on or after the issuance of a denial of the application for naturalization by the Immigration and Naturalization Service, if such denial should occur prior to one year after the date of the redetermination or recertification.

All other provisions of the bill, including the requirement to complete all redeterminations or recertifications within one year of enactment of the bill, continue to apply.

Statutory Language

Section 402(a) (2) (D) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) is amended --

(a) in subparagraph (i)(III) by striking "The provisions" and inserting "(aa) Except as provided in division (bb), the provisions"; and by adding at the end the following:

"(bb) In the case of an individual described in subclause (I) who, prior to the redetermination of such individual's eligibility under such subclause--

(AA) meets the requirements respecting residence within the United States for application for naturalization as a citizen of the United States that are applicable to such individual under the Immigration and Nationality Act, and

(BB) has filed with the Attorney General a declaration of intention to become a citizen of the United States or an application for naturalization as a citizen of the United States pursuant to section 334 of the Immigration and Nationality Act,

the provisions of this subsection and the redetermination under subclause (I) shall only apply with respect to the benefits of such individual for months following the twelfth month that begins after the date of such redetermination or, if earlier, for months following the month in which the Attorney General denies such individual's application for naturalization."

(b) in subparagraph (ii)(III), to read as follows:

"(III) GRANDFATHER PROVISION. -- The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on the date of enactment of this Act the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment: Provided, That ineligibility under paragraph (1) shall not apply for one additional year from such recertification to an alien who has achieved or will achieve the residency requirement for application for naturalization as a citizen of the United States within the period for recertification set forth in subclause (I) and who files with the Attorney General a declaration of intention to become a citizen of the United States or an application for naturalization as a citizen of the United States pursuant to section 334 of the Immigration and Nationality Act, as amended, within 60 days after such recertification. This exception shall become void upon the issuance of a denial of the application for naturalization by the Immigration and Naturalization Service. Nothing in this subclause is intended to prevent a finding of ineligibility as provided under any other provision of law."

## **Extend Food Stamp Benefits to Legal Immigrants**

### **Background**

- Under enacted Welfare Reform legislation over 1 million legal immigrants will lose food stamp benefits at the end of their current period of certification. Some individuals will lose benefits as soon as October 1. All legal immigrants that don't meet one of the law's exemption provisions will lose benefits within one year of the law's enactment date, August 22, 1996.
- On August 23 the President directed USDA to provide States with an option to extend the certification periods of participating households. The waiver is intended to diminish the number of eligible aliens that would lose their benefits incorrectly. To date 32 States have implemented the waiver provisions.
- The waiver provides no relief for households certified for 12 months, the maximum time period allowed by law. California, which has 40% of the Nation's legal immigrants, primarily uses 12 month certification periods.

### **Proposal**

**Include a provision in the C.R. to delay implementing the Food Stamp bans until April 1, 1997.**

- Extends benefits for some of the approximately 1 million currently participating legal immigrants, allowing legal immigrants eligible to naturalize to initiate the process.
- Provides States and the Federal government time to develop and implement procedures to determine if legal immigrants are exempt from the ban because they have 40 qualifying quarters of work.
- Makes the effective date of legal immigrant bans parallel the timing of SSA's announcement of redeterminations for legal immigrants receiving SSI.
- States are unlikely to take full advantage of administrative waivers to extend certification periods. The legislative proposal guarantees that legal immigrants will not lose benefits before April 1, 1997.
- All legal immigrants (would don't meet other exemptions) would lose benefits by August 22, 1997, as under current law.

## **PROPOSAL TO EXTEND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS**

Under the welfare reform law, enacted on August 22, 1996, most immigrants receiving food stamps will lose their eligibility for benefits at the end of their current certification period.

Many legal immigrants who would lose benefits under the welfare reform law have applied or are eligible, because they have lived in the United States five years or more, to apply to become naturalized citizens. However, the welfare reform law would deny benefits to immigrants that are eligible to become citizens and have taken steps to do so. The Immigration and Naturalization Service estimates that it takes an average of six months to process an application for citizenship. Many of the individuals denied benefits will eventually become U.S. citizens--the Congressional Budget Office estimates that nearly half of all immigrants that will lose benefits under the welfare reform law will become citizens within seven years.

Legal immigrants that have worked 40 qualifying quarters retain their eligibility to receive food stamps. However, there currently is no mechanism to accurately and quickly determine if a legal immigrant has met this requirement.

This proposal would delay the effective date of the food stamp immigrant bans until April 1, 1997. This date parallels the requirements for SSA to notify all legal immigrants receiving SSI that their benefit status will be redetermined. The proposal would only extend eligibility for current recipients, and benefits would cease no later than August 22, 1997, as under current law.

It provides time for currently participating immigrants who are eligible to apply for naturalization, and gives States and the Federal Government time to implement a system to determine if legal immigrants are eligible for benefits based on their previous work history. It would extend eligibility for some of the approximately 1,000,000 individuals receiving food stamps.

Title IV, Subtitle A, section 402(a)(2)(D)(ii)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (110 Stat. 2105), is amended to read as follows--

“(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on the date of enactment of this Act, unless such alien is subsequently determined to be ineligible to receive such benefits under the Food Stamp Act of 1977, as amended. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997 and ending August 22, 1997.”

(a) Title IV, Subtitle A, section 402(a)(2)(D)(ii)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193 (110 Stat. 2105), is amended to read as follows--

“(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997 to an alien who received benefits under such program on the date of enactment of this Act, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977, as amended. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997 and ending August 22, 1997.”

(b) New spending authorized by subsection (a) shall be scored as direct spending pursuant to section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

**Implementation of Ineligibility Provisions for Aliens Participating in the  
Food Stamp Program  
(April 1, 1997-August 22, 1997)**

**Title IV, Subtitle A, section 402(a)(2)(D)(i)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (110 Stat. 2105), is amended to read as follows--**

**"(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997 to an alien who received benefits under such program on the date of enactment of this Act, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977, as amended. The State agency shall recertify the eligibility of all aliens who received benefits on the date of enactment during the period beginning on April 1, 1997 and ending August 22, 1997. "**

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

24-Sep-1996 06:17pm

TO:           Jeremy D. Benami  
TO:           Elena Kagan  
TO:           Emily Bromberg  
TO:           Kenneth S. Apfel  
TO:           Keith J. Fontenot  
  
FROM:          Diana M. Fortuna  
              Domestic Policy Council

SUBJECT:      food stamp QC requests

I just heard from USDA that states are getting interested in California's deal of having a hold harmless from QC errors while their food stamp waiver request is being evaluated. First Illinois called USDA to learn more. Then USDA heard that APWA had a conference call with states on this and plans to publicize the option to its members.

So, watch out.

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

24-Sep-1996 06:18pm

TO:            Kenneth S. Apfel

FROM:          Diana M. Fortuna  
                Domestic Policy Council

CC:            KAGAN\_E  
CC:            benami\_j  
CC:            bromberg\_e

SUBJECT:      Re: calif food stamp proposal

Ken, you are so busy these days that it can be hard to stay coordinated. I think Elena got the legislative language somewhat by happenstance from USDA. Given your schedule and the CR, it would be great if Keith and company or Cynthia could circulate paper to appropriate WH offices in your absence (although this may violate the ancient and honorable code of conduct for OMB career employees -- I don't know).

Anyway, anything you can do to help paper flow quickly would be much appreciated.

*now -  
you can't become ineligible  
until Apr 1 if you've  
elig. till April 1.*

**DRAFT**

**Implementation of Ineligibility Provisions for Aliens Participating in the Food Stamp Program (April 1-August 22, 1997)**

Title IV, Subtitle A, section 402(a)(2)(D)(ii)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 (110 Stat. 2105), is amended to read as follows--

**"(I) IN GENERAL.--**With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, <sup>to an</sup> ~~alien who receives benefits under such program continuously during the period beginning on August 22, 1996, and ending on March 31, 1997.~~ During the period beginning on April 1, 1997, and ending on August 22, 1997, the State agency shall recertify the eligibility of all such aliens at the time of recertification for such aliens whose certification periods end during the period beginning April 1, 1997, and ending on August 22, 1997, and no later than August 22, 1997, for all other such aliens."

*to an alien who received  
benefits under such program <sup>prior to</sup> the  
date of enactment  
of this Act unless  
such alien subsequently has  
become ineligible under  
the Food Stamp Act of 1977,  
as amended.*

becomes

become ineligible under the Food Stamp Act of 1977, as amended.

*is subsequently determined to be ineligible*

*for such benefits*

Title IV, Subtitle A, section 402(a)(2)(D)(ii)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193 (110 Stat. 2105), is amended to read as follows--

"(I) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997 to an alien who (received benefits under) such program on the date of enactment of this Act, unless such alien is subsequently determined to be ineligible (for such benefits under) the Food Stamp Act of 1977, as amended. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997 and ending August 22, 1997.

participated under  
in

to participate under  
in

402(a)(2)(D)(i)(I)

with respect to the specified program described in 91(3)(D),  
during the period beginning ~~March~~ <sup>April</sup> 1, 1997 and ending Aug 22, 1997,  
the state agency shall verify the eligibility of any indiv.  
who is receiving benefits under such program as of the date  
of enactment of —

with respect to the specified Fed prog. described in,  
the state agency shall, between April 1, 1997 and August 22, 1997,  
verify the eligibility of any individual who was receiving  
benefits under such program

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The st agency shall verify the elig of  
all such alies during the period  
beg. April 1, 1997 and ending  
Aug 22, 1997.

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-Sep-1996 11:48am

TO:           Elena Kagan  
TO:           Keith J. Fontenot  
TO:           Matthew D. McKearn  
  
FROM:         Diana M. Fortuna  
              Domestic Policy Council

SUBJECT:     Why couldn't both of the legislative fixes you are

working on (12 month extension for those who file a declaration of intention to naturalize, and April 1 effective date for food stamps) apply to NEW applicants for food stamps and SSI, not just current applicants?

I am sure I must be forgetting something.

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-Sep-1996 09:57am

TO: Carol H. Rasco

FROM: Diana M. Fortuna  
Domestic Policy Council

CC: Jeremy D. Benami  
CC: Elena Kagan  
CC: Emily Bromberg

SUBJECT: Food stamp implementation and today's article

You had asked about today's NYTimes article and its charge that USDA's instructions have been "confusing and nearly impossible to decipher."

Clearly USDA needs to work on how it communicates. They say that food stamp directors understand the rules of the game. But advocates or state officials may not understand it as well, because you need to understand the complicated QC process to understand the rules. USDA did send states a confusing letter immediately after the bill was signed, but they think they have clarified the policy to states in the 3 conferences they have had in the past few weeks.

Part of the confusion stems from our offer of the waiver to states. The states' different recertification schedules mean that the waiver hits different states in different ways. The continuing effort to figure out something for California has created more uncertainty, particularly as states like Illinois start to hear that California has a special grace period while we resolve their waiver request.

Jeremy is right that the lack of a good interim verification system does mean that states are in the dark on things like how to verify 40 quarters of Social Security for NEW applicants. All the delays we have been able to devise so far, to give states more time to develop interim verification procedures, only help on current applicants, not new applicants.

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

26-Sep-1996 11:39am

TO:           Jeremy D. Benami  
TO:           Emily Bromberg  
TO:           Elena Kagan  
TO:           Keith J. Fontenot  
  
FROM:          Diana M. Fortuna  
              Domestic Policy Council

SUBJECT:      Illinois and food stamp grace period

I hear Illinois is asking for the same treatment as Calif. on food stamps and the grace period.

**FAX COVER**

Date/Time:

**Income Maintenance Branch**

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

TO: *Ken Apfel Elena Kagan*FROM: *Matthew McKeam***Fax Destination****Organization:****Fax Number:****Number of Attached Pages:** *Cover + 3***Notes:**

*Attached are revised talking points for the Food Stamp immigrant provisions and legislative language. This version incorporates Elena's comments. Both Elena and Roz Rethman, OMB GC has cleared off on the legislative language.*

*Cindy has a clean copy of the attachments and the file is i:\data\immig\fspalien.926*

*CC: Elena Kagan  
Barry Whitte*

Income Maintenance Fax Number:  
Voice Confirmation:

202/395-0851  
202/395-4686

EK 61647

## **Extend Food Stamp Benefits to Legal Immigrants**

### **Background**

- Under enacted Welfare Reform legislation over 1 million legal immigrants will lose food stamp benefits at the end of their current period of certification. Some individuals will lose benefits before October 1. All legal immigrants who don't meet one of the law's exemption provisions will lose benefits within one year of the law's enactment date, August 22, 1996. New applicants are ineligible as of the date of enactment.
- On August 23 the President directed USDA to provide States with an option to extend for a limited time the certification periods of participating households. The waiver is intended to diminish the number of eligible aliens that would lose their benefits incorrectly. To date 32 States have implemented the waiver provisions.
- The waiver, however, provides no relief for households already certified for 12 months, the maximum time period allowed by law. California, which has 40% of the Nation's legal immigrants, primarily uses 12 month certification periods.

### **Proposal**

#### **Include a provision in the C.R. to delay implementing the Food Stamp bans for currently participating legal immigrants until April 1, 1997.**

- Guarantees currently participating legal immigrants food assistance to April 1, 1997. This provides more time for: 1) States and the Federal government to develop and implement procedures to determine if legal immigrants are exempt from the ban because they have 40 qualifying quarters of work, or fit within another exemption and 2) legal immigrants eligible to naturalize to initiate the process.
- Treats legal immigrants receiving food stamps in a manner similar to the treatment of legal immigrants receiving SSI. Moving the effective date to April 1, 1997 parallels the timing of SSA's requirement to notify participants that their eligibility status will be redetermined. All of the other legal immigrant bans in the bill provide a transition period.
- Some large States can't take advantage of administrative waivers to extend certification periods, for example, California.
- The legislative proposal guarantees that legal immigrants will not lose benefits before April 1, 1997. At the same time, all legal immigrants (who don't meet other exemptions) would lose benefits by August 22, 1997, as under current law.
- The cost of this proposal would be scored against the pay-go scorecard rather than the discretionary caps.

## **PROPOSAL TO EXTEND FOOD STAMP ELIGIBILITY FOR LEGAL IMMIGRANTS**

Under the welfare reform law, enacted on August 22, 1996, most immigrants receiving food stamps will lose their eligibility for benefits at the end of their current certification period.

The proposal provides States with additional time to make sure that legal immigrants who remain eligible for food stamps continue to receive them. Legal immigrants who have worked 40 qualifying quarters retain their eligibility to receive food stamps. However, there currently is no mechanism to accurately and quickly determine if a legal immigrant has met this requirement. The additional time provided by this provision gives States the opportunity to develop procedures to make accurate determinations of many facts -- such as immigration classification, veteran status or work history. This will decrease inaccurate or inequitable decisions to cut off food stamp benefits.

Many legal immigrants who would lose benefits under the welfare reform law will eventually become U.S. citizens -- the Congressional Budget Office estimates that nearly half of all immigrants that will lose benefits under the welfare reform law will become citizens within seven years. This proposal provides additional time for eligible legal immigrants to apply to naturalize and for INS to review the application, a process that takes an average of six months to complete.

This proposal would delay the effective date of the food stamp immigrant bans until April 1, 1997. This date parallels the requirements for SSA to notify all legal immigrants receiving SSI that their benefit status will be redetermined. The proposal would only extend eligibility for current recipients, and benefits would cease no later than August 22, 1997, as under current law.

**Legislative Language**

(a) Title IV, Subtitle A, section 402(a)(2)(D)(ii)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193 (110 Stat. 2105), is amended to read as follows--

“(1) IN GENERAL.--With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997 to an alien who received benefits under such program on the date of enactment of this Act, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977, as amended. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997 and ending August 22, 1997.”.

(b) New spending authorized by subsection (a) shall be scored as direct spending pursuant to sections 250(c)(8)(C) and 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

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

26-Sep-1996 05:23pm

TO:            Elena Kagan  
TO:            Emily Bromberg  
TO:            Jeremy D. Benami  
TO:            Kenneth S. Apfel  
TO:            Keith J. Fontenot  
  
FROM:          Diana M. Fortuna  
                Domestic Policy Council

SUBJECT:      other states on Calif. food stamp bandwagon

USDA fears that more and more states will be asking shortly for the same treatment as Calif. NY, WV, and Iowa have inquired; Illinois has already written a letter. Yvette thinks all the states will view this as "what have I got to lose?" once they hear about it from an APWA bulletin. And then we will risk having Congress say we are simply delaying implementation of the law for no reason.

She is worried that the grace period she gave Calif that other states now want has no clear legal basis, and so extending it to many states increases the risk.

She is concerned that Illinois's request does not have any substance to it in terms of requesting a specific waiver. It just says "give us what you gave to Calif". She may call them and ask what they want specifically.

Elena: do you want to call her? Emily?



Robert W. Wright  
Director

# Illinois Department of Public Aid

Jesse B. Harris Building  
100 South Grand Avenue East  
Springfield, Illinois 62762-0001

cc Elena Kagan  
Emily Bronberg  
Keith Fontenot  
Steve Warrath  
Jeremy Ben Ami  
Diana  
Illinois wants  
Calif. deal

September 25, 1996

William E. Ludwig, Administrator  
Food and Consumer Service  
United States Department of Agriculture  
3101 Park Center Drive  
Alexandria, VA 22302

Dear Mr. Ludwig:

In accordance with statutory requirements defining state implementation of the Food Stamp Program Provisions of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, I wish to address a specific issue of concern on the effective date of enactment. The problem section is 402, Alien Eligibility, and is related to the President's directive of August 22, 1996 to the Secretary of Agriculture. That directive specifically gave authority to FCS permitting state agencies to extend certification periods of currently participating aliens, to no longer than 12 months, or up to 24 months if all adult household members are elderly or disabled.

Effective immediately the State of Illinois will be determining ineligible, upon application, any noncitizen who is not otherwise eligible, to participate in the food stamp program. However, I am asking for your positive consideration of a delay in our application of the new provisions of this Act to those noncitizens currently participating in the food stamp program. In Illinois, out of approximately 38,600 legal immigrants that could lose their food stamp benefits, an estimated 31,900 will not be able to benefit from the President's order allowing the extension of certification periods, because those households already have a certification period of 12 months or greater. This presents a considerable inequity for states with a significant number of the noncitizen population receiving food stamps having certification periods of 12 months or longer.

We are aware that such a consideration has been requested by California in allowing them to extend all certification periods past 12 months until August 22, 1997. We request a similar consideration, including a hold harmless provision for any currently participating noncitizen households receiving benefits during such a period. We also feel that the normal, mandated 120 day hold harmless period should be extended accordingly.

I will be happy to discuss any questions you might have at your convenience. I can be reached at 217-782-1200.

Sincerely,

*Robert W. Wright*

Robert W. Wright  
Director

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-Sep-1996 05:42pm

TO: KAGAN\_E  
FROM: Keith J. Fontenot  
SUBJECT: RE: Draft Language

Message Creation Date was at 25-SEP-1996 17:40:00

You should have everything -- I think Matt faxed it over this morning. Please call (57757 or Matt 57760) if you haven't gotten it. We'd like to wrap this up pronto.

Matt's note said USDA was OK with the construction as it was but wanted to talk alternative constructions. At this point I'd rather just stick with what you and they are OK with.

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

23-Sep-1996 04:51pm

TO:           (See Below)

FROM:         Diana M. Fortuna  
              Domestic Policy Council

SUBJECT:     Food stamp cuts

I hear that Judith Havemann of the Wash. Post is poking around today on the implementation date of the food stamp cut-off for legal immigrants. She has spoken to USDA about this in general; and to HHS about the fact that Virginia is stating that they are implementing the cuts.

Here is some background: As of the date of enactment, legal immigrants applying for food stamps were no longer eligible. USDA gave states a 30-day grace period to get this up and running. But the 30 days are just about up, and so states are starting to implement this for new applicants.

For legal immigrants currently on the rolls, we have allowed states to use a waiver that could extend the cut-off by several months, but not all states benefit from this waiver. As you probably know, we have told California they do not have to implement this change for current recipients while we figure out if we can give them some relief.

Distribution:

TO: Mary Ellen Glynn  
TO: John C. Angell  
TO: Carol H. Rasco  
TO: Kenneth S. Apfel  
TO: Emily Bromberg  
TO: Jeremy D. Benami  
TO: Keith J. Fontenot  
TO: Elena Kagan  
TO: Stephen C. Warnath

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

23-Sep-1996 04:55pm

TO:            Elena Kagan  
FROM:          Diana M. Fortuna  
                Domestic Policy Council

SUBJECT:      USDA tells me they just sort of made up the 30 day

grace period; not clear what authority they had for it. I wonder if we could have made it longer, but it's probably too late now.

*I talked to Yvet*

THE WHITE HOUSE  
WASHINGTON

Randy -

Please review the attached ASAP. Also, could you do me a favor (I'm still on jury duty) and make sure Ron Hill gets this and reviews it too.

I believe you and Chris will be asked to a 5:00 meeting today to discuss all the ideas on the table and finally (I hope) get a resolution

Elena

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

LRM NO: 5489

FILE NO: 1073

9/16/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): \_\_\_\_\_

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES *J. Schroeder for Jukes* (for) Assistant Director for Legislative Reference

OMB CONTACT: Ingrid SCHROEDER 395-3883 Legislative Assistant's Line: 395-3454  
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=SCHROEDER, G=INGRID, I=M  
schroeder\_i@a1.eop.gov

SUBJECT: Proposed Report and Talking Points RE: HR2202, Immigration in the National Interest Act

DEADLINE: COB Monday, September 16,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Also attached for agency comment are draft talking points listing the major issues in the draft conference report on H.R. 2202. Since the conference committee is meeting tomorrow, Sept. 17th, at noon we will need clearance on the draft letter and talking points tonight.

Hill  
Concerned - ltd to current/haw?  
Hand to justify at least in absence of p.f. case.  
Thruin - rule to lawsuit - new applicant can bring EP suit  
Simple presumptive - legally indefensible

273.2 f 2 ii C  
verifying immig status  
hard 194 form  
w request for ~~proof of~~ <sup>proof of</sup> ~~status~~ <sup>immig status</sup>  
place holder  
w of lawful admittic to perm ~~res.~~ <sup>res.</sup>

DOI - Randy -  
Simple Presump - <sup>Very</sup> aggressive  
close 2.  
Narrower - p.f. case - ~~not~~ <sup>there</sup> OK.

AG do it? Charged w/ visit. syst -  
qualified alien +  
is able to receive such  
benef.  
Auth to do it under this.



United States  
Department of  
Agriculture

Food and  
Consumer  
Service

3101 Park Center Drive  
Alexandria, VA  
22302-1500

FOOD STAMP PROGRAM

DATAFAX COVER SHEET

DATE: 9/16/96

TO: Elena Kazan

OFFICE: \_\_\_\_\_

PHONE: 456-1647 (Fax)

FROM: Quetta Jackson

OFFICE: USDA / Food Stamp Program

PHONE: \_\_\_\_\_

SUBJECT: Implementation of Alien Eligibility  
Provision

REMARKS: If you have questions, please call  
Art Foley or my staff at 703-305-2490.

NO. OF PAGES INCLUDING COVER SHEET: 2

## Implementation of Alien Eligibility Provision

**California proposal:** The 12-month certification period allowed by the new definition of certification periods should be applied to ongoing households. All recipient households may be assigned a new 12-month certification period as of August 22, 1996.

**Alternate proposal:** Implementation should be waived until the eligibility determination can be done accurately. For the ongoing caseload, the administrative complexity of determining the eligibility of alien household members is so great and the existing capability so meager that Congress did not contemplate implementation until verification systems are in place. States should not attempt to verify the eligibility of currently participating aliens until verification systems are in place.

**FCS comment:** This proposal may be legally defensible, but it is highly questionable from a policy standpoint. It would result in applying different policies to new applicants and the ongoing caseload. New applicants would be required to provide verification of eligible alien status, but current participants would not be asked. This would be difficult to defend to Congress. Also, it would set a bad precedent. State agencies would want the same policy applied not only to other provisions of the welfare reform legislation but also to other legislation that may be passed in the future.

### **Other options:**

**Self-declaration:** Aliens attest under penalty of perjury that they meet the 40-quarters requirement.

**Presumptive eligibility:** State agencies would be expected to verify the date of an alien's entry into the country and to make a determination of eligibility or ineligibility based on verification, to the extent possible, of the employment history of the alien or alien's spouse or parent. Aliens alleging that they meet the requirement for 40 quarters of social security coverage would have to provide information regarding the dates and places of employment.

These options would not apply after SSA has a system available for verifying quarters of coverage.

## Demonstration Projects Testing Implementation of Welfare Reform Provisions Limiting Food Stamp Eligibility of Legal Aliens

### Possible Proposal:

The President could direct the Secretary of Agriculture to grant a welfare reform waiver under its legislative waiver authority which would allow a statewide demonstration project testing the effects of extending the certification periods of aliens participating in the Food Stamp Program on August 22, 1996. The test would permit a State to assign all affected households up to a 24-month certification periods.

The practical effect of such a waiver in California would be to grant up to 12 additional months of eligibility for aliens currently participating in the food stamp program who are now ineligible under the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA). This waiver would not apply to new applicants for food stamps who would be subject to the new eligibility rules.

] clear?  
Yes.

### Discussion:

**Legal Authority:** USDA does not believe the statute explicitly permits such an action on the part of the Secretary. The Secretary has authority to grant legislative waivers to States for the purposes of carrying out demonstrations. This authority is analogous, although not the same, as HHS's Section 1115 waiver authority. PRWORA revised demonstration project waiver authority by including in the Food Stamp Act requirements that evaluations (which usually include random assignment of households and use of a control group) be conducted and that projects meet one of the following four goals:

- improve program administration
- increase the self-sufficiency of food stamp recipients
- test innovative welfare reform strategies
- allow greater conformity with the rules of other programs

The statute explicitly states that the waiver authority is for demonstration purposes only. The proposed waiver is highly questionable as a welfare reform demonstration project. It does not appear to meet the criteria established in the law. The first goal would appear to be the most likely justification for such a waiver. One could argue that a State might seek a waiver to assure orderly implementation including adequate verification. However, our understanding of Congress' intent when stating "improving program administration" was to test strategies for verification, processing times and other more straightforward program management requirements under the law. In addition, USDA has been very public that one of the best ways to improve program administration is to *shorten certification periods - not lengthen them*. The purpose of such a proposed demonstration

project could be viewed as undermining the alien ineligibility provisions Congress specifically included in welfare reform legislation.

**Regulatory Requirement:** Under Section 282.5 of the Food Stamp regulations, a public notice is required for demonstration projects that will likely have a significant impact on the public. This notice must be placed in the Federal Register at least 30 days prior to the initiation of the demonstration. This notice will make all States and Congress aware of the waiver – likely causing other States to request it.

**Precedent:** Allowing such a waiver would establish several highly visible precedents which USDA would have difficulty overlooking in the future:

1. Allowing waivers which are not demonstration projects
2. Allowing waivers which explicitly violate the Administration's policy of cost neutrality
3. Granting waivers at a county's request - without State approval

**Waivers as Demonstration Projects:** Some have argued that there is already precedent for approving waiver which are not testing a specific outcome. USDA approved a one-time demonstration for purposes of the 1990 census which excluded the income paid to enumerators. However, this project was approved for the purposes of studying "the effect of short-term employment experience on the long term employability of recipients". In addition, the scope and purpose of the 1990 waiver does not seem analogous to the proposed outlined above. An evaluation was required and it was determined that the waiver of the food stamp rules cost program \$1.2 million. The Department of Commerce requested this waiver again in 1996 and USDA denied their request (see attached).

It is not clear what is to prevent this proposal from being applied to more than one State. There are 20 States with monthly reporting - which is an indication of a caseload with generally long certification periods. Many more States than that have average certification periods in excess of 10 months (see attached). Approving a waiver for one State to extend eligibility of all of its participating aliens until August 22, 1997 would be extremely inequitable to aliens in all other States because some of them will begin losing eligibility each month as their extended certification periods expire.

**Cost Neutrality:** The Food Stamp Act does not require that legislative waivers be cost neutral. However, the Administration has a long standing policy that welfare reform waivers (including Medicaid, AFDC and Food Stamp waivers) be cost neutral. Sound measurement and contractual language have been put in place for most existing waivers to ensure that if a State experiences cost overruns due to a waiver that the federal government will not face a loss. There are 43 existing food stamp waivers which need to be renegotiated -- many of which violate cost neutrality under the new TANF program. In addition, there are 13 pending waivers which may have to be approved if the inherent tie between cost neutrality and welfare reform waivers is cut.

FCS estimates that granting the proposed waiver to the State of California would cost approximately \$40 million in FY97. (This would be in addition to the \$100 million estimated cost of the administrative waiver FCS approved for all States to extend participating aliens' certification periods to 12 months from the periods originally assigned by States. Total food stamp savings in FY97 from the aliens ban was originally estimated to be \$ 365 million) Food Stamp welfare reform waivers will continue to be an active part of State welfare reform waivers. USDA will soon have to renegotiate the terms and conditions governing its welfare reform waivers with 43 States. It may be difficult to sustain the Administration's cost neutrality policy, if a waiver such as the one proposed above is allowed.

Perhaps more important that the actual cost of such waivers to the federal government is the perception that USDA is managing the Food Stamp Program with the appropriate level of stewardship. The Administration barely escaped a hard appropriations cap in the welfare reform legislation. If the Administration is perceived as irresponsible with Food Stamps, Congress may once again entertain the proposal to cap annual spending on the Food Stamp program .

*County vs. State:* Our understanding is that the State of California has not requested the proposed waiver, nor any similar waiver. It appears that several counties in California are interested in receiving some sort of relief from the food stamp alien provisions. However, it is unclear whether the State agrees with the proposal and whether they would permit counties to take advantage of the waiver. The Secretary has never granted a legislative waiver to a State at a county's request. Traditionally, if a county is interested in seeking a waiver it must first go through its State human services department and sometimes even its State legislature. While this process may be cumbersome for counties it ensures that States understand, fully endorse and will take responsibility for whatever waivers USDA grants.



Ms. Paula J. Schneider  
Principal Associate Director  
for Programs  
United States Department of Commerce  
Bureau of the Census  
Room 2037-3  
Washington, D. C. 20233-0001

SEP 09 1996

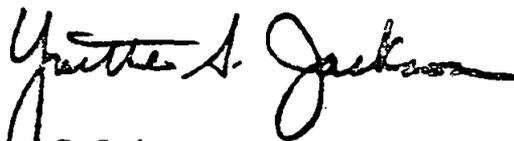
Dear Ms. Schneider:

Thank you for your letter of August 9, 1996, requesting that we find some way to exempt census income from food stamp eligibility determinations for the estimated 600,000 short-term workers you anticipate you will need for the 2000 census.

We realize the importance of the decennial census and we understand that the ability to disregard income earned from working on the census would help make the short-term census opportunities more attractive to food stamp recipients.

However, it is not possible for us to consider another demonstration project and grant an administrative waiver, similar to the one we used for the workers you hired for the 1990 census. We considered that project a success and have no basis for approving another "test" of what we believe to be an already well tested process. Based on this prior experience we estimate that exclusion of the census income for the 2000 census would be about \$1.2 million in food stamps. We would be pleased to assist you in preparing legislation to disregard the income assuming adequate offsets can be found.

Sincerely,



Yvette S. Jackson  
Deputy Administrator  
Food Stamp Program

FCS:FSP:PDD:CPB:CPI:JWALSH:FINAL:9/3/96:va  
DIR: I: SCHNEIDR.CO2



Reply to  
Attn. of:

JAN 19 1990

Subject:

FSP - Demonstration to Improve Food Stamp Recipient Employability  
by Disregarding Income Received as Short-Term Census Takers

To:

All Regional Administrators

Through: Office of Regional Operations

The purpose of this memorandum is to advise you of the decision to offer State agencies the opportunity to participate in a demonstration project that would allow the disregard of short-term income received as census takers.

We have developed this demonstration project in response to a request from the Department of Commerce to exclude as income the earnings of census takers. The Bureau of the Census prefers to recruit census takers from the area where they will be discharging their duties and has, in the past, experienced difficulty in recruiting workers from low-income inner city areas. The Bureau believes that the reduction or termination of benefits resulting from counting census income will discourage residents of inner cities and housing projects from accepting employment, and that excluding such income would aid recruitment. The Department of Health and Human Services has developed a similar demonstration project in response to the request from the Department of Commerce.

As we indicated in a memorandum to all Regional Food Stamp Program Directors, dated September 27, 1989, we would be unable to approve waivers excluding the short-term income of census takers under the standard regulatory waiver authority at 7 CFR 273.2(c)(1) since section 5(d) of the Food Stamp Act requires the inclusion of all income subject to only specified statutory exclusions. The earned income of census takers is not among these exclusions. We have determined, however, that the exclusion of short term census income would be appropriate under the demonstration project waiver authority provided by section 17(b)(1) of the Act. A demonstration project would be an appropriate vehicle for excluding such income since the project would enable us to study the effect of short-term employment experience on the long-term employability of recipients. Participating in the project would also enable State agencies to maintain consistency between procedures in the Food Stamp and Aid to Families with Dependent Children Programs regarding the treatment of short-term census income.

Attached for your reference are model letters to State agencies. The letter identified as Attachment I is to be used to advise State agencies of the availability of the demonstration project. Copies of this letter should be mailed to the State agencies in your region upon receipt of this memorandum. The second letter, identified as Attachment II, is the letter of commitment which acknowledges the interest of the State agency regarding participation in the project and contains the terms and conditions of the project. This letter is to be mailed to State agencies expressing interest in participating in the demonstration project.

If you have any questions, do not hesitate to contact us.

*Bonny O'Neil*

BONNY O'NEIL  
Acting Deputy Administrator  
Food Stamp Program

Attachments

Table C-2. Average Monthly Values of Selected Characteristics by State, 1994

State	Average Monthly Values						
	Gross Income (Dollars)	Net Income (Dollars)	Total Deduction (Dollars)	Countable Resources (Dollars)	Food Stamp Benefit (Dollars)	Household Size (Persons)	Certification period (Months)
Total .....	507	268	272	81	168	2.5	9.8
Alabama .....	481	264	257	82	175	2.6	10.3
Alaska .....	849	540	356	136	271	3.0	10.8 ✓
Arizona .....	500	255	280	62	189	2.8	7.1
Arkansas .....	530	310	249	146	160	2.6	8.8
California .....	604	362	269	69	175	3.0	12.0 ✓
Colorado .....	520	250	302	41	171	2.5	9.1
Connecticut .....	619	362	268	111	131	2.4	9.3 ✓
Delaware .....	416	189	267	104	182	2.4	9.2 ✓
Dist. of Col. ....	392	215	204	20	166	2.3	10.6 ✓
Florida .....	488	227	302	125	175	2.5	7.1
Georgia .....	487	261	259	101	166	2.5	11.7
Guam .....	484	198	370	82	357	3.0	7.1
Hawaii .....	647	375	290	184	268	2.3	11.4 ✓
Idaho .....	594	343	278	170	170	2.8	8.5
Illinois .....	413	211	242	70	161	2.3	11.3 ✓
Indiana .....	512	279	267	82	175	2.7	10.0
Iowa .....	548	305	262	114	151	2.5	11.3 ✓
Kansas .....	514	272	271	123	157	2.4	12.1 ✓
Kentucky .....	482	292	221	91	166	2.6	7.2
Louisiana .....	469	252	255	45	189	2.7	8.6
Maine .....	555	247	340	100	151	2.3	7.5
Maryland .....	415	195	248	14	186	2.5	9.5
Massachusetts .....	576	303	288	87	146	2.4	10.9 ✓
Michigan .....	500	247	286	65	168	2.5	13.2 ✓
Minnesota .....	579	330	271	194	151	2.6	11.7 ✓
Mississippi .....	502	291	242	106	166	2.6	11.3 ✓
Missouri .....	491	264	257	116	164	2.5	10.9
Montana .....	546	301	271	172	164	2.6	11.9
Nebraska .....	604	339	285	219	153	2.6	7.4
Nevada .....	411	176	298	51	165	2.2	8.0
New Hampshire .....	554	347	242	168	132	2.4	6.9
New Jersey .....	469	203	296	35	177	2.4	8.8
New Mexico .....	508	298	245	98	183	2.8	6.1
New York .....	542	239	330	23	154	2.3	9.4
North Carolina .....	512	292	246	151	155	2.4	10.0
North Dakota .....	592	320	296	393	151	2.5	9.5
Ohio .....	476	250	252	71	155	2.3	8.0
Oklahoma .....	519	289	266	68	164	2.6	9.9
Oregon .....	479	247	275	101	149	2.3	9.6 ✓
Pennsylvania .....	474	233	272	77	153	2.2	12.4 ✓
Rhode Island .....	513	272	270	101	156	2.4	10.9 ✓
South Carolina .....	507	291	251	111	175	2.7	12.6
South Dakota .....	536	274	291	250	170	2.6	11.9 ✓
Tennessee .....	460	240	260	107	168	2.4	8.2
Texas .....	452	238	264	57	191	2.7	7.9
Utah .....	589	338	281	173	165	2.8	6.6
Vermont .....	605	335	297	182	132	2.3	10.0
Virgin Islands .....	482	294	209	90	293	3.1	5.7
Virginia .....	483	258	255	89	164	2.4	9.1
Washington .....	512	248	291	70	162	2.4	7.3 ✓
West Virginia .....	496	289	236	66	166	2.6	13.2
Wisconsin .....	633	379	271	158	150	2.7	6.9 ✓
Wyoming .....	535	291	271	179	164	2.6	10.1

States w/  
Monthly  
Reporting

Source: 1994 Food Stamp Quality Control sample.

11-21-78

§ 282.5 Public notice procedures for demonstration projects.

(a) *General Notices:* At least 30 days prior to the initiation of a demonstration project, FNS shall publish a General Notice in the FEDERAL REGISTER if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures, shall consider the public comment received under § 282.2, and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project.

10-19-82

(b) *Amended General Notices:* If the procedures or explanation referred to in paragraph (a) of this section are significantly changed because of comments, an amended General Notice will be published in the FEDERAL REGISTER at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General Notice shall also explain the basis and purpose of the changes.

(c) *Reporting and Recordkeeping Requirements:* In addition, for demonstration projects with reporting and recordkeeping requirements which exceed the requirements set forth in OMB Circular A-102, the Department will obtain the necessary approval from OMB prior to project implementation.

5-31-93

September 17, 1996

## IMPLEMENTING THE FOOD STAMP BAN ON IMMIGRANTS IN CALIFORNIA

Most certification periods in California already are set for twelve months. Therefore, the waiver USDA offered allowing states to extend immigrants' certification periods to reach a total of twelve months has virtually no effect in California. California counties have asked that they be permitted to extend certification periods without regard to the twelve-month limit. California still would implement the new restrictions on immigrants by August 22, 1997, the outside limit set by the law.

There are two possible bases on which such a waiver could be granted. First, USDA long has had administrative authority to waive its own regulations at the request of a state. 7 C.F.R. § 272.3(c). This authority has not permitted waivers of provisions of the Food Stamp Act. Second, the new welfare law gave USDA broad new authority to waive provisions of the statute. Food Stamp Act, § 17(b), *as amended by* Pub.L. 104-193, § 850; 7 U.S.C. § 2026(b).

The Administration's efforts to grant relief to California have focused to date around the first of these approaches. Because section 3(c) of the Food Stamp Act (7 U.S.C. § 2012(c)) limits most certification periods to twelve months, the Administration has been unable to find a way to approve California's request without overriding this provision of law. If the only the old administrative waiver authority is employed, it may be very difficult legally to grant California the relief it seeks.

The Administration can, however, grant the waiver California seeks under the statutory waiver authority granted under the new law. The new waiver authority prohibits waivers of certain provisions of the Food Stamp Act, but the limit on the length of certification periods is *not* among those provisions that cannot be waived. In addition, waivers under the new statutory waiver authority are *not* required to be cost-neutral. As a matter of sound financial management, USDA has usually required that statutory waivers be cost-neutral, but that is not now and never has been required in the statute.

Precedent exists for granting such a statutory waiver for purposes having nothing to do with program research. Under the previous, more restrictive statutory waiver authority, the Bush Administration granted a blanket waiver to allow states not to count as income the money paid to enumerators in the 1990 Census. This was formally described as a "demonstration project," but no evaluation was performed and the purpose obviously was to override provisions of the Food Stamp Act that otherwise would have required the food stamp benefits of enumerators to be reduced. In addition, this waiver obviously was not cost-neutral.

USDA staff apparently rejected using the new statutory waiver authority because they do not believe it advisable from a policy standpoint to invoke that authority where the state is proposing the waiver for purposes other than policy research. Since California's motive is to postpone implementation of the immigrant ban until it can make arrangements for more orderly application of the new law, USDA staff judged this an undesirable application of the waiver authority.

Although USDA staff should be commended for taking a cautious approach to the new waiver authority, the California request is a special case. It arises from the unfortunate coincidence that the state with by far the largest number of legal immigrants receiving food stamps also happens to have among the longest certification periods in the country. It also arises from the difficulty of implementing complex new legislation without sufficient time to train staff properly or to establish links to SSA for verifying immigrants' exemption status.

In the coming months, the Administration should carefully consider and delineate its policy on how the new waiver authority may be used. It should not wait for those decisions to be made, however, before using this authority to assist counties — and immigrants — in California.

### **The Need for Urgent Action and a Possible Stopgap Remedy**

If California does not hear from the Administration today or early tomorrow, it will tomorrow Federal Express instructions to its county offices to begin to start denying assistance to immigrants on October 1. California feels obliged to act now because a memo USDA sent to all states has instructed them that they would be liable for quality control (QC) errors beginning October 1 if they did not send out notice concerning this policy by September 22. Since California has a relatively high QC error rate, the state does not believe it can afford to take this danger lightly: states with error rates exceeding the national average are liable for monetary penalties that increase with the volume of their errors.

USDA staff has told us that California could postpone implementation for a few weeks until it hears from the Administration and could ask that any resulting QC errors be excused for "good cause." The statute explicitly permits such waivers where "a change in the food stamp program ... has a substantial adverse impact on the management of the food stamp program of a State." Food Stamp Act, §16(c)(9)(D); 7 U.S.C. § 2015(c)(9)(D). Yet although USDA would seem likely to approve such a request, "good cause" for QC errors has sometimes been a contentious issue with the states in the past. California may be unwilling to take the chance that such a request would be denied.

Therefore, if the Administration is unable to decide today or early tomorrow how it wishes to resolve California's underlying proposal to extend certification periods, USDA could ask California to postpone issuing its directive to the states and USDA could commit to the state that any QC errors resulting from this postponement will be excused for "good cause." USDA is very unlikely to take such a step on its own without some guidance indicating it should do so.

1 member continues to participate in the work  
2 supplementation or support program.

3 “(4) OTHER WORK REQUIREMENTS.—No individual  
4 shall be excused, by reason of the fact that a State has a  
5 work supplementation or support program, from any work  
6 requirement under section 6(d), except during the periods  
7 in which the individual is employed under the work  
8 supplementation or support program.

9 “(5) LENGTH OF PARTICIPATION.—A State agency  
10 shall provide a description of how the public assistance re-  
11 cipients in the program shall, within a specific period of  
12 time, be moved from supplemented or supported employ-  
13 ment to employment that is not supplemented or sup-  
14 ported.

15 “(6) DISPLACEMENT.—A work supplementation or  
16 support program shall not displace the employment of indi-  
17 viduals who are not supplemented or supported.”.

18 SEC. 850. WAIVER AUTHORITY.

19 Section 17(b)(1) of the Food Stamp Act of 1977 (7 U.S.C.  
20 2026(b)(1)) is amended—

21 (1) by redesignating subparagraph (B) as subpara-  
22 graph (C); and

23 (2) in subparagraph (A)—

24 (A) in the first sentence, by striking “benefits to  
25 eligible households, including” and inserting the follow-  
26 ing: “benefits to eligible households, and may waive any  
27 requirement of this Act to the extent necessary for the  
28 project to be conducted.

29 “(B) PROJECT REQUIREMENTS.—

30 “(i) PROGRAM GOAL.—The Secretary may not  
31 conduct a project under subparagraph (A) unless—

32 “(I) the project is consistent with the goal  
33 of the food stamp program of providing food  
34 assistance to raise levels of nutrition among  
35 low-income individuals; and

1                   “(II) the project includes an evaluation to  
2                   determine the effects of the project.

3                   “(ii) PERMISSIBLE PROJECTS.—The Secretary  
4                   may conduct a project under subparagraph (A)  
5                   to—

6                   “(I) improve program administration;

7                   “(II) increase the self-sufficiency of food  
8                   stamp recipients;

9                   “(III) test innovative welfare reform strat-  
10                   egies; or

11                   “(IV) allow greater conformity with the  
12                   rules of other programs than would be allowed  
13                   but for this paragraph.

14                   “(iii) RESTRICTIONS ON PERMISSIBLE  
15                   PROJECTS.—If the Secretary finds that a project  
16                   under subparagraph (A) would reduce benefits by  
17                   more than 20 percent for more than 5 percent of  
18                   households in the area subject to the project (not  
19                   including any household whose benefits are reduced  
20                   due to a failure to comply with work or other con-  
21                   duct requirements), the project—

22                   “(I) may not include more than 15 percent  
23                   of the State’s food stamp households; and

24                   “(II) shall continue for not more than 5  
25                   years after the date of implementation, unless  
26                   the Secretary approves an extension requested  
27                   by the State agency at any time.

28                   “(iv) IMPERMISSIBLE PROJECTS.—The Sec-  
29                   retary may not conduct a project under subpara-  
30                   graph (A) that—

31                   “(I) involves the payment of the value of  
32                   an allotment in the form of cash, unless the  
33                   project was approved prior to the date of enact-  
34                   ment of this subparagraph;

35                   “(II) has the effect of substantially trans-  
36                   ferring funds made available under this Act to

1 services or benefits provided primarily through  
2 another public assistance program, or using the  
3 funds for any purpose other than the purchase  
4 of food, program administration, or an employ-  
5 ment or training program;

6 “(III) is inconsistent with—

7 “(aa) the last 2 sentences of section  
8 3(i);

9 “(bb) the last sentence of section 5(a),  
10 insofar as a waiver denies assistance to an  
11 otherwise eligible household or individual if  
12 the household or individual has not failed  
13 to comply with any work, behavioral, or  
14 other conduct requirement under this or  
15 another program;

16 “(cc) section 5(c)(2);

17 “(dd) paragraph (2)(B), (4)(F)(i), or  
18 (4)(K) of section 6(d);

19 “(ee) section 8(b);

20 “(ff) section 11(e)(2)(B);

21 “(gg) the time standard under section  
22 11(e)(3);

23 “(hh) subsection (a), (c), (g), (h)(2),  
24 or (h)(3) of section 16;

25 “(ii) this paragraph; or

26 “(jj) subsection (a)(1) or (g)(1) of sec-  
27 tion 20;

28 “(IV) modifies the operation of section 5  
29 so as to have the effect of—

30 “(aa) increasing the shelter deduction  
31 to households with no out-of-pocket hous-  
32 ing costs or housing costs that consume a  
33 low percentage of the household’s income;  
34 or

35 “(bb) absolving a State from acting  
36 with reasonable promptness on substantial

1 reported changes in income or household  
2 size (except that this subclause shall not  
3 apply with regard to changes related to  
4 food stamp deductions);

5 “(V) is not limited to a specific time pe-  
6 riod; or

7 “(VI) waives a provision of section 26.

8 “(v) ADDITIONAL INCLUDED PROJECTS.—A  
9 pilot or experimental project may include”;

10 (B) by striking “to aid to families with dependent  
11 children under part A of title IV of the Social Security  
12 Act” and inserting “are receiving assistance under a  
13 State program funded under part A of title IV of the  
14 Social Security Act (42 U.S.C. 601 et seq.)”; and

15 (C) by striking “coupons. The Secretary” and all  
16 that follows through “any pilot” and inserting the fol-  
17 lowing: “coupons.

18 “(vi) CASH PAYMENT PILOT PROJECTS.—Any  
19 pilot”.

20 **SEC. 851. RESPONSE TO WAIVERS.**

21 Section 17(b)(1) of the Food Stamp Act of 1977 (7 U.S.C.  
22 2026(b)(1)), as amended by section 850, is amended by adding  
23 at the end the following:

24 “(D) RESPONSE TO WAIVERS.—

25 “(i) RESPONSE.—Not later than 60 days after  
26 the date of receiving a request for a waiver under  
27 subparagraph (A), the Secretary shall provide a re-  
28 sponse that—

29 “(I) approves the waiver request;

30 “(II) denies the waiver request and de-  
31 scribes any modification needed for approval of  
32 the waiver request;

33 “(III) denies the waiver request and de-  
34 scribes the grounds for the denial; or

35 “(IV) requests clarification of the waiver  
36 request.

To be able to browse preceding or succeeding code sections, enter B. The first page of the document you are currently viewing will be displayed in FULL.

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\*\*\* CURRENT THROUGH 104-165, 7/24/96, \*\*\*  
\*\*\* EXCEPT FOR PLS 134, 140, 153, 155, 162, 164 \*\*\*

TITLE 7. AGRICULTURE  
CHAPTER 51. FOOD STAMP PROGRAM

7 USCS @ 2026 (1996)

@ 2026. Research, demonstration, and evaluations

(a) Contracts or grants.

(1) The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition-related benefits.

(2) The Secretary may, on application, permit not more than two State agencies to establish procedures that allow households whose monthly food stamp benefits do not exceed \$ 20, at their option, to receive, in lieu of their food stamp benefits for the initial period under section 8 and their regular allotment in following months, and at intervals of up to 3 months thereafter, aggregate allotments not to exceed \$ 60 and covering not more than 3 months' benefits. The allotments shall be provided in accordance with paragraphs (3) and (9) of section 11(e) [ <=1> 7 USCS @ 2020(e)] (except that no household shall begin to receive combined allotments under this section until it has complied with all applicable verification requirements of section 11(e)(3) [ <=2> 7 USCS @ 2020(e)(3)]) and (with respect to the first aggregate allotment so issued) within 40 days of the last coupon issuance.

(b) Pilot projects.

(1) (A) The Secretary may conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households, including projects involving the payment of the value of allotments or the average value of allotments by household size in the form of cash to eligible households all of whose members are age sixty-five or over or any of whose members are entitled

to supplemental security income benefits under title XVI of the Social Security Act [ <=3> 42 USCS @@ 1381 et seq.] or to aid to families with dependent children under part A of title IV of the Social Security Act [ <=4> 42 USCS @@ 601 et seq.], the use of countersigned food coupons or similar identification mechanisms that do not invade a household's privacy, and the use of food checks or other voucher-type forms in place of food coupons. The Secretary may waive the requirements of this Act [ <=5> 7 USCS @@ 2011 et seq.] to the degree necessary for such projects to be conducted, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households or a project conducted under paragraph (3)", shall be implemented which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act [ <=6> 7 USCS @@ 2014, 2017]. Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act [ <=7> 42 USCS @@ 1381 et seq.] shall be continued through October 1, 2002, if the State so requests.

(B) (i) No waiver or demonstration program shall be approved under this Act [ <=8> 7 USCS @@ 2011 et seq.] after the date of enactment of this

Any other way to waive a stat req than by demo project waiver?

Randy Moss -

~~Stat req was notifiable to toll~~

More comfortable w/ tolling -

everyone  
w/in next 3 mos -

not tolling when

it comes up - except

if it comes up w/in

next 3 mos.

for lib's say six mos -

for those who p. MT

be subj to 402 - toll

the entire certif process.

CAZ

up to 24 mos OR Aug 22, 1997, whichever is 1st

↳ Aug 22, 1997 always

Dyden's proposal -

for the next 6 mos, we're going to postpone the certifs

Add 6 mos to each person who falls w/in certif

period.

OR WHEN THE 6 MOS IS UP - AS SOON AS PRACTICABLE

Give options to States?

↳ give us a plan - flexibility up to a yr

by extending  
waining certif periods -  
tolling

for any p. who mt be subj  
to 402.

tell us experiment / how <sup>will</sup> do it.

2 study at end.

Proposal for extending

C.P.S. as now  
- up to Aug 22 1997

for p who mt toll w/in  
402

Reas expln of exper. ben. to be obtained,  
such as.

come to us w/ this - we will act  
quickly

What are we testing?

Testing whether when implementing new diff. scheme +  
how yr to do so -

1) can say <sup>start</sup> making decisions tomorrow

2) can say take some time - then do faster

Which provides for more effective/ethic. prog.

Which is best way to put into effect a subject change in an expansive govt program

start making imp. decisions rt away w/ time  
OR

take time to figure out how to make decisions but  
have less time to make them

one approach <sup>is</sup> more cost-effective  
more accurate  
fairer  
administratively program dollars  
(much more to do if (2))

Standing to challenge this?

- Arg that new applicants would have standing

- some state w/ liberal TP standing - if any st submit (admin costs)

if only this - pub. note  
sufficient predicate

Emily  
797-8109

More contained reaction  
Much less threatening to core  
of our authorities.

1. Orig Calik proposal
2. New " proposal - demo authority
3. Presumptive

UDA

extension already granted - 100m

orig. CA proposal - adds 10m

New proposal - makes no sure lid

to currents - because  
"What are you testing?"

Anything you're testing  
applies to everyone.

Using waiver auth -  
dangerous precedent

diffic to hold line on

any requests

↑ risk of comp security

us of bad faith -

jeopardizes future by

fixes - and also

jeops. waiver auth

generally -

also - gives ammo

to those who want to

put ceiling on.

every one ← If cost neutrality doesn't  
given up to  
W-W - has  
met CD.  
Policy - not  
ref.

uh... blow the lid.

Extremely undesirable  
programmatically.

On (1) - Certifik period can't start w/out certifying event. Same as just extending by and 12 mos.  
Highly unstable

DoS - On (2)

→ Bush incident - suspects poss of

"abusing" this auth

Higher on list than 1st one -

from purely legal point of view

at least have a margin of a chance.

Need a few more hrs to think about this.

could do  
- month  
- talking.

40 states - prob not until Feb or

March - get rudimentary

system to verify

3. Presumptive -

Applicants/recipients -

If have credible acct -

been in country / on spouse's passport /  
for 10 yrs.

some good - connection w/ where

Presume them eligible.

Until such time as system in place.

Commit to states - wait ask for feedback  
wrong.

All under penalty under perjury.  
USDA comfortable w/ above 44

How many p. would this help? Some.

But this isn't much of a presump - it's just proof.

REAL PRESUMPTION -

Don't ask / Don't tell

Too wide open.

Irresponsible -

if it's clear that not ...

Possible  
waiver  
outlet/pilot  
projects

Tolling of certification  
decisions as to 40-2hr  
determin

for x mos (but guess  
as to how long it will  
take to get system up)

(essentially a 2-part  
certification)

(or toll the whole certification)

EXECUTIVE OFFICE OF THE PRESIDENT

19-Sep-1996 12:55pm

TO: John B. Emerson  
TO: Emily Bromberg

FROM: Diana M. Fortuna  
Domestic Policy Council

CC: Carol H. Rasco  
CC: Elena Kagan

SUBJECT: Call from Calif. Senate staffer

Carol wanted me to pass along to you the following:

She got a phone call yesterday from Sarah McCarthy, who is a staffer (I believe) on the Calif. Senate's Health and Human Services Committee (possible she's a member, but I don't think so). Carol doesn't know her personally.

McCarthy called to register her opposition to the food stamp cutoff for legal immigrants, but more importantly to ask if there is anything she and her committee could do to prevent the implementation of this.

I assume this refers to Wilson's action. For whatever reason, she didn't leave a phone number; not clear if she's expecting a call back.

WASHINGTON EDITION

California's  
Newspaper

# Los Angeles Times

Friday  
September 20  
1996

CIRCULATION:  
1,021,121 DAILY / 1,391,076 SUNDAY

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DAILY \$1.00  
AN EDITION OF THE LOS ANGELES TIMES

## Wilson Drops Cutbacks in Food Stamp Program

■ **Welfare:** Governor issues reversal after federal government pledges to keep benefits going past deadline.

By DAVE LESHER  
TIMES STAFF WRITER

SACRAMENTO—Gov. Pete Wilson rescinded an order to drop food stamp benefits for legal immigrants Thursday after federal officials said they will temporarily keep the program going even though it will be eliminated as part of the nation's new welfare reform law.

The governor's order came just hours after Wilson officials told county representatives at a Capitol briefing that they are required under federal law to begin phasing out food stamp assistance next week for nearly 400,000 indigent legal immigrants living in the state.

The governor's office later

reacted with surprise and anger to the letter from federal welfare officials, complaining that it is an about-face from previous orders. Federal authorities said, however, they have been clear from the start about the program status.

"Is it any wonder why people think the federal government is a bunch of buffoons?" said Wilson press secretary Sean Walsh. "This is just outrageous."

The White House fired back Thursday evening: "On the subject of immigration and who is playing politics, Gov. Wilson is not in a propitious position to make charges," said White House press secretary Michael McCurry.

The episode underscored the

Please see WELFARE, A8

12

# WELFARE: Cuts in Food Stamp Dropped

Continued from A1

confusion, politics and high stakes involved in the implementation of a landmark overhaul of the nation's welfare system in an election year.

"The state was far too aggressive in its ... approach to eliminating the food stamp program," said Los Angeles County Supervisor Gloria Molina, who contacted the White House about the issue early Thursday.

According to McCurry, Molina called White House Chief of Staff Leon Panetta, himself a possible Democratic candidate for governor of California in 1998. Panetta then spoke with Clinton during their bus trip through the Northwest. Clinton directed them to look into the matter to see what could be done.

Democrats privately suspected that Wilson's action was intended to embarrass President Clinton by dumping thousands of needy people on the streets of California weeks before the Nov. 5 election.

Many Democrats were angry that Clinton signed the welfare reform bill and, with that in mind, the president singled out the cuts for legal immigrants as a provision in the bill that he disliked and intended to change.

"I am deeply disappointed that the Congressional leadership insisted on attaching to this extraordinarily important bill a provision that will hurt legal immigrants in America, people who work hard for their families, pay taxes, serve in our military," Clinton said July 31 when he promised to sign the welfare reform bill.

Wilson officials countercharged

that Clinton is playing presidential politics with the legislation by not implementing the bill that he signed.

The welfare reform bill would cut many public benefits to legal immigrants while giving states the discretion to restore the programs at their own cost. Since the legislation was signed Aug. 22, however, the White House has delayed implementation of those cuts by granting waivers and exemptions to a number of states.

Federal officials say the delay is necessary to reorganize the bureaucracy to handle the changes required. They did not say how long the temporary funding for the

workers were left in the lurch and community advocates for the poor were dizzied by the changing directions.

Earlier this week, Wilson's office sent notices to all county welfare offices in California notifying them that, starting next week, they would have to begin implementing plans to cut off food stamps to legal immigrants.

The same message was relayed personally to county representatives Thursday in a meeting in the Capitol. State welfare officials also held a news conference Thursday afternoon to tell reporters about the pending cuts.

Wilson officials said the governor

whether or not to move forward with the cuts.

"I'm going to give it until over the weekend before we start taking action," said Lynn W. Bayer, director of the county's Department of Public Social Services. "On Monday, we'll see where we're at."

She added: "Right now it feels like we're in the eye of the storm."

State officials had planned to cut food stamps for legal immigrants as they arrived at county offices for their annual recertification of eligibility. The process meant that some recipients could be cut within a few days while others might continue to receive benefits until next summer.

The federal Department of Agriculture, which administers the food stamp program, and the state issued a paper trail of previous correspondence intended to demonstrate that they had been clear about the status of the food stamp program.

Wilson officials released letter from the USDA dated last week saying "legal noncitizens ... are ineligible for food stamp benefits." It added, "These provisions must be implemented no later than Sept. 22."

The USDA, meanwhile, in a letter written Thursday to the state Department of Social Services said "California will not be required to implement [the food stamp cutoff] ... until we provide further clarification."

Times staff writers Tina Daunt and Patrick McDonnell in Los Angeles contributed to this story.

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## While the finger-pointing continued Thursday, county social workers were left in the lurch and community advocates for the poor were dizzied by the changing directions.

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program would continue.

But Wilson officials also questioned the waivers and exemptions, saying that they suspected political motivations.

"The Clinton Administration has needlessly confused hundreds of thousands of Californians," Wilson said in a statement. "This is either total incompetence on the part of the federal government or, more likely, political games being played out in an election year by the Clinton Administration."

While the finger-pointing continued Thursday, county social

did not see the letter from federal authorities until after 5 p.m.

"Everything we have now is so vague," said Angelo Doti, director of financial assistance for Orange County's Social Services Agency. "What we are hearing is word of mouth from the state."

Doti said they expected to get clearer instructions from state officials by late Friday afternoon.

Los Angeles County officials said they heard rumors about the letter from the Department of Agriculture on Thursday afternoon, but were still awaiting official word on

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September 19, 1996, Thursday, Home Edition

## **WILSON PLANS IMMEDIATE CUTS IN FOOD STAMPS**

*BYLINE: DAVE LESHNER and TINA DAUNT, TIMES STAFF WRITERS*

Nearly 400,000 legal immigrants in California will be cut off from food stamp assistance beginning next week as part of the state's first major step to implement the nation's new welfare reform law, aides to Gov. Pete Wilson said Wednesday.

County leaders are scheduled to meet in Sacramento today for a briefing about the food stamp plan as well as an update on an upcoming massive overhaul of the state's welfare system called for under the law signed by President Clinton last month.

For poor legal immigrants, this is only the first benefit cut under the new law. The federal legislation requires that all public benefits be stopped for legal immigrants, although states can replace the services at their own cost.

Already, the first steps to implement the landmark legislation were sending ripples through county government and indigent communities all over California. In Los Angeles on Wednesday, county officials met with advocates for the poor to issue a warning that they should brace for an unexpectedly rapid disruption.

"This is the kind of thing that worries us very much in our department," said Lynn W. Bayer, director of the county Department of Public Social Services. "We wanted this to be a thoughtful process. And this makes us feel like this might not end up to be such a thoughtful process after all."

The advocates also echoed concerns, warning that the cutoff of food stamps will be measured by an increase in the state's homeless population.

"This whole community will just see more hungry people very quickly," said Bob Erlenbusch, executive director of the Los Angeles Coalition to End Homelessness. "We have known for years that the food banks are stretched to the limits. The cupboard is bare."

Carolyn Olney, the associate director of the Interfaith Hunger Coalition, also predicted: "You are going to see a great cost--not only to families themselves, but the community at large."

State officials said Wednesday that they requested more time to prepare for the food stamp cuts but their schedule was expedited by a recent order from the U.S. Department of Agriculture, which supervises the assistance program.

As a result, state welfare officials told *The Times* that they are required to begin the food stamp cutoff by Sunday, dropping as many as 17,000 recipients per month over the next year. Under the plan, individuals will be cut from the rolls when they arrive at county offices for their annual recertification of eligibility.

Counties are expected to implement the cuts on various schedules because federal law requires that they notify recipients of the legal changes.

In Los Angeles County, where the notification process is to begin next week, officials said they expect to begin cutting off legal immigrant recipients by Nov. 1. Small counties might be able to notify recipients more quickly, followed immediately by the cutoff of benefits, state officials said.

About 436,000 legal immigrants in California currently receive food stamp benefits, with nearly half of that population in Los Angeles County. The federal legislation, however, provides exemptions for legal immigrants

who are refugees, veterans, some who have been granted asylum in the United States, and those who have worked in the country for more than 10 years.

State officials estimated that at least 373,000 food stamp recipients in California will be affected by the new cutoff.

In Orange County, community officials said they were particularly worried about the large number of Southeast Asian immigrants.

"There is a population that we brought over from Southeast Asia that has not been able to work or who have been working and their income is so low that they depend on food stamps," said Jean Forbath, director of Share Our Selves charity. "They will have to make horrific choices between paying the rent or paying the electricity and buying food."

The average California household receiving food stamps gets about \$ 182 in benefits per month. It is entirely paid for by federal funds and, unlike other welfare programs, does not include any state money.

The reform ended a 61-year guarantee of cash assistance to every eligible poor family with children. The legislation granted states much more authority over welfare programs. But the transition has already caused significant confusion.

President Clinton said when he signed the bill that he was disturbed by the provision affecting legal immigrants. He has pledged to return to Congress and seek changes that will restore at least some of the benefits for legal immigrants that were cut by the bill.

In the meantime, the president sought to provide some protection by allowing states to continue their current assistance levels until Aug. 22, 1997—one year after the legislation was signed.

Aides to Wilson said, however, the extension will not help California recipients because their eligibility is determined annually—unlike other states. As a result, recertification of the state's recipients would exceed the president's extension.

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## **The Record**

September 19, 1996

### **WHITMAN TO KEEP WELFARE FOR LEGAL ALIENS**

*BYLINE: ELIZABETH LLORENTE, Staff Writer*

Continuing her pattern of defying GOP hard-liners on immigration issues, Governor Whitman plans to continue providing Medicaid and welfare to non-citizen legal immigrants, a spokeswoman for the governor said Wednesday.

But tens of thousands still face losing food stamps and other benefits, which state officials say would be too costly to maintain.

The welfare reform bill, signed last month by President Clinton, allows states to decide whether to continue providing Medicaid and Aid to Families with Dependent Children, the main welfare program, to legal immigrants who are not naturalized citizens.

About 15,000 such immigrants in New Jersey receive welfare; some 50,000 get Medicaid, the federal-state health insurance program for the poor, said Ray Castro, the director of federal relations for the state Department of



United States  
Department of  
Agriculture

Food and  
Consumer  
Service

3101 Park Center Drive  
Alexandria, VA  
22302-1500

**FOOD STAMP PROGRAM**

**DATAFAX COVER SHEET**

DATE: 9/16/96

TO: Elena Kagan

OFFICE: \_\_\_\_\_

PHONE: \_\_\_\_\_

FROM: Gracie Jackson

OFFICE: USDA/ Food Stamp Program

PHONE: \_\_\_\_\_

SUBJECT: \_\_\_\_\_

REMARKS: This is to support our  
conversation of this morning

NO. OF PAGES INCLUDING COVER SHEET: 11

Prior to the enactment of P.L. 104-193, the Food Stamp Act provided in defining "certification period" that State agencies could, with the approval of the Secretary, waive any restrictions on the length of the certification period to improve program administration. This authority was used frequently and did not require the use of the Secretary's demonstration authority.

P.L. 104-193 limits certification periods to 12 months; however, the Department has instructed States that this limit is to be implemented at the next recertification action. Until a new certification takes place, the current certification period is governed by prior law; therefore, it may be extended beyond 12 months without invoking any use of the demonstration authority. This protects the Food Stamp Program and the Department against charges that it is abusing the new demonstration authority and sets no precedents for other areas of the program. California could be allowed to extend any current certification period to any length of time so long as the new restrictions on noncitizens are implemented by August 22, 1997

SUBJECT: FSP Weekly Report

TO: Ellen Haas  
Under Secretary for  
Food, Nutrition, and Consumer Services

FROM: Yvette S. Jackson  
Deputy Administrator  
Food Stamp Program

Welfare Reform - Legal Immigrants

The discussions concerning California's request for relief from implementing the ban on participation by legal immigrants has continued. The attached paper was prepared at the request of White House counsel and was cleared by Greg Frazier. This was provided to Elana Kagan in response to her "don't ask" proposal. On September 18th, another meeting was held to discuss the pros and cons of various proposals. Ron Hill and Cheryl Macias went with me. OMB, Justice, White House Counsel, and DPC were all represented. No decisions were reached but the following options were discussed:

1. California's original proposal to set certification periods for all immigrant cases to begin with the enactment date of the legislation (August 22, 1996). The Dept. of Justice does not think that this is legally defensible because it violates the concept of certification periods starting from a certifying event, ie an application or reapplication.
2. The "don't ask" policy based on the concept that systems are not yet in place to verify status so states should be given the option not to ask. The problem with this approach is that we would be saying that states would have to establish eligibility or ineligibility for new applicants but not current recipients when the lack of verification is the same for both. We would also be telling states to ignore information in the case record that may clearly show that someone can not meet one of the exemption criteria.
3. The "presumptive" eligibility concept would accept reasonable information to justify eligibility until a verification system is in place. This would allow both

applicants and recipients to claim eligibility status based on their assertions of 40 quarters of covered work by themselves, a spouse, or a parent (while they were under age 18) as long as the information provided is reasonable. The group was very comfortable with this concept since it can be implemented as normal process and is "clean" (non controversial). The obvious drawback is that this approach will not delay the dropping of people who do not appear to meet any of the exemptions.

4. The last proposal was the idea of using our Section 17 Demonstration authority to waive certifications for a period of time. (This idea was outlined in a paper from David Super.) The DOJ attorneys thought that this approach was more defensible than California's request, but it would be setting potentially dangerous precedents from our perspective. We would not really be demonstrating or testing anything and we would be grossly violate cost neutrality. Another danger would be how we could hold the line on future waiver requests from states (we must renegotiate about 40 Food Stamp waivers from existing projects over the issue of cost neutrality). We have come up with a rationale, however, that we believe would allow us to extend or waive the the existing certification period for California using our existing administrative waiver authority (and using the existing Executive Order from the President). Attached is what we faxed to Elana Kagan.

The most critical issue now, of course, is to make a decision and get back to California. There will be other states who will also be interested in getting the same consideration as California.

#### Welfare Reform - DPC Intergovernmental Meeting

On Wednesday, September 18th, a meeting was held with the intergovernmental group (NGA, APWA, NCSL, HHS, USDA, INS, SSA, and the DPC) to review the top five issues/concerns for states as the implementation proceeds. At the meeting, NGA, APWA, and NCSL reviewed their issues (see attached lists). Not surprisingly, all of the issues were related to either TANF or Medicaid. No Food Stamp specific issues were raised. I do think that it would be good for you to mention our approach to regulations at a future meeting. (We want broad involvement and input and our regs will reflect the philosophy of maximum state flexibility.)

The top five Food Stamp issues raised by states to us are:

1. Timely State Implementation recognizing the huge task for states to make all of the necessary systems changes, issue instructions, train staff, etc.
2. Accurate determinations for Legal Immigrants

3. Implementation of time limits for able bodied childless adults ages 18 - 50.
4. Treatment of waivers in effect prior to August 22, 1996
5. Volume of regulations and fact that states must implement long before regs will be published.

## **Implementation of Alien Eligibility Provision**

**California proposal:** The 12-month certification period allowed by the new definition of certification periods should be applied to ongoing households. All recipient households may be assigned a new 12-month certification period as of August 22, 1996.

**Alternate proposal:** Implementation should be waived until the eligibility determination can be done accurately. For the ongoing caseload, the administrative complexity of determining the eligibility of alien household members is so great and the existing capability so meager that Congress did not contemplate implementation until verification systems are in place. States should not attempt to verify the eligibility of currently participating aliens until verification systems are in place.

**FCS comment:** While this proposal would be legally defensible, it does raise policy questions. It would result in applying different policies to new applicants and the ongoing caseload. New applicants would be required to provide verification of eligible alien status, but current participants would not be asked. It might also be difficult to defend to some in Congress. We should also consider the precedent it would set. State agencies might want the same policy applied not only to other provisions of the welfare reform legislation but also to other legislation that may be passed in the future.

### **Other options:**

**Self-declaration:** Aliens attest under penalty of perjury that they meet the 40-quarters requirement.

**Presumptive eligibility:** State agencies would be expected to verify the date of an alien's entry into the country and to make a determination of eligibility or ineligibility based on verification, to the extent possible, of the employment history of the alien or alien's spouse or parent. Aliens alleging that they meet the requirement for 40 quarters of social security coverage would have to provide information regarding the dates and places of employment.

These options would not apply after SSA has a system available for verifying quarters of coverage.

Q: Does the FCS administrator have authority to permit California to provide food stamp benefits to households that are "receiving benefits under [the food stamp program] as of the date of enactment of the [Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (or PRA)] and whose eligibility for such benefits may terminate by reason of the provisions of [§ 402(a) of Subtitle A of Title IV]" beyond 12 months from their last certification of eligibility, without those households undergoing recertification?

A: I do not believe there is a plausible reading of the Food Stamp Act (7 U.S.C. 2010 et. seq.), as amended by the PRA, that supports an affirmative answer. The question requires evaluation of the "text and structure of the statute, taken as a whole," to determine whether Congress has spoken to the "precise question at issue." If it has, the Court will not permit an agency to adopt an interpretation that is at odds with that statement.

Reading these statutes in a manner that permits such a continuation of benefits can proceed in only one of two directions. (1) The statutes might be read to permit an extension of an existing certification period by virtue of a waiver of the recertification requirements currently imposed upon the states. (Under the structure of the Food Stamp program, eligibility terminates at the end of the certification period. See point 11, below.) (2) The statutes might be read to establish a certification period with an origination date different from the origination date of the existing certifications, so that the otherwise applicable 12 month maximum for a certification period would not be reached until some date later than 12 months after the initial date of the existing certifications.

Within the construct of the Food Stamp program, I have been unable to discern an approach other than these two that would provide an affirmative answer to the question posed. Unfortunately, for the reasons sketched below, the details of the Food Stamp statute contradict either one of them.

1. Under the Food Stamp Act, households who qualify receive a food stamp authorization card that is valid for a "certification period" and that shows the amount of food stamps that the household is authorized to receive each month. This follows simply from the definitions of the relevant terms in 7 USC 2012(a) through (c): Certification period means "the period for which households shall be eligible to receive authorization cards." <sup>not an</sup> <sub>obstacle</sub>  
 Authorization card means "the document issued by the State agency to an eligible household which shows the allotment the household is entitled to be issued," and allotment means "the total value of coupons (food stamps) a household is entitled to receive during each month."

2. Prior to the PRA, 7 U.S.C. § 2012(c) specified that a certification period was to be "at least six months but no longer than twelve months" for households required to submit periodic reports under § 2015(c)(1)(C), and "not less than three months" for others, subject to exceptions not relevant here. 7 USC § 2012(c). For households submitting periodic reports, the limits on certification could be "waived by a state agency for certain categories of households where such waiver will improve the administration of the program," while for other households, the administrator may have had authority to waive where the waiver will

"improve the administration of the program."<sup>1</sup> Id.

3. The PRA deletes all of then existing § 2012(c) except for the initial definitional sentence (quoted in 1, above), and replaces it with the following:

"The certification period shall not exceed 12 months, except that the certification period may be up to 24 months if all adult household members are elderly or disabled. A State agency shall have at least 1 contact with each certified household every 12 months."

PRA, Title VIII, Subtitle A, § 801.

4. § 801 eliminates the waiver authority that formerly existed in § 2012(c). We have not located any other waiver authority in the Food Stamp Act that could be relied upon to extend a certification period beyond the 12/24 month maxima established in § 801. Accordingly, we believe that the administrator has been deprived of such waiver authority, and that no other reading of the Food Stamp Act, as amended by the PRA, is plausible. *granted.*

5. These considerations preclude reading the statute to permit an extension of an existing certification period by means of a waiver. We turn next to considering the second possibility, that of a statutorily created new certification origination date.

6. § 402(a)(2)(D)(ii)(I) of Subtitle A of Title IV of the PRA states that "during the period beginning on the date of enactment of this Act and ending on the date which is 1 year after the date of enactment, the State agency shall, at the time of the recertification, recertify [individuals so as to apply the criteria making qualified aliens ineligible for food stamps]." This provision contemplates that the recertification of individuals will occur within a year of enactment of the PRA, but it does not in and of itself state when that recertification shall occur. We have concluded that the FCS administrator did have authority to waive the termination of existing certification periods so as to continue a household's eligibility -- by avoiding recertification which could disqualify a household under the new criteria -- until a date no later than August 23, 1997 (1 year from enactment of the PRA), or 12/24 months from the date of initial certification, whichever was earlier. Thus the already promulgated FCS waiver was consistent with the interpretation that all certification periods were subject to the 12/24 month maxima. *not an obstacle*

7. For households already enjoying a 12 month certification period, the 12 month maximum would not come into play as a constraint if the statute authorized us to begin the

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<sup>1</sup> I say "may" because the waiver provision's application to this period is ambiguous due to the wording of the statute. Because resolving the ambiguity is unnecessary for the analysis of the Food Stamp Act after the waiver has been deleted, as it was by the PRA, I have not attempted to resolve the ambiguity conclusively.

Pat says we can, we can't @004

No -

Pat says we can't, we can.

certification period "clock" at a new origination date. Under the most favorable interpretation, the eligibility of any household could be continued until the outer limit of August 23, 1997 was reached, under § 402(a)(2)(D)(ii)(I). The new origination date must be one that the states could employ by operation of law, without having to recertify households through a (normal) process of reviewing individual household facts relevant to eligibility, because any such recertification would have to be performed, pursuant to § 402(a)(2)(D)(ii)(I), using the new PRA criteria.

8. We believe that the only way in which the statute could be read to provide for such a new origination date is by reading the amendment to § 2012(c) as allowing a new certification period to begin -- by operation of law -- on the effective date of the PRA. There is simply no other origination date suggested by any text in the PRA that we have identified. *why need any partic stat? If no thing says, we can do.*

9. There is no express language of the PRA or the Food Stamp Act that supports this interpretation. The only argument based on the text that favors this interpretation is the language in § 402(a)(2)(D)(ii)(I) of the PRA that refers to the period "beginning on the date of enactment" (and extending for a year) during which the states must recertify the eligibility of individuals whose benefits may terminate based on their immigration status, and the absence of any express statement of when a certification period must begin. Section 402(a)(2)(D)(ii)(I), however, does not purport to define the "certification period" -- which is addressed separately in § 801 -- but rather concerns the process of removing aliens who are no longer entitled to receive benefits from the welfare rolls. As a general rule, moreover, the absence of express statutory language does not provide a sufficient basis for reworking an existing legislative scheme. *Right!*

10. The legislative history of the PRA provides little additional support for the proposed interpretation. The Conference Report explains that § 402(a)(2)(D)(ii)(I) was intended "[t]o allow individuals time to adjust to the revised policy" by permitting "otherwise restricted aliens" to "remain eligible for at most 1 year after enactment" and that eligibility will terminate immediately at the time of recertification. The House Report, similarly, notes: "For noncitizens who are receiving SSI and food stamp benefits on the date of enactment, eligibility would continue for 1 year; however, if a review or recertification during the year after enactment finds that the noncitizen would not meet the revised eligibility standards . . . , eligibility would end upon the review or recertification." Although one might argue that this language leaves the states with the option of delaying recertification for up to a year -- and thus permitting noncitizens to continue to receive benefits during that period -- this language can just as easily be read to clarify that benefits may be provided for up to a year unless an individual's certification period expires before the end of the year. Accordingly, the legislative history is of little assistance. *if there is an existing stat scheme that prevents this. But where is it? Again, don't mean surely doesn't hurt us.*

11. Logistical considerations counsel against interpreting the PRA to restart the certification period on the date of enactment. Among other things, the proposed interpretation would restart the certification period in all states, and not simply in California.

*who wanted*  
3  
*That's what this is based on??*

As a result, individuals in states, like California, that have one year certification periods might argue that they may not be deprived of food stamps before the end of the period. Congress, however, consciously created the food stamp program to provide an entitlement for a limited period of time, after which benefits terminated unless eligibility was recertified. See *Banks v. Block*, 700 F.2d 292, 295-97 (6th Cir. 1983) (reviewing history and structure of the Food Stamp Act, and ruling that a household receiving stamps has no protectable property interest in, and hence no procedural due process for, "the continuous entitlement to food stamps beyond the expiration of its certification period"), cert. denied, 464 U.S. 934 (1983); *Holman v. Block*, 823 F.2d 56, 59 (4th Cir. 1987) (same). See also 7 C.F.R. 273.10(f) (requiring that states "establish a definite period of time within which a household shall be eligible to receive [food stamp] benefits"). Even more fundamentally, it would be impossible for the states to make all recertification decisions under § 402(a)(2)(D)(ii)(I) on the same day, which would seemingly be required if the certification period for all aliens is deemed to commence on the same day and to extend for a year (or six or three months) thereafter. Yet, to read the statute to allow the states to process the recertifications over the course of the year, while withholding a final decision until the end of the period, would add a further layer of fancy to the interpretation of the statute. Finally, even if states might be able to adopt a series of new certification periods for various classes of individuals to avoid this problem, it seems unlikely that Congress would have imposed such a logistical burden on the states without any reference in the statute or legislative history. Indeed, § 402(a)(2)(D)(ii)(I) appears to contemplate a rolling process of removing aliens from the welfare rolls to avoid just this sort of problem.

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12. Further considerations adverse to this reading arise from the structure of the food stamp program. The statute requires most eligibility determinations to be made on the basis of a prospective estimation of income for the period of certification, except that for the first month of a "continuous period in which a household is certified, the State agency shall determine eligibility and the amount of benefits on the basis of the household's income and other relevant circumstances in such first ... month." 7 U.S.C. § 2014(f)(2)(A). The prospective calculation of income is subsequently defined as "the calculation of income on the basis of the income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined." 7 U.S.C. § 2014(f)(3)(A). These provisions create several difficulties for the interpretation that the statute creates a new certification period by operation of law.

→ This is actually not the interp.

13. First, the separate specification for procedures applicable for the first month of eligibility suggests that a calculation specific to the first month will be made for eligible households, on the basis of the household's income for that month. However, the State agency will have no information bearing on the household's income for that month if certification occurs by operation of law, and not through an actual recertification review, pursuant to which such information would be submitted by the applicant.

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14. Second, the requirement that eligibility be based on the "reasonably anticipated" income of the household during the period for which eligibility or benefits are being

Shayan

determined creates a similar difficulty. Without actual information bearing on income reasonably anticipated during the period "for which ... benefits are being determined," or for the year August 23, 1996 to August 23, 1997, the State agency would not have the ability to make that calculation.

15. In order to implement a new origination date (by operation of law,) it would be necessary to develop some rules that govern the eligibility determination, to substitute for the provisions of 7 U.S.C. §§ 2014(f)(2)-(3) reviewed in 12-14. Because there is no new income information available, any such rule would probably have to utilize the household's last eligibility determination calculations. Reading the statute simply to permit continuing eligibility on the basis of the earlier determination is one possibility. This, however, looks nearly indistinguishable from an extension of the original certification period, something we have concluded the PRA does not permit beyond a 12 month maximum. See 4, above.

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admit this.

16. Alternatively, we might announce that currently eligible households would be presumed to be eligible for the new certification period on the basis of their prior certification data. Assuming this presumptive eligibility approach would avoid the problem just noted in 14, we would still be required to defend the use of such a presumption in a statute that stresses and appears to require the use of income assessments based on actual information. See, e.g., § 2014(d) ("household income ... shall include all income from whatever source derived [subject to specifically enumerated exclusions]"); § 2014(f)(3)(A) (calculation of income to be based on income "reasonably anticipated to be received by the household during the [certification period]"); § 2020(e)(2) ("State agency shall require that an adult representative of each household that is applying for food stamp benefits shall certify in writing, under penalty of perjury, that the information contained in the application is true...") § 2020(e)(3) ("State agency shall ... promptly determine the eligibility of each applicant household by way of verification of income ..."); § 2020(e)(4) ("State agency shall insure that each participating household receive a notice of expiration of its certification period ... advising the household that it must submit a new application ... and, further, that each ... household which seeks to be certified another time or more times thereafter by filing an application for such recertification ... shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment issued to it pursuant to its prior certification...").

17. I believe the structure of the food stamp statute supports no other conclusion than the following: the statute contemplates that a certification period rests upon an actual verification, by the State agency pursuant to federal standards, of income (and other eligibility information) submitted by an applicant. Finding the statute to authorize a new certification period by operation of law, and hence without such prior application and verification, is incompatible with that statutory structure.

18. It is, of course, within Congress's power to enact a new certification period that takes effect upon the effective date of the PRA and requires no current certification of income information from recipients, and no verification of income by the State agency.

Reading the PRA to authorize that result, however, would require one to read the statute to suspend or otherwise avoid the certification of current income information by an applicant, under penalty of perjury, as well as the requirement that a state verify such information. If the new origination date brought with it a termination of the prior certification period, then the requirement that certification for "another time" be preceded by filing another application would have to be suspended or otherwise avoided as well. All of this could be accomplished, of course, either by deeming the provisions to be satisfied, or by finding them to be unnecessary when a certification period is created by operation of law.

19. Concluding that Congress might have done something is different from concluding that the statute it enacted actually did that thing, or that the statute permits an administrative agency to do it. The PRA contains no "deemer" clauses and no clauses suspending otherwise operative requirements of signature under penalty of perjury, verification of income information and calculations of income for the relevant certification period. Therefore, these existing statutory aspects of the program, which courts have found to be essential to the food stamp structure enacted by the Congress (see cases cited in 11, above), are in considerable tension with the attempted reading of the PRA's amendment to § 2012(c). When it is recalled that the sole statutory basis for the attempted reading is the mere absence of any provision expressly defining when a certification period is to begin, we conclude that the obstacles to the attempted reading are insurmountable.

**FAX COVER**

Date/Time:

**Income Maintenance Branch****Executive Office of the President  
Office of Management and Budget  
Washington, DC 20503****TO:***Elena Kagan, Steve Aitken***FROM:***Jack Smalligan***Fax Destination****Organization:****Fax Number:****Number of Attached Pages: Cover +****Notes:***FCS Options paper on  
FS Waiver***Income Maintenance Fax Number:  
Voice Confirmation:****202/395-0851  
202/395-4686**

## **WAIVER EXTENDING CERTIFICATION PERIODS OF FOOD STAMP HOUSEHOLDS CONTAINING NONCITIZENS**

### **Background:**

On August 22, 1996, the President directed the Secretary to allow State agencies to extend the certification periods of currently participating aliens, provided that no certification period is extended to longer than 12 months, or up to 24 months if all adult household members are elderly or disabled, and provided that in no event shall certifications be extended beyond August 22, 1997. He announced this in a press release from the White House on August 23. A statement by the Press Secretary indicates that the waiver will not have a significant impact in States that use the maximum 12-month certification period.

On August 26, 1996, we sent a memorandum to our Regional Offices notifying them that we are waiving the provisions of 7 CFR 273.10(f) to allow State agencies to extend certification periods as indicated in the President's directive.

At the time the waiver was being developed, we notified all decision makers that it would not provide relief for households in certain States, particularly California, that have 12 month certification periods. If a household with an alien member was already certified for 12 months and is due for recertification in September, the State agency will have to apply the new alien eligibility criteria.

### **The issue:**

The California State agency argues that the 12-month limit should be interpreted to be 12 months from the date of enactment. They believe that this 12 months can be added on to any previous certification period so long as it does not exceed one year after enactment. While clearly contrary to legislative intent, they believe it is a defensible interpretation of statute.

### **The implications:**

*Legal* - States could argue that the certification periods of all households should be extended. OGC feels that extending certification periods for aliens could be legally defensible, but the action would increase the disparity between treatment of aliens and citizens. Extending the certification periods of alien households not only postpones the action on the status of alien members, it also delays application of other provisions of the legislation that might be implemented sooner for other households.

*Budgetary* - There are many provisions in the legislation which are to be implemented at recertification. Delaying the implementation of the alien provision and the others for all households, including those with 12-month certification periods, would drastically reduce the savings from welfare reform for FY97. If implementation of the alien provision only for current recipients is delayed until August 22, 1997, \$235 million in savings would be lost. Delaying implementation of all provisions implemented at recertification (including the alien provision) until August 22, 1997 would reduce savings for FY97 from \$975 to \$90 million.

*Other* - In addition, the Administration could be criticized for refusing to implement a bill the President has signed.

**Possible alternatives:**

1. **Adopt California's interpretation and modify current waiver to allow extension of 12-month households.**
  - a. **Limit it to alien households only by denying requests from other States that wish to extend the authority to their entire caseload.**
  - b. **Approve extension requests for any case, not just aliens.**
  
2. **Do not change current waiver. While it does not help California, it does provide potential relief to most other States, including New York, Florida, and Texas, all of whom have less than 50 percent of their alien cases certified for less than 12 months, by giving them the same recertification burden as California.**

Welfare implementation group 9/3/96

1. CA - food stamp certification

Uses 12-mo certifi periods now (for 92% of cases)

So E Directive - did nothing

CA suggested: start certifi period at Aug 22

USDA attys said that was a stretch.

(Gov of CA - wants?)

hard to know - playing both sides)

USDA attys - asking for guidance from DOT  
Not CA specific.

Restricted just to aliens? or to everyone?

Regroup in 24-hours.

I'm supposed to wk process - DOT / USDA.

**FAX COVER**

Date/Time:

**Income Maintenance Branch**

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

TO: *Elena Kazan*FROM: *Matthew McKern*

Fax Destination

Organization:

Fax Number:

Number of Attached Pages: *Cover +* |

## Notes:

*issue paper drafted by the Food and Consumer Service on California's interpretation of the welfare reform certification period provisions for legal immigrants receiving food stamps. The paper has been reviewed by USDA OGC*

*cc: Steve Aiken*

Income Maintenance Fax Number:  
Voice Confirmation:

202/395-0851  
202/395-4686

## **WAIVER EXTENDING CERTIFICATION PERIODS OF FOOD STAMP HOUSEHOLDS CONTAINING NONCITIZENS**

### **Background:**

On August 22, 1996, the President directed the Secretary to allow State agencies to extend the certification periods of currently participating aliens, provided that no certification period is extended to longer than 12 months, or up to 24 months if all adult household members are elderly or disabled, and provided that in no event shall certifications be extended beyond August 22, 1997. He announced this in a press release from the White House on August 23. A statement by the Press Secretary indicates that the waiver will not have a significant impact in States that use the maximum 12 month certification period.

On August 26, 1996, we sent a memorandum to our Regional Offices notifying them that we are waiving the provisions of 7 CFR 273.10(f) to allow State agencies to extend certification periods as indicated in the President's directive.

At the time the waiver was being developed, we notified all decision makers that it would not provide relief for households in certain States, particularly California, that have 12 month certification periods. If a household with an alien member was already certified for 12 months and is due for recertification in September, the State agency will have to apply the new alien eligibility criteria.

### **The issue:**

The California State agency argues that the 12-month limit should be interpreted to be 12 months from the date of enactment. They believe that this 12 months can be added on to any previous certification period so long as it does not exceed one year after enactment. While clearly contrary to legislative intent, they believe it is a defensible interpretation of statute.

### **The implications:**

**Legal** - States could argue that the certification periods of all households should be extended. OGC feels that extending certification periods for aliens could be legally defensible, but the action would increase the disparity between treatment of aliens and citizens.

**Budgetary** - There are many provisions in the legislation which are to be implemented at recertification. Delaying the implementation of the alien provision and the others would reduce the savings from welfare reform.

**Other** - In addition, the Administration could be criticized for refusing to implement a bill the President has signed.

### **Possible alternatives:**

1. Adopt California's interpretation and modify current waiver to allow extension of 12-month households.
  - a. Limit it to alien households only by denying requests from other States that wish to extend the authority to their entire caseload.
  - b. Approve extension requests for any case, not just aliens.
2. Do not change current waiver. While it does not help California, it does provide potential relief to most other States, including New York, Florida, and Texas, all of whom have less than 50 percent of their alien cases certified for less than 12 months.

EXECUTIVE OFFICE OF THE PRESIDENT

02-Sep-1996 03:34pm

TO: (See Below)

FROM: Diana M. Fortuna  
Domestic Policy Council

SUBJECT: California and food stamp waiver for immigrants

Those of you who were here last week may know more about this than me, but:

There has been some activity between USDA and the state of California on the waiver we are offering states on food stamp recertification dates, to ameliorate the legal immigrant cuts.

Calif. doesn't benefit much from the waiver we are offering states, because its recertification cycle was already 12 months in most cases. Calif. human service officials were complaining to USDA that our plan doesn't help them and threatening to complain publicly. USDA told them it was the best we could do, and asked if they had any alternatives.

California came back with a proposal that we could redefine the start of the 12 month recertification period as the date of enactment of the welfare reform law. This would really postpone the effect of this change (and increase the cost), but it's not clear it's OK legally. As of last Friday, USDA's counsel was looking at this.

~~Distribution:~~

~~TO: Carol H. Rasco  
TO: Jeremy D. Benami~~

~~CC: Emily Bromberg  
CC: Elena Kagan  
CC: Kenneth S. Apfel  
CC: Keith J. Fontenot  
CC: Stephen C. Warnath~~