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**[Welfare Reform Binder] [3]**



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## Welfare Reform & Immigrants

(P.L. 104-193, signed 8/22/96)

### Q&A

#### Summary of Changes

- Most noncitizens are no longer eligible for SSI and Food Stamp benefits.
- New immigrants (arriving after 8/22/96) are barred from federal means-tested benefits for 5 years.
- After the 5-year bar, new immigrants that have sponsors must include their sponsors' income when applying for federal means-tested benefits (until the immigrant attains citizenship or 10 years of work).
- After January 1, 1997, states have the option to determine current immigrants' eligibility for TANF, Medicaid and SSBG (for new immigrants, after the 5-year bar).
- States have the option to provide or bar state funded programs for current and future immigrants. State and local-funded programs may deem for future immigrants.
- Illegal immigrants are ineligible for federal, state, and local public benefits.

#### Q. When do legal immigrants lose SSI benefits?

Legal immigrants who are currently receiving SSI must be re-evaluated by 8/22/97. The immigrant will lose benefits in the month after the evaluation, with the following exceptions:

1. Refugees, asylees, and those whose deportation is withheld (only for their first five years in the U.S.; if they have already been in the U.S. for more than five years, they lose benefits.)
2. Veterans, those on active duty, and their spouses and unmarried dependent children.
3. Immigrants who have worked in the U.S. for 10 years. The immigrant's spouse and minor children can be credited with qualifying work quarters. (To count as a "qualifying quarter" after December 31, 1996, the individual must not receive any public benefits during the quarter.)

#### Q. When do legal immigrants lose Food Stamp benefits?

Legal immigrants who are currently receiving food stamps must be recertified by 8/22/97. Certification periods will be extended to 1 year (2 years if elderly or disabled) if the recertification period is currently less than 1 year. Legal immigrants will then no longer be eligible for food stamps. Same exceptions as above.

#### Q. When does the 5-year bar on federal means-tested benefits take effect?

The 5-year bar is prospective: only new immigrants (arriving on or after 8/22/96) are affected.

Individual exceptions from the 5-year bar:

- 1) refugees, asylees, those granted withholding of deportation;
- 2) veterans, active duty military, their spouses and dependents; and,
- 3) refugee and entrant assistance for Cuban-Haitian Entrants.

Programs exempt from the 5-year bar:

1. emergency medical assistance;
2. emergency disaster relief;
3. national school lunch benefits
4. child nutrition act benefits
5. public health assistance (not including Medicaid) for immunizations, testing and treatment of symptoms of communicable diseases;
6. foster care and adoption assistance (unless parent is qualified alien subject to 5-year bar);
7. programs specified by the Attorney General;
8. higher education;
9. means-tested programs under ESEA;
10. Head Start; and,
11. JTPA.

"Federal means-tested program" was defined in H.R. 3734 as cash, medical, housing, food assistance, and social services of the federal government in which eligibility of the individual, household, or family is based on income, resources, or financial need. The definition was deleted from the conference agreement due to the Byrd rule. HHS will need to issue a definition.

Q. What about school meals?

School lunch and school breakfast is available to all immigrants regardless of status; states may provide certain other nutrition programs to undocumented immigrants.

Q. Explain **deeming**.

Deeming means that the income and resources of the sponsor and his/her spouse count as the immigrant's income in determining program eligibility (with no allowance for the needs of the sponsor's family as in current law.) Previously, deeming applied only to AFDC, SSI and Food Stamps. Deeming now applies to all federal means-tested programs until the sponsored immigrant naturalizes or has worked for 10 years. (An immigrant needs a sponsor to enter the U.S. if the State Department or the INS determines that the immigrant may become a "public charge", dependent on public assistance. Sponsors must now be citizens, nationals, or lawful permanent residents; 18 years or over; resident of the 50 states or D.C., and the petitioner for admission of the immigrant.)

Q. How many immigrants have sponsors?

Family immigrants are often, but not always, sponsored. Refugees are not sponsored immigrants. Employment-based immigrants are generally not sponsored.

Q. When do the new **deeming** rules take effect?

In 5-6 months for state option to deem state programs; in 5 years for federal programs. Deeming for all federal and state means-tested programs applies only to the newly executed affidavits of support, and thus does not affect immigrants currently living in the U.S. (However, new immigrants are subject first to the 5-year bar on federal benefits. Then deeming applies for federal benefits until citizenship or 10 years work). The INS must have new forms in effect by February 18, 1997. States

have the option to deem for state-funded programs after 1/1/97 except for emergency health, disaster, school lunch/child nutrition, immunizations and testing/treatment of symptoms of communicable diseases, foster care/adoption assistance, A.G. discretion programs.

Note: Veterans/active duty military are not exempted from deeming as they are from the SSI and Food Stamps bar, the 5-year bar, and the AFDC, Medicaid, SSBG state option.

### State Option re AFDC, Medicaid and SSBG

Q. What is the eligibility for immigrants under AFDC (now TANF), Medicaid and SSBG?

The legislation offers states the authority to determine the eligibility of "qualified" immigrants for these 3 programs. After 1/1/97, states may choose to provide, deny, deem, or otherwise limit these programs for current immigrant residents. New immigrants are subject first to the 5 year bar on federal means-tested benefits. After the 5-year bar, states have the option to bar until citizenship. Legislative intent is unclear whether states can waive deeming after 5 years for TANF, Medicaid and SSBG.

Individual exceptions:

1. refugees, asylees, and those whose deportation is withheld (only for their first five years in the U.S.)
2. Veterans, those on active duty, and their spouses and unmarried dependent children.
3. Immigrants who have worked in the U.S. for 10 years.

Q. What are some of the legal challenges regarding state authority to deny benefits to aliens?

Equal Protection. The offer by the federal government to grant states the authority to discriminate against aliens is constitutionally suspect at both federal and state levels. The 1971 U.S. Supreme Court decision in *Graham v. Richardson* ruled that state welfare benefits cannot be denied to immigrants under the Fourteenth Amendment (which prohibits a state from denying equal protection to any person within its jurisdiction). At the state level, in the 1987 decision *El Souri v. Department of Social Services*, the Michigan State Supreme Court ruled that Michigan could not impose a deeming requirement on legal immigrants because it was an infringement upon a suspect classification: lawful alienage.

Obligations to the Poor: State constitutions and statutes may also require public assistance be provided to any needy residents.

### MEDICAID

Q. If current recipients receive Medicaid by virtue of SSI, do they lose categorical eligibility for Medicaid when the SSI bar goes into effect?

Because SSI eligibility automatically qualified immigrants for Medicaid, the loss of SSI benefits will drop immigrants from Medicaid benefits. (CBO assumes most disabled and 1/2 of elderly will retain eligibility under state medically needy programs.) However, many immigrants may retain eligibility under medically needy programs, if the state has a medically needy program.

Q. Do states have to deem for current immigrant residents for Medicaid? No deeming for current residents..

Q. Can Medicaid funds be used for immunizations, testing and treatment of communicable disease? No, only non-Medicaid funds can be used for "non-qualified" aliens and for new arrivals subject to the 5-year bar.

### **State Option for State-Funded Programs**

States are given the authority to determine eligibility for state public benefits of qualified aliens, nonimmigrants, or parolees during their first year in the U.S.

Exceptions:

1. Qualified aliens shall be eligible for state public benefits
2. Refugees, asylees, and those whose deportation is withheld for first 5 years in the U.S.
3. Veterans, those on active duty, and their spouses and unmarried dependent children.
4. Immigrants who have worked in the U.S. for 10 years.
5. Current recipients are eligible until 1/1/97.

States and localities are given the authority to apply deeming for state and local programs (new immigrants with new affidavits of support only.) Exceptions for: assistance for health care items and services necessary for treatment of an emergency medical condition (not organ transplants), emergency disaster relief, programs comparable to School Lunch Act; programs comparable to Child Nutrition Act; public health assistance for immunizations and testing/treatment of symptoms of communicable diseases; payments for foster care/adoption assistance; A.G. discretion programs. The definition of state public benefit was dropped from the bill. It is unclear who defines state public benefit.

### **Illegal/Undocumented Immigrants**

Q. Who is ineligible for public benefits?

Only "qualified aliens" (lawful permanent residents, refugees, asylees, parolees after 1 year, those whose deportation withheld) are eligible for federal public benefits. Only "qualified aliens", nonimmigrants, or parolees during their first year in the U.S. are eligible for state or local public benefits. HHS will need to issue a definition of federal public benefits.

States may provide benefits to ineligible immigrants only by enacting state law after enactment of the welfare reform law affirmatively providing for such eligibility.

*Prepared by the Immigrant Policy Project at NCSL  
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## Common Immigration Terms

### *Who is an immigrant?*

As a general term for new arrivals, this includes legal immigrants, refugees, asylees, parolees, and others. Legal immigrants are granted admission to the United States on the basis of family relation or job skill. The Immigration Act of 1990 permits up to 675,000 immigrants to enter in 1995; this figure is adjustable dependent upon visa usage in the previous year. (FY95 legal immigration visas: 480,000 family-sponsored; 140,000 employment-based; and 55,000 diversity visas.)

### *Who is a nonimmigrant?*

Aliens who are allowed to enter the United States for a specific purpose and for a limited period of time are nonimmigrants. Examples include tourists, students, and business visitors. (Nearly 22.1 million nonimmigrants entered the United States in 1994.)

### *Who is a Lawful Permanent Resident (LPR)?*

A person who lives in the United States permanently and qualifies as a refugee, asylee, or immigrant, or who has been granted amnesty other than suspension of deportation is an LPR. (804,000 immigrants were granted lawful permanent resident status during 1994.)

### *Who is a refugee?*

A refugee is a person who flees his or her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group. Refugees are eligible for federal resettlement assistance. (In 1995, 121,562 refugees were admitted.)

### *Who is an asylee?*

Similar to a refugee, this is a person who seeks asylum and is already present in the United States when he or she requests permission to stay. (In 1994, 146,468 asylum applications were filed, a dramatic increase from the 56,310 applications filed in 1991.)

### *Who is a parolee?*

The Justice Department has discretionary authority to permit certain persons or groups to enter the United States in an emergency or because it serves an overriding public interest. Parole may be granted for humanitarian, legal, or medical reasons. These entrants are granted temporary residence, are ineligible for special federal benefits and are not on a predetermined path to permanent resident status. Parolees may qualify for work authorization, depending upon personal circumstances. (In 1995, 113,542 persons were paroled, a figure that has declined from the 137,000 paroled in 1992.)

### *Who is an "illegal alien?"*

Also known as an undocumented immigrant, this is someone who enters or lives in the United States without official authorization, either by entering without inspection by the INS, overstaying their visa, or violating the terms of their visa. Under the Immigration Reform and Control Act of 1986, Congress granted amnesty to approximately 3 million undocumented persons who had lived in the U.S. for five years or were "special agricultural workers". IRCA also established a requirement that employers verify work authorization of their employees or face stiff financial penalties. (The INS estimates 300,000 undocumented persons enter and stay in the U.S. each year.)

### *Who are Cuban/Haitian entrants?*

This category was created for the Cuban and Haitian arrivals in 1980, who were allowed to obtain work permits and to apply for public assistance. Cuban and Haitian entrants are eligible for refugee services (22,560 Cuban and Haitian entrants arrived in the U.S. in 1995.)

### *What does PRUCOL mean?*

For the purposes of determining benefit eligibility, PRUCOL (permanently residing under color of law) status means that an alien is considered to be legally residing in the country for an indefinite period of time. PRUCOL is not, however, a method for entering the country, but indicates that an individual is legally present under statutory authority and may remain under administrative discretion. (PRUCOL is no longer qualified under the 1996 Welfare Reform Legislation.)

### *Who is a "Qualified Alien?"*

"Qualified alien" refers to permanent residents, refugees, asylees, parolees after one year, those whose deportation is withheld, and conditional entrants before 1980. This new term was created to define immigrants eligible for public benefits in the 1996 welfare reform legislation, now Public Law 104-193.

### *What does "deeming" mean?*

Some legal immigrants come to the U.S. with the aid of citizens who serve as their sponsors. That sponsor signs an affidavit of support agreeing to help support and sustain the immigrant. Should the immigrant apply for public benefits, agencies must consider, or "deem," the income of the sponsor and his/her spouse available to the immigrant when determining program eligibility.

### *What is an affidavit of support?*

An affidavit of support is the contract that an immigrant's sponsor signs, agreeing to financially assist the immigrant to prevent him/her from becoming a public charge. Following the welfare reform legislation of 1996, affidavits of support will become legally binding documents and are enforceable until the immigrant naturalizes.

### *Who is a public charge?*

Immigrants who become dependent upon public assistance, fail to find employment, and are unlikely to be self-supporting in the future may be deported on the grounds that they have become a "public charge."

### *What is naturalization?*

Naturalization is the process by which a foreign-born individual becomes a citizen of the United States. Naturalization requires that the person be over 18 years old, lawfully admitted to the U.S., reside in the country continuously for five years, and have a basic knowledge of English, American government, and U.S. history.

### *What is temporary protected status (TPS)?*

TPS is granted to people living in the U.S. who are from designated countries where unsafe conditions make it a hardship for them to return. The countries that have been designated under the TPS program in the past include El Salvador, Kuwait, Lebanon, Somalia and Liberia. TPS authorizes recipients to remain in the U.S. for a specific period of time and to work. TPS recipients are not considered to be PRUCOL.

*Prepared by the Immigrant Policy Project of the State and Local Coalition on Immigration, August 1996*

**IMMIGRATION PROVISIONS IN WELFARE REFORM: CONFERENCE AGREEMENT ON H.R. 3734  
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996**  
*Prepared by the Immigrant Policy Project at the National Conference of State Legislatures*

	Current Law	H.R. 3734 Conference Agreement (7/30/96)
<p><b>Programs Barred to Legal Immigrants</b></p>	<p>None</p>	<p><b>Permanent bar on SSI and Food Stamps (Sec. 402)</b>  <b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>• refugees, asylees, or those granted withholding of deportation for their first 5 years in the U.S.;</li> <li>• lawful permanent resident with 40 qualifying quarters of work (to count qualifying quarters after 12/31/96 the individual must also not receive any federal means-tested public benefit); the spouse and minor children can be credited with qualifying quarters-see Sec. 435;</li> <li>• veterans, active duty military, spouses and dependents.</li> </ul> <p><b>Transition:</b> Current SSI recipients subject to redetermination of eligibility in the year following enactment; current food stamp recipients must be recertified within one year. On 8/22, the President directed the Secretary of Agriculture to permit states to provide food stamps until 8/22/97.</p> <p><b>5-year bar on federal means-tested public benefits for new arrivals who are qualified aliens (Sec. 403(a))</b>  <b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>• refugees, asylees, or those granted withholding of deportation for their first 5 years in U.S.;</li> <li>• veterans, active duty, spouses and dependents; and</li> <li>• refugee program activities for Cuban and Haitian entrants (Sec. 403(d)).</li> </ul> <p>(See program exceptions under Definition of Means-Tested Public Benefit, below.)</p>
<p><b>State and Local Government Program Eligibility</b></p>	<p>States and localities may deny their benefits to illegal immigrants and nonimmigrants.</p> <p>States and localities may not deem or prohibit legal immigrants from accessing their programs.</p>	<p><b>States are authorized to determine the eligibility of "qualified aliens" for TANF (formerly AFDC), Social Services Block Grant, and Medicaid. (Sec. 402(b))</b> (After the 5-year federal bar, state option to bar until citizenship. For current Medicaid recipients, state option to continue services after 1/97.) Effective date for current recipients: 1/1/97. (Sec. 402(b)(2)(D))</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>• refugees, asylees, alien whose deportation has been withheld are eligible for first 5 years.</li> <li>• lawful permanent residents with 40 qualifying quarters of work (spouses/minor children can be credited)</li> <li>• veterans, active duty military, spouses and dependents.</li> </ul> <p><b>State authority to limit eligibility of qualified aliens (Sec. 412):</b> States may determine eligibility for state public benefits of qualified aliens, nonimmigrants, or parolees during their first year in the U.S. Except these aliens shall be eligible: refugees, asylees, and those granted withholding of deportation for their first 5 years in the U.S.; lawful immigrants who have worked 40 qualifying quarters and did not receive federal means-tested public benefits; veterans, active duty and their spouses and dependents; and, current recipients are eligible until 1/1/97.</p> <p><b>Ineligible immigrants:</b> Only qualified aliens, nonimmigrants, or parolees in the U.S. for less than 1 year are eligible for state or local public benefits. Excepted benefits: emergency medical; emergency disaster relief; public health for immunizations, testing and treatment of symptoms of communicable diseases; and A.G. discretion (in-kind, not conditioned on income, necessary for the protection of life or safety.) (Sec. 411)</p> <p>States may provide public benefits to illegal immigrants only through enacting state law after this bill is enacted. (Sec. 411(d))</p> <p><b>School lunch and breakfast provisions:</b> School lunch and breakfast available to all immigrants regardless of status; states may provide certain other nutrition programs to undocumented immigrants. (Sec. 742)</p>

	Current Law	H.R. 3734 Conference Agreement (7/30/96)
<b>Definition of Means-Tested Public Benefit</b>	n/a	<p><b>Federal programs (Sec. 403(c)):</b> cash, medical, housing, food assistance, and social services of the federal government in which eligibility of the individual, household, or family is based on income, resources, or financial need.</p> <p>Except: emergency medical assistance; short-term, non-cash, in-kind emergency disaster relief; National School Lunch benefits; Child Nutrition Act benefits; public health assistance (not including Medicaid) for immunizations, testing and treatment of symptoms of communicable diseases; foster care and adoption assistance (unless parent is qualified alien subject to 5-year bar); programs specified by the Attorney General (in-kind, etc.); higher education; means-tested programs under ESEA; Head Start; JTPA.</p> <p><b>State or local programs (Sec. 411(c)):</b> any grant, contract, loan, professional license; any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or similar benefit provided to an individual, household, or family.</p> <p><b>NOTE:</b> These definitions were deleted due to the Byrd rule, although "it is the intent of conferees" that these definitions be used.</p>
<b>Definition of "Qualified Alien"</b>	n/a	<p><b>"Qualified Alien"</b> = permanent residents, refugees, asylees, parolees after 1 year; deportation withheld; conditional entrants before 1980 (Sec. 431) (Note: withholding of deportation is similar to political asylum.)</p>
<p><b>Programs Restricted by Deeming</b></p> <p>(Note: deeming = sponsor's income and resources are considered, or "deemed", available to immigrant when determining program eligibility)</p>	AFDC, Food Stamps, SSI	<p><b>Federal means-tested programs must deem.</b> Income and resources of any person (and his/her spouse) who executed an affidavit of support shall be deemed available to alien in determining eligibility and amount of benefits for ANY federal means-tested public benefit program. (Sec. 421)</p> <p>Effective date (Sec. 421(d)):</p> <ul style="list-style-type: none"> <li>• for programs that deem, date of enactment;</li> <li>• for programs that do not currently deem, effective for eligibility determinations made 180 days after enactment.</li> </ul> <p><b>State option to deem</b></p> <p>Except: emergency health, disaster, school lunch/child nutrition; immunizations and testing/treatment of symptoms of communicable diseases; foster care/adoption assistance; A.G. discretion programs (soup kitchens). (Sec. 422)</p> <p>(Note: The conference report refers to affidavit of support requirements added in Sec. 423; deeming would seem to apply only to affidavits executed under the new regulations, which the A.G. must implement 150-180 days after enactment; in other words, no deeming for current legal immigrants).</p>
<b>Length of Deeming Provisions</b>	AFDC and Food Stamps (3 years); SSI (5 years)	<b>Deeming applies until citizenship or 40 qualifying quarters of work</b> with no receipt of federal means-tested public assistance. (Sec. 421(b))
<b>Affidavits of Support</b>	Unenforceable	<p><b>Affidavits are legally enforceable against the sponsor</b> by the sponsored alien, the federal government, and by any state or locality which provides means-tested programs up to 10 years after receipt of benefit. Affidavits of support are enforceable until citizenship. (Reimbursement may not be sought for the 11 excepted programs to federal means-tested benefits defined above.)</p> <p><b>Sponsors must notify the Attorney General and the state where the sponsored alien resides of any change of address of the sponsor.</b> (Sponsor must be a citizen or national or lawful permanent resident; 18 years or over; resident of the 50 states or D.C.; and be the petitioner for admission of the immigrant.)</p> <p>Effective date: The A.G. has 90 days to create a new form; effective 60-90 days thereafter.</p>

<p><b>Eligibility of Immigrants "Not Qualified"</b></p>	<p>Eligibility of immigrants the INS does not plan to deport varies by program. Undocumented immigrants are ineligible for all major federal programs; <i>exceptions include:</i>  <i>-emergency Medicaid</i>  <i>-public health</i>  <i>-child nutrition</i>  <i>-K-12 public education</i></p>	<p><b>Immigrants not "qualified" are barred from federal, state and local public benefits:</b> A) grants, contracts, loans, licenses; B) retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit provided to an individual, household, or family by the U.S. or by appropriated funds of the U.S. (Sec. 401 &amp; 401(c)) (Sec. 411)  <b>Exceptions:</b> (Sec. 401(b))</p> <ul style="list-style-type: none"> <li>• emergency medical assistance under Medicaid (if alien meets the eligibility requirements under the state plan)</li> <li>• short-term, non-cash, in-kind emergency disaster relief</li> <li>• public health (not including Medicaid) for immunizations and for testing and treatment of symptoms of communicable diseases</li> <li>• programs identified by the Attorney General which deliver in-kind services at the community level, do not condition assistance on the individuals' income or resources; and are necessary for the protection of life or safety (such as soup kitchens).</li> <li>• housing or community development assistance for current recipients.</li> </ul>
<p><b>Reporting; Verification; Cooperation with INS</b></p>	<p>Immigration information may be kept confidential by organizations such as battered women's shelters, hospitals, and law enforcement agencies (e.g., witness protection programs).</p>	<p><b>Reporting under Title IV of Social Security Act:</b> Requires agencies that administer SSI, housing assistance, or TANF to report quarterly to the INS the names and addresses of individuals they know are unlawfully in the U.S. (Sec. 404)</p> <p><b>The Attorney General with the Secretary of HHS must issue regulations within 18 months requiring verification</b> that alien applying for federal public benefits is a qualified alien and eligible for such benefit. States administering federal public benefits must comply with the verification system within 24 months of regs being adopted. Authorizes "such sums as may be necessary" to carry out this section. (Sec. 432)</p> <p><b>No state or local government entity may be prohibited or restricted from communicating information to the INS about the immigration status of an alien in the U.S.</b> (Sec. 434)</p>
<p><b>CBO Estimated Federal Savings</b></p>	<p>n/a</p>	<p>\$23.8 billion for immigrant provisions (accounts for 44% of the total savings of \$54.1 billion over 6 years for H.R. 3734)</p>

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## IMPACT OF IMMIGRANT PROVISIONS IN WELFARE REFORM

### National Impact

In scoring H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Congressional Budget Office (CBO) estimated the federal government would save \$2.9 billion in fiscal year 1997 and \$54.2 billion between FY1997 and FY2002. The impact of this legislation on legal immigrants is profound. Accounting for over 44% of the federal savings, the federal government saves \$1.2 billion in FY1997 and as much as \$23.8 billion between FY1997 and FY2002 by denying benefits to legal immigrants. However, federal savings could easily become a state obligation if states either choose or are forced to make up the difference.

The table below denotes the number of immigrants potentially affected by this bill and the amount of money the federal government expects to save for the three largest benefit programs.

Immigrants Affected Nationwide and Estimated Federal Cost Savings  
(CBO, 8/9/96)

Program	Immigrants	Savings	
		FY1997	FY1997 - Y2002
SSI	500,000	\$375,000,000	\$13,275,000,000
Food Stamps	1,000,000	\$385,000,000	\$3,700,000,000
Medicaid	600,000	\$105,000,000	\$5,290,000,000

### Supplemental Security Income (SSI)

SSI is a cash assistance entitlement program administered by the Social Security Administration that benefits the aged, blind, and disabled. Under current law, legal aliens are eligible to receive SSI benefits if they meet the same criteria applied to citizen applicants. Recipients of SSI are automatically eligible for Medicaid in most states. It is unclear at present whether immigrants who lose SSI benefits under welfare reform will lose categorical eligibility for Medicaid benefits. Also, H.R. 3734 grants states the *option* to deny Medicaid to current immigrants after January 1, 1997. (New immigrants are subject first to a 5-year bar on federal means-tested programs and to deeming thereafter).

CBO estimates approximately 500,000 legal immigrants will lose benefits, based on CBO assumptions applied to administrative records for the SSI program. There were 785,000 noncitizen SSI recipients in 1995. CBO subtracted groups that are exempted in the bill (mainly refugees, asylees and those with 40 qualifying quarters of work) and estimated that 15% of those currently on the rolls as aliens are in fact naturalized citizens. CBO also assumes that a certain percentage of noncitizens will have an incentive to naturalize (ranging from 5% in 1997 up to 45% in 2002). Estimating cash benefits at \$400/month (in 1997), adjusted for cost of living, CBO estimates an annual federal budget savings of between \$2 billion and \$3 billion per year after 1997.

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**Immigrants Receiving SSI By State and Eligibility Category**

<b>State</b>	<b>Total</b>	<b>Aged</b>	<b>Disabled</b>	<b>Percentage<sup>b</sup></b>
Alabama	600	480	140	0.08%
Alaska	800	480	320	0.10%
Arizona	7,500	3,860	3,640	0.96%
Arkansas	350	210	140	0.04%
California	321,720	183,360	138,360	40.97%
Colorado	5,270	2,870	2,400	0.67%
Connecticut	4,430	2,860	1,570	0.56%
Delaware	410	230	180	0.05%
District of Columbia	1,030	630	400	0.13%
Florida	77,960	50,040	27,920	9.93%
Georgia	4,550	3,050	1,500	0.58%
Hawaii	4,470	3,430	1,040	0.57%
Idaho	360	170	190	0.05%
Illinois	26,200	15,520	10,680	3.34%
Indiana	1,100	750	350	0.14%
Iowa	1,170	590	580	0.15%
Kansas	1,530	730	800	0.19%
Kentucky	660	340	320	0.08%
Louisiana	2,790	1,720	1,070	0.36%
Maine	650	260	390	0.08%
Maryland	9,010	6,880	2,130	1.15%
Massachusetts	24,260	13,210	11,050	3.09%
Michigan	7,920	4,260	3,660	1.01%
Minnesota	6,800	2,550	4,250	0.87%
Mississippi	530	290	240	0.07%
Missouri	1,860	1,200	660	0.24%
Montana	170	100	*	0.02%
Nebraska	640	320	320	0.08%
Nevada	2,450	1,620	830	0.31%
New Hampshire	350	200	150	0.04%
New Jersey	24,670	16,470	8,200	3.14%
New Mexico	3,380	1,610	1,770	0.43%
New York	123,240	71,420	51,820	15.69%
North Carolina	2,290	1,460	830	0.29%
North Dakota	140	*	*	0.02%
Ohio	5,790	3,710	2,080	0.74%
Oklahoma	1,340	880	460	0.17%
Oregon	4,370	2,280	2,090	0.56%
Pennsylvania	12,030	7,040	4,990	1.53%
Rhode Island	3,580	1,830	1,750	0.46%
South Carolina	660	470	190	0.08%
South Dakota	190	*	110	0.02%
Tennessee	1,360	830	530	0.17%
Texas	57,230	34,420	22,810	7.29%
Utah	1,300	640	660	0.17%
Vermont	160	*	*	0.02%
Virginia	7,760	5,790	1,970	0.99%
Washington	13,440	6,050	7,390	1.71%
West Virginia	200	120	*	0.03%
Wisconsin	4,670	1,750	2,920	0.59%
Wyoming	*	*	*	0.00%
<b>TOTAL</b>	<b>785,340</b>	<b>458,960</b>	<b>325,850</b>	<b>100.00%</b>

<sup>a</sup>Noncitizens Receiving SSI Payments by State and Eligibility Category. Social Security Administration (December 1995)  
<sup>b</sup>Calculated by the Immigrant Policy Project

[Federal Register: August 28, 1996 (Volume 61, Number 168)]  
[Proposed Rules] [Page 44227-44230]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]

DEPARTMENT OF JUSTICE - Immigration and Naturalization Service  
8 CFR Part 312  
[INS No. 1702-96] RIN 1115-AE02

Exceptions to the Educational Requirements for Naturalization for Certain Applicants  
AGENCY: Immigration and Naturalization Service, Justice.  
ACTION: Proposed rule.

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**SUMMARY:** The Immigration and Naturalization Service (the Service) is amending its regulation relating to the educational requirements for naturalization of eligible applicants. This is necessary to implement changes to section 312 of the Immigration and Nationality Act (the Act) as amended by the Technical Corrections Act of 1994. The amendment provides an exemption from the requirements of demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage, and of demonstrating a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States, for certain applicants who are unable to comply with both requirements because they possess a "physical or developmental disability" or a "mental impairment."

**DATES:** Written comments must be submitted on or before September 27, 1996.

**ADDRESSES:** Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1702-96 on your correspondence. Comments are available for public inspection at the above-noted address by calling (202) 514-3048 to arrange an appointment.

**FOR FURTHER INFORMATION CONTACT:** Craig S. Howie, Adjudications Officer, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 312 of the Act requires a person seeking naturalization as a citizen of the United States to demonstrate an understanding of the English language and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. On October 25, 1994, Congress amended section 312 of the Act, through the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Technical Corrections Act), Public Law 103-416, 108 Stat. 4309, section 108(a)(4). Under the new subsection (b) of section 312 of the Act, certain persons are exempt from the English proficiency and history and government requirements of section 312(a) if they possess a "physical or developmental disability" or a "mental impairment."

Congress did not specifically define the phrases "physical and developmental disability" or "mental impairment" in the Technical Corrections Act. However, Congress did provide limited guidance for defining these terms in the Report of the House of Representatives Committee on the Judiciary, H.R. No. 103-387, November 20, 1993. The relevant comments, found on pages 5 and 6 of the report, read:

*The bill also provides a general waiver of all testing requirements for persons of any age who, because of "physical or developmental disability or mental impairment," could not reasonably be expected to pass the test. This is not intended to include conditions that are either temporary or that have resulted from an individual's illegal use of drugs. An individual who is developmentally disabled is one who shows delayed development of a specific cognitive area of maturation, i.e., reading, language, or speech, resulting in intellectual functioning so impaired as to render the individual unable to participate in the normal testing procedures for naturalization. This is not an acquired disability, but one whose onset occurred prior to the 18th birthday. An individual who is mentally disabled is one for whom there is a primary impairment of brain function, generally*

*associated with an organic basis upon which diagnosis is based, resulting in an impairment of intellectual functions, including memory, orientation or judgment. This definition does not include individuals whose mental disability is not the result of a physical disorder. An individual who is physically disabled is one who has a physical impairment that substantially limits a major life activity.*

It is clear that the amendment to section 312 is to exempt only those individuals who, because of their disability, cannot demonstrate the requisite literacy and knowledge as required under section 312 of the Act.

On November 21, 1995, the Service provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the expanded exemptions provided under the Technical Corrections Act. The Service also provided preliminary definitions of the terms "developmental disability," "physical disability," and "mental impairment" following the language in H.R. No. 103-387. Applicants seeking disability waivers were required to submit medical evidence (e.g., a one-page certification from a designated civil surgeon) with their N-400, Application for Naturalization, supporting their claim of disability.

#### Amendment of Existing Regulation

In order to implement the changes to section 312 of the Act as mandated by the Technical Corrections Act, the Service is proposing to amend 8 CFR 312.1 and 312.2 to provide definitions of the terms "developmental disability," "physical disability," and "mental impairment," and to outline procedures for individuals who seek disability exemption pursuant to section 312(b)(1) of the Act.

This proposed rule not only modifies the Service's current preliminary guidance to the field but also comports with existing Federal policies and regulations for implementing nondiscriminatory disability based programs as required under section 504 of the Rehabilitation Act of 1973, as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, and 28 CFR part 39. This proposed rule also provides that an exemption will be granted only to those individuals with disabilities who, because of the nature of their disability, cannot demonstrate the required understanding of the English language and knowledge of American history and government.

The section 312(b) disability-exemption is not a blanket waiver from the testing requirements to be granted based solely on evidence of a disability. To interpret section 312(b) as a blanket exemption not only would have the tacit effect of perpetuating the negative stereotype that people with disabilities are unable to participate fully in mainstream activities, but also would be contrary to the requirements of section 504 of the Rehabilitation Act.

All waiver eligibility determinations will be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General, who determine that the applicant has a disability that renders the individual unable to demonstrate the English proficiency or knowledge required by this part or renders the individual unable, even with reasonable modifications, to participate in the testing procedures for naturalization.

Pursuant to section 504 of the Rehabilitation Act of 1973, the Service will provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Reasonable modifications may include providing wheelchair-accessible test sites, sign language interpreters, or brailled materials. In addition, modifications may be made in the test format or test administration procedures. An applicant will be deemed unable to participate in the testing procedures only in those situations where there are no reasonable modifications that would enable the applicant to participate.

It will be the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate the claim for a disability-based exception. The Service has no desire for applicants with disabilities to submit extensive medical reports or medical background information regarding their condition. Since Service officers are not physicians and should not be placed in the position of making a medical determination, the Service is proposing use of civil surgeons for assessing the disability claimed by applicants. In addition, as reflected in the language of the proposed rule, the Service is considering use of qualified individuals or entities designated by the Attorney General to perform such assessments. The designees will review the necessary background medical reports, submitted by the applicant or the applicant's medical specialist. Civil surgeons not experienced in diagnosing developmental disabilities or other cognitive impairments shall be required to consult with professionals who are experienced in diagnosing cognitive impairments prior to making an eligibility determination. If the surgeon or designee is in agreement with the background information and has consulted with the necessary specialist, he or she will issue a one-

page certification, verifying the existence of a disability as defined under 8 CFR 312.1(b)(3) and 312.2(b)(1), and attesting to the applicant's inability to participate in the testing procedures required under section 312 of the Act. The Service fully intends to work with the civil surgeons and other qualified individuals or entities in developing guidance and procedures for the preparation of the certification needed by an applicant with a disability for this particular exception.

#### Request for Comments

The Service is seeking public comments regarding this proposed rule. The Service is interested in public comment on the requirements for medical certifications. The Service also seeks public comment on the use of civil surgeons and on the circumstances under which the Service should consider use of qualified individuals or entities, other than civil surgeons, for disability determinations such as licensed physicians, other health care professionals, or other government or private entities designated by the Attorney General. It should also be noted that the Service is engaged in an additional revision of 8 CFR part 312. That revision will be issued as a proposed rule, also with a request for public comments.

#### Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Therefore, the agency solicits public comments on the revised information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 300,000 applicants may apply for an exemption from the requirements of section 312. The Service also estimates that it will take each applicant three (3) hours to obtain the necessary attestation for an exemption. This amounts to 900,000 total burden hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs (OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objectives.

#### Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3) (B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the 1994 Technical Corrections Act in order to afford certain disabled naturalization applicants an exemption from the educational requirements outlined in section 312 of the Immigration and Nationality Act.

#### Executive Order 12612

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

#### List of Subjects in 8 CFR Part 312

Citizenship and naturalization. Education.

Accordingly, part 312 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 312--EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

1. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

2. In Sec. 312.1, paragraph (b)(3) is revised to read as follows:

##### Sec. 312.1 Literacy requirements.

(b) \* \* \*

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate an understanding of the English language, as noted in paragraph (a) of this section. Physical disability, developmental disability, and mental impairment do not include conditions that are temporary or that have resulted from an individual's illegal drug use.

(i) For the purposes of this paragraph (b)(3), the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to render an individual to be unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications.

Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgment that causes an individual to be unable to demonstrate an understanding of the English language required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that causes that individual to be unable to demonstrate an understanding of the English language required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications.

(ii) [Reserved]

\* \* \* \* \*

3. Section 312.2 is amended by:

- a. Revising the last sentence of paragraph (a);
- b. Redesignating paragraph (b) as paragraph (c) and by
- c. Adding a new paragraph (b), to read as follows:

##### Sec. 312.2 Knowledge of history and government of the United States.

(a) \* \* \* A person who is exempt from the literacy requirement under Sec. 312.1(b) (1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. Physical disability, developmental disability, and mental impairment do not include conditions that are temporary, or that have resulted from an individual's illegal drug use.

(i) For the purposes of this paragraph (b)(1), the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to render the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgment that renders the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that renders the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(ii) [Reserved]

(2) Medical certification. All persons applying for naturalization and seeking an exemption from the requirements of Sec. 312.1(a) and paragraph (a) of this section based on one of the enumerated disability exceptions must submit a certification from a designated civil surgeon (as defined in 42 CFR 34.2) or qualified individuals or entities designated by the Attorney General, attesting to the origin, nature, and extent of the person's medical condition as it relates to the disability exceptions noted under Sec. 312.1(b)(3) and paragraph (b)(1) of this section. The certification shall be a letter-sized one-page document, signed and dated by the civil surgeon or qualified individuals or entities. The civil surgeon, in particular those not experts in diagnosing developmental disabilities or other cognitive impairments, shall consult with other qualified physicians and psychologists prior to providing a certification, and may require the person seeking a disability-based exception to furnish evidence from a medical specialist or psychologist to support the person's claim of a qualifying disability. Any additional medical evidence required by a civil surgeon to assist in the evaluation shall only be for the use of the civil surgeon. The additional evidence shall not be attached to the civil surgeon's certification or filed with the applicant's application for naturalization as background or supporting documentation. An affidavit or attestation by the person, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement. The Service may consult with other Federal agencies in making its determination on whether an individual previously determined to be disabled by another Federal agency has a disability as defined in this section. This consultation may be used in lieu of the individual's medical certification.

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Dated: August 23, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96-22043 Filed 8-26-96; 11:52 am]

BILLING CODE 4410-10-M

**Summary of Medicaid-Related Immigration Provisions of H.R. 3734,  
Personal Responsibility And Work Opportunity Reconciliation Act of 1996**

**Title IV-- Restricting Welfare and Public Benefits for Aliens**

Category of Immigrant	Eligibility for Full Medicaid Benefits TANF, SSBG		Eligibility for Emergency Medicaid (If state does not choose option to provide full Medicaid)		Eligibility for SSI		State or Local Programs	Effective Date (Provisions are generally effective immediately for new applicants)
	<i>Already here:</i>	<i>New arrival:</i>	<i>Already here:</i>	<i>New arrival:</i>	<i>Already here:</i>	<i>New arrival:</i>		
<b>Permanent Resident Alien (without 40 quarters)</b>  <b>Parolee, for at least one year</b>  <b>Conditional Entrant (pre-1980)</b>	<i>Already here:</i> state option to cover. If state does not cover, receive emergency services only.	<i>New arrival:</i> not eligible for 5 yrs. after date of entry; state option thereafter. Deeming will apply.	<i>Already here:</i> mandatory if state does not provide full Medicaid benefits	<i>New arrival:</i> mandatory for first five years; mandatory at all times if state does not provide full Medicaid benefits	<i>Already here:</i> not eligible after 8/22/97.	<i>New arrival:</i> not eligible	State is authorized to determine eligibility for state benefits.	Medicaid: Eligibility guaranteed until January 1, 1997. State option afterwards.  SSI: Eligibility may end in month following redetermination, which must be completed by 8/22/96.  State programs: guaranteed through January 1, 1997.
<b>Permanent Resident Alien (with 40 quarters)</b>	<i>Already here:</i> Mandatory	<i>New arrival:</i> not eligible for 5 years post date of entry; eligible at state option thereafter. Deeming will apply.	<i>Already here:</i> mandatory	<i>New arrival:</i> mandatory	<i>Already here:</i> eligible	<i>New arrival:</i> not eligible for 5 years post date of entry; in addition, must work 40 quarters.	Must be eligible for state benefits. (Silent on local benefits)	Medicaid: Eligibility guaranteed until January 1, 1997. State option afterwards.  SSI: Eligibility may end in month following redetermination, which must be completed by 8/22/96.  State programs: guaranteed through January 1, 1997.

Category	Eligibility for Full Medicaid Benefits	Eligibility for Emergency Medicaid	Eligibility for SSI	State or Local Programs	Effective Date
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<b>Refugee</b> <b>Asylee</b> <b>Individual granted withholding of deportation</b>	<i>Already here:</i> mandatory for 5 years after date of entry, state option thereafter	<i>New arrival:</i> mandatory for 5 years after date of entry; state option thereafter. Deeming will apply.	<i>Already here:</i> mandatory after 5 years of full Medicaid ends, if state does not opt to provide full benefits.	<i>New arrival:</i> mandatory	<i>Already here:</i> eligible for 5 years after date of entry	<i>New arrival:</i> not eligible	Must be eligible for state benefits (silent on local benefits)	Medicaid: Eligibility guaranteed until January 1, 1997. State option afterwards.  SSI: Eligibility may end in month following redetermination, which must be completed by 8/22/96.  State programs: guaranteed through January 1, 1997.
<b>Veteran, active duty, their spouse, child who is an alien lawfully residing in state</b>	Mandatory eligible, regardless of length of stay or date of entry	Mandatory eligible, regardless of length of stay or date of entry	Eligible for benefits regardless of length of stay or date of entry	Eligible for benefits regardless of length of stay or date of entry	Eligible for benefits regardless of length of stay or date of entry	Eligible for benefits regardless of length of stay or date of entry	Must be eligible for state benefits (silent on local benefits)	Date of enactment.
<b>Individual Paroled for less than one year</b>  <b>Nonimmigrant under INA</b>	Not eligible.	Eligible	Not eligible.	Not eligible.	Not eligible.	Not eligible.	State may provide benefits.	Medicaid: Eligibility guaranteed until January 1, 1997. State option afterwards.  SSI: Eligibility may end in month following redetermination, which must be completed by 8/22/96.  State programs: guaranteed through January 1, 1997.
<b>Newly-arriving qualified aliens during first five years after arrival</b>	<i>Eligible for following programs only:</i> Emergency Medicaid services; short-term disaster relief; assistance or benefits under the School Lunch and Child Nutrition Acts; immunization and testing and treatment of communicable diseases; payments for foster care or adoption assistance; programs identified by the Attorney General that deliver in-kind services at the community level, do not condition assistance on the individual's income and resources, and are necessary for the protection of life and safety (such as soup kitchens); several student assistance programs; Head Start, and JTPA (Sec. 403 (a) and (c)).							

Category	Eligibility for Full Medicaid Benefits	Eligibility for Emergency Medicaid	Eligibility for SSI	State or Local Programs	Effective Date
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<p><b>Aliens who are not "qualified" (e.g., PRUCOL categories not listed below, illegal immigrants, and others).</b></p>	<p><i>Not eligible for federal public benefits:</i> grant, contract, loan, professional license, commercial licenses; retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit provided to an individual, household or family by agency of U.S. or appropriated U.S. funds. (Sec. 401 (a) and (c)).</p> <p><i>Eligible for the following benefits:</i> Emergency Medicaid under 1903(v)(3) if meets state eligibility requirements; short-term disaster relief; public health assistance (not including Medicaid) for immunizations and testing and treatment of symptoms of communicable diseases; programs identified by Attorney General which deliver in-kind services at community level, do not condition assistance on individual's income or resources, and are necessary for protection of life or safety (e.g., soup kitchens); Housing or community development assistance for current recipients (Sec. 401(b)).</p> <p><i>Eligibility for State programs:</i> States are barred from providing any state- or locally-funded benefits to illegal immigrants, unless the state passes a law stating explicitly that illegal immigrants are eligible. (Sec. 411 (d)).</p>				
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Notes:

1. A "qualified alien" may be determined eligible for some benefits. Qualified aliens are defined in Section 431. Other persons residing under color of law (PRUCOL) categories are no longer Medicaid-eligible.:

- Permanent resident alien under the Immigration and Nationality Act (INA) (42 CFR 435.406 (a)(2))
- Asylee under Section 208 of INA (42 CFR 435.408 (b)(8))
- Refugee admitted under Section 207 of INA (42 CFR 435.408 (b)(9))
- Alien granted parole for at least 1 year under Section 212 (d)(5) of INA (42 CFR 435.408(b)(2))
- Alien whose deportation is being withheld under section 243(h) of INA (42 CFR 435.408(b)(15))
- Conditional entrant under (203(a)(7) as in effect prior to April 1, 1980 (42 CFR 435.408 (b)(1))

2. "Already here" and "new arrival," as used in the chart, refer to immigrants who are already living here and immigrants who arrive after the date of enactment, August 22, 1996 (Sec. 403).

3. Deeming means a sponsor's income and resources are considered or "deemed" available to an immigrant when determining program eligibility. Section 421 requires all federally-means tested programs to deem. For programs that do not currently do so, such as Medicaid, deeming must begin 180 days after enactment (Sec. 421 (d)(2)). However, deeming applies only to the new affidavits of support, which are made legally enforceable. The new affidavits of support will be used for newly arriving immigrants only, who are subject to the five-year bar on benefits. In most cases, then, Medicaid agencies will not be required to deem income until the five year bar on newly arriving immigrants has expired.

4. According to the Congressional Budget Office, the estimated federal savings of immigrant provisions is \$23.8 billion, which accounts for 44% of the total savings of \$54.1 billion over 6 years.

**Medicaid-Related Immigration Provision of H.R. 3734,  
Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

**Title IV -- Restricting Welfare and Public Benefits for Aliens**

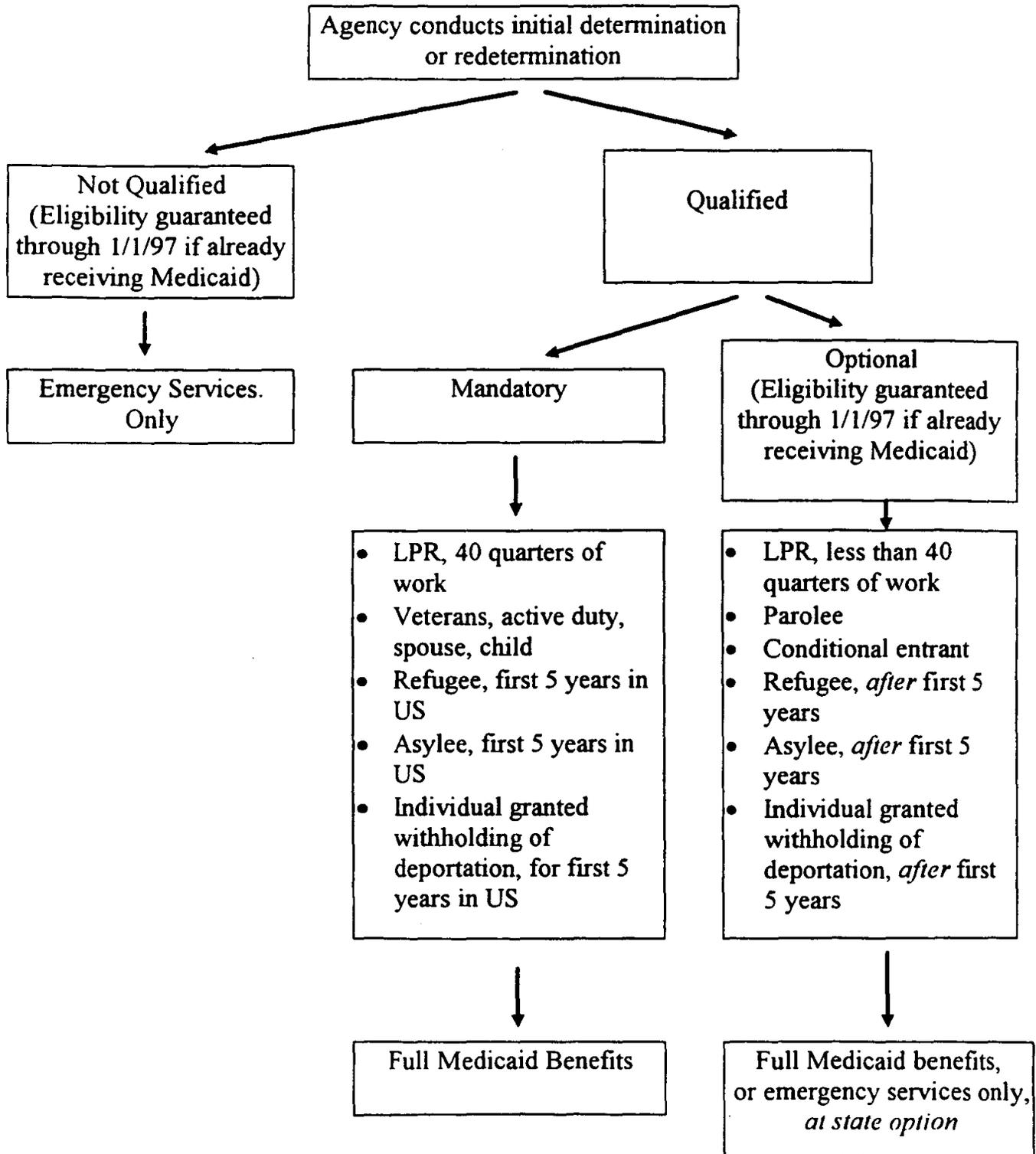
**PRUCOL Categories and Status Under Welfare Bill (Qualified/Not Qualified)**

<b>Status</b>	<b>CFR Cite</b>	<b>Category</b>
Qualified	42 CFR 435.406 (a) (2)	Permanent resident aliens
Qualified	42 CFR 435.408 (b)(1)	Aliens admitted US pursuant to section 8 USC 1153 (a)(7), section 203 (a) (7) of the Immigration and Naturalization Act (INA).
Qualified	42 CFR 435.408 (b)(2)	Aliens, including Cuban/Haitian entrants, paroled in the U.S. pursuant to 8 USC 1182 (d)(5), Section 212 (d) (5) of the INA.
Not qualified	42 CFR 435.408 (b)(3)	Aliens residing in the US pursuant to an indefinite stay of deportation.
Not qualified	42 CFR 435.408 (b)(4)	Aliens residing in the US pursuant to an indefinite voluntary departure.
Not qualified	42 CFR 435.408 (b)(5)	Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5 (a)(2)(vi)) and whose departure the INS does not contemplate enforcing.
Not qualified	42 CFR 435.408 (b)(6)	Aliens who have filed applications for adjustment of status pursuant to section 245 of the INA... that the INS has accepted as properly filed... and whose departure the INS does not contemplate enforcing.
Not qualified	42 CFR 435.408 (b)(7)	Aliens granted stay of deportation by court order, statute, or regulation, or by individual determination of the INS..., whose departure the agency does not contemplate enforcing.
Qualified	42 CFR 435.408 (b)(8)	Aliens granted asylum pursuant to section 208 of the INA.
Qualified	42 CFR 435.408 (b)(9)	Aliens admitted as refugees pursuant to section 207 or Section 203 (a) (7) of the INA.
Not qualified	42 CFR 435.408 (b)(10)	Aliens granted voluntary departure pursuant to section 242 (b) of the INA whose departure the INS does not contemplate enforcing.

Status	CFR Cite	Category
Not qualified	42 CFR 435.408 (b)(11)	Aliens granted deferred action status pursuant to INS Operations instruction 103.1(a)(ii) prior to June 15 1984 or Sec. 242.1 (a)(22) issued June 15 1984 and later.
Not qualified	42 CFR 435.408 (b)(12)	Aliens residing in the US under orders of supervision.
Not qualified	42 CFR 435.408 (b)(13)	Aliens who have entered and continuously resided in the US since before January 1, 1972.
Not qualified	42 CFR 435.408 (b)(14)	Aliens granted suspension of deportation pursuant to Section 244 of the INA and whose departure the INS does not contemplate enforcing.
Not qualified	42 CFR 435.408(b)(15)	Aliens whose deportation has been withheld pursuant to Section 243 (2) of the INA.
Not qualified	42 CFR 435.408 (b)(16)	Any other aliens living in the US with knowledge and permission of the INS whose departure the agency does not contemplate enforcing.

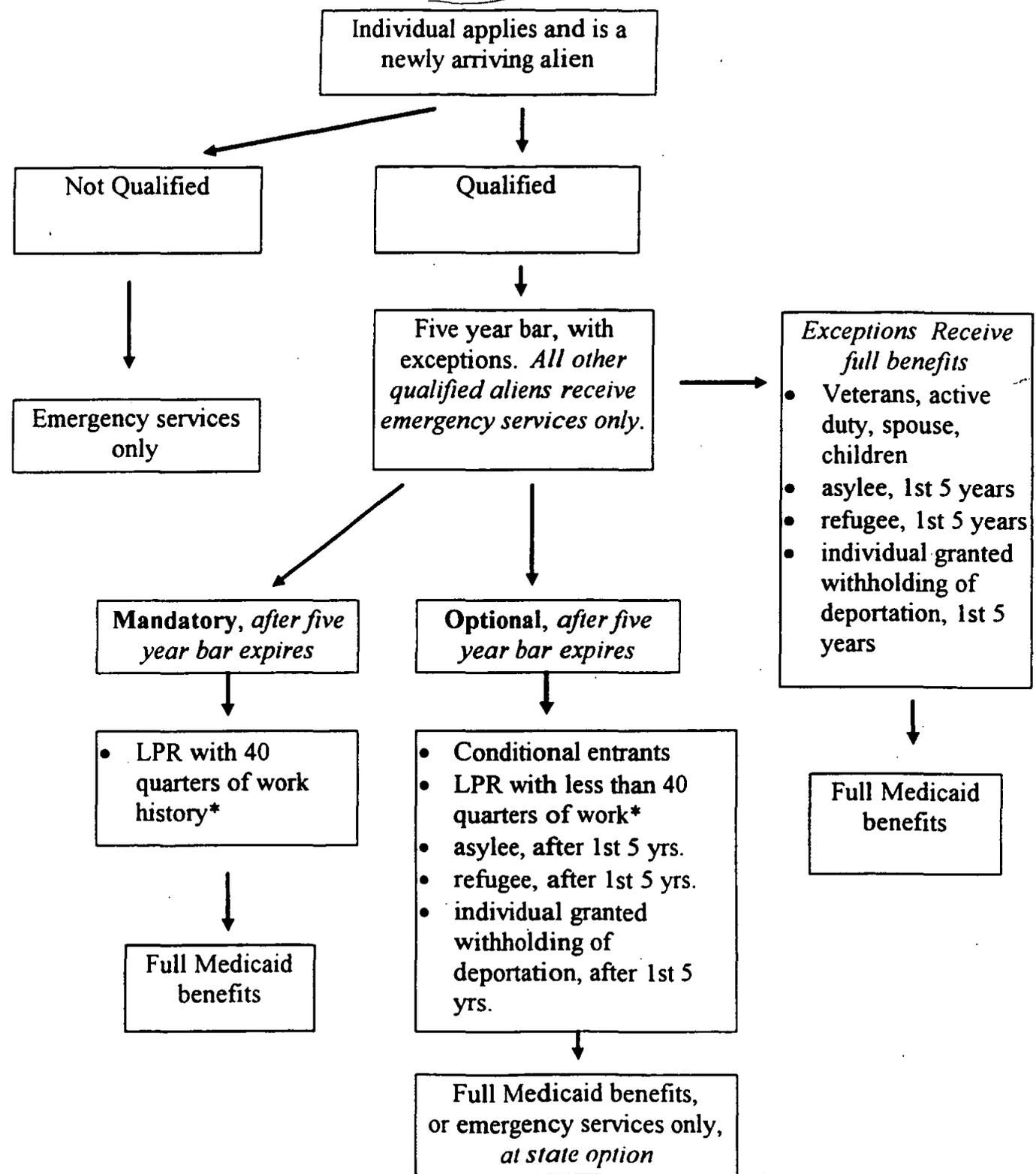
## Medicaid Eligibility for Immigrants

(Individual who is already in the U.S.)



### Medicaid Eligibility for Immigrants

(Individual who arrives in the U.S. after date of enactment, August 22, 1996\*)



\*Deeming applies for all newly arriving, family-sponsored immigrants.

THE WHITE HOUSE  
WASHINGTON

August 22, 1996

MEMORANDUM FOR THE ATTORNEY GENERAL  
THE SECRETARY OF HEALTH AND HUMAN SERVICES  
AND OTHER HEADS OF EXECUTIVE DEPARTMENTS AND  
AGENCIES

SUBJECT: Naturalization

Citizenship is the cornerstone of full participation in our democracy. To become a United States citizen through naturalization represents a pledge to undertake the responsibilities of being a full member of our national community.

Naturalization is the best example of our legal immigration system at work. It reflects our society's recognition of those who came to this country to work hard, play by the rules, and pursue shared ideals of freedom, opportunity, and responsibility.

In the past, hundreds of thousands of eligible people have had to wait unnecessarily to become citizens. In some parts of the country, these people have had to wait well over a year after filing their application to realize their dream of United States citizenship.

This Administration is committed to eliminating the waiting lists of those eligible for citizenship. To accomplish this, we launched "Citizenship U.S.A.," the most ambitious citizenship effort in history. In fiscal year 1996, the Immigration and Naturalization Service (INS) will spend more than \$165 million for naturalization.

Citizenship U.S.A. combines three broad strategies: hiring more people to handle applications, improving the naturalization process, and expanding partnerships with local officials and community organizations.

We are already making progress. We have increased the staff 235 percent in the five districts with 75 percent of the pending applications: Los Angeles, New York, Miami, San Francisco, and Chicago. In Los Angeles, where one-fourth of all new applications are filed, we have opened three new processing centers and have more than quadrupled the number of INS officers handling citizenship applications.

But this is just the beginning. This Administration's target is to process and swear-in within 6 months of application all individuals eligible for citizenship. As we meet this target, more than one million newcomers will become citizens by the end of this year. After that, INS shall maintain those reforms necessary to stay current with the demand of new citizen applicants.

Using all of the tools at your disposal, I ask you to ensure that policies and practices necessary to accomplish these targets of one million new citizens sworn-in and the elimination of the waiting list are implemented. This includes continuing, expanding or accelerating, as appropriate and practicable, the following:

- 1) New Hires. Hiring, training, and deployment of full staff to assist naturalization efforts should proceed to completion as quickly as possible.
- 2) Cutting Red Tape. This includes: establishing electronic filing and mailing-in of citizenship applications, extended weekday hours and Saturday interviews, further expansion of processing facilities, and improvements to make it easier for people to obtain forms and get immigration information by telephone or computer.
- 3) Working with Local Officials and Community-Based Groups. We are working in partnership with local officials and community groups to expand outreach. I direct you to expand these efforts to help get naturalization information to people, assist them in filling out applications, offer more local sites for interviews, especially for the elderly and the homebound, and seek other means to jointly facilitate the process. We also will work to expand the availability of local hotlines providing naturalization information.
- 4) English Training. To assist legal immigrants to move toward citizenship, I request relevant agencies to work with the Domestic Policy Council, the National Economic Council, and other White House offices to present to me by December 30, 1996, a report making recommendations with respect to public/private efforts to teach English to those needing to improve their English-language skills. This report should consider possible roles by private companies, educational institutions, unions, community organizations, and the AmeriCorp program to accomplish this goal.

5) Interagency Outreach. I direct each executive department and agency to take steps to promote naturalization outreach consistent with your agency's mission. In particular, in materials sent to welfare recipients concerning eligibility, I direct that, to the extent authorized by law, you include naturalization information.

6) Refugees and Asylees. Those who flee persecution and suffering in their home country are often in the weakest position to acquire the skills they need to enter the job market; maintain self-sufficiency, and achieve U.S. citizenship. I direct the Secretary of Health and Human Services, in conjunction with other agencies as appropriate, to present to me by December 30, 1996, through the Domestic Policy Council, a report setting out a strategy of additional steps that we can take to promote social adjustment in the United States, economic self-sufficiency, and naturalization.

In taking these steps, this Administration shall maintain and strengthen the standards and requirements of the naturalization test that demonstrate an individual's readiness to accept the responsibilities of citizenship and full participation in our national community. You are directed to continue vigilant oversight to uphold these standards.

Hundreds of thousands of people are seeking the dream and the promise of American citizenship. They have worked to become United States citizens, and these steps should ensure that they are not made to wait unnecessarily.

William G. Clinton

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DEPARTMENT OF JUSTICE [AG Order No. 2049-96]

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

AGENCY: Department of Justice.  
ACTION: Notice.

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EFFECTIVE DATE: August 23, 1996.

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

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

**Background**

Section 401 provides a new rule that an alien who is not a "qualified alien," as defined in Sec. 431 of the Act, is not eligible for any "Federal public benefit"--which, in general, means: (a) any grant, contract, loan, professional license or commercial license provided by a federal agency or through appropriated federal funds; or (b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, house-holds or families by a federal agency or through appropriated federal funds.

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

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

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

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

**Attorney General Review**

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the

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

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

#### Specification

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

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

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

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

(a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;

(c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

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

Dated: August 23, 1996.

Janet Reno,  
Attorney General.

[FR Doc. 96-22233 Filed 8-29-96; 8:45 am]  
BILLING CODE 4410-01-M

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[AG Order No. 2054-96]

[INS No. 1792-96]

RIN 1115-AE51

Definition of the Term Lawfully Present in the United States for  
Purposes of Applying for Title II Benefits  
Under Section 401(b)(2) of Pub. L. 104-193

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to define the term "an alien who is lawfully present in the United States" so that the Social Security Administration may determine which aliens in the United States are eligible for benefits under title II of the Social Security Act. Aliens who are considered "lawfully present in the United States," however, must otherwise satisfy the requirements for benefits under title II of the Social Security Act in order to receive social security benefits.

DATES: This rule is effective [Insert date of publication in the FEDERAL REGISTER]. Written comments must be received on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch,

Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1792-96 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.

**FOR FURTHER INFORMATION CONTACT:** Derek C. Smith, Assistant General Counsel, Office of the General Counsel; or Sophia Cox, Adjudications Officer, Adjudications Division; Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-2895 or (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), Pub. L. 104-193. Section 401(a) of the Personal Responsibility Act provides that, subject to limited exceptions, only "qualified aliens," as defined under section 431, may receive Federal public benefits, including retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, and unemployment benefits, among others.

Section 431(b) of the Personal Responsibility Act defines the term "qualified alien" to mean the following six groups of aliens:

(1) Aliens who are lawfully admitted for permanent residence under the Immigration and Nationality Act (Act);

(2) Aliens who are granted asylum under section 208 of the Act;

(3) Refugees admitted into the United States under section 207

of the Act;

(4) Aliens who are paroled into the United States under section 212(d)(5) of the Act for a period of at least 1 year;

(5) Aliens whose deportation is being withheld under section 243(h) of the Act; and

(6) Aliens who are granted conditional entry pursuant to section 203(a)(7) of the Act as in effect prior to April 1, 1980.

Section 401(b)(2) of the Personal Responsibility Act, however, provides an exception, which allows aliens who are "lawfully present in the United States," as determined by the Attorney General, to receive benefits under title II of the Social Security Act. (Title II benefits include, for example, retirement benefits.) The purpose of this regulation, therefore, is to define the term "an alien who is lawfully present in the United States," as required under section 401(b)(2) of the Personal Responsibility Act, thereby enabling the Social Security Administration to determine whether aliens who are not "qualified aliens" are eligible to receive title II benefits, if they are lawfully present in this country. This definition is made solely for the purpose of determining an alien's eligibility for payment of title II social security benefits, as required under section 401(b)(2) of the Personal Responsibility Act, and is not intended to confer any immigration status or benefit under the Immigration and Nationality Act.

In determining which aliens are lawfully present for the purposes of section 401(b)(2) of Public Law 104-193, the Service

had to distinguish among many classes of aliens in the United States. The characteristic common to all the classes of aliens defined as "lawfully present in the United States" is that their presence in the United States has been sanctioned by a policy determination that a particular class of aliens should be allowed to remain in the United States, and that policy determination has almost always been implemented by an official act having the force of law. Each of the five categories defined as lawfully present fits within this rationale. First, the Service has concluded that Congress intended for qualified aliens, as defined in section 431(b) of the Personal Responsibility Act, to be included in the definition of lawfully present. Second, aliens who have been inspected and admitted to the United States and have not violated their status are lawfully present under the terms of the Immigration and Nationality Act. Third, an alien who has been paroled into the United States is lawfully present pursuant to section 212(d)(5) of the Act. However, persons who are paroled in order to determine whether or not they must be excluded under the Act are not lawfully present because no determination has been made as to the lawfulness of their presence, and they are allowed into the United States to avoid having to keep them in detention while they await proceedings. Fourth, aliens who belong to one of the seven classes of aliens listed in section 103.12(a)(4) of this rule have been permitted to remain in the United States either by an act of Congress or through some other policy determination affecting that class of aliens. Aliens in temporary resident status

pursuant to section 210 or 245A of the Act, aliens under Temporary Protected Status (TPS) pursuant to section 244A of the Act, and Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 are all in lawful status under the Act. Cuban-Haitian entrants, aliens in deferred action status, aliens under Deferred Enforced Departure, and aliens who are the spouses and children of a United States citizen with an approved visa petition all remain in the United States under a Presidential or administrative policy that permits them to do so. Finally, applicants for asylum and withholding of deportation are permitted to remain in the United States because section 208(a) of the Act requires the Attorney General to create a procedure for adjudicating claims for asylum made by aliens physically present in the United States. Section 208(a) of the Act was passed to implement the obligations of the United States under the Convention Relating to the Status of Refugees, of July 28, 1951, as incorporated into the Protocol Relating to the Status of Refugees, of January 31, 1967.

**Good Cause Exception**

This interim rule is effective upon publication in the Federal Register although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b). Section 401(b)(2) of Pub. L. 104-193 requires the Attorney General to define the term "an alien lawfully present in the United States" so that the Social

Security Administration can determine which aliens are eligible for payment of title II social security benefits under the terms of the Social Security Act. Absent a definition of "an alien lawfully present in the United States," section 401(a) of Pub. L. 104-193 requires the Social Security Administration to suspend payments under title II for aliens who are not "qualified aliens" (as defined under section 431(b)) and who file applications on or after September 1, 1996. It is therefore impracticable to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities, because this regulation affects individuals, not small entities.

#### **Executive Order 12866**

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

#### **Executive Order 12988**

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

**Executive Order 12612**

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

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 103--POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. A new § 103.12 is added to read as follows:

§103.12 Definition of the term "lawfully present" aliens for purposes of applying for Title II social security benefits under Public Law 104-193.

(a) Definition of the term an "alien who is lawfully present in the United States." For the purposes of section 401(b)(2) of Pub. L. 104-193 only, an "alien who is lawfully present in the United States" means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104-193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(a)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244A of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of deportation under section 243(h) of the Act who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders. An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on

the basis of the Service's decision not to, or failure to, enforce  
an outstanding order of deportation or exclusion.

Sept. 4, 1996  
Dated:

Janet Reno  
Janet Reno,  
Attorney General.

## FACT SHEET

8/27/96

*Proposed INS Regulation:*  
**Exemptions from English and Civics Testing Requirements  
For Disabled Naturalization Applicants**

### Background

- On October 25, 1994, Congress passed the Immigration and Naturalization Technical Corrections Act of 1994. Section 108(a)(4) of this Act amended Section 312 of the Immigration and Nationality Act (INA) to provide exemptions to the English proficiency and history and government requirements for naturalization for persons with "physical or developmental disabilities" or "mental impairments."
- The Immigration and Naturalization Service (INS) has published a proposed rule to implement this legislative change to the naturalization requirements. The proposed regulation will be published in the *Federal Register* on August 28, 1996. Written comments on the regulation may be submitted to the INS until September 27, 1996.
- The Technical Corrections Act did not specifically define the terms "developmental disability," "mental impairment," or "physical disability." However, Congress did provide limited guidance for defining these terms in the Report of the House of Representatives Committee on the Judiciary, H. Rpt. 103-387, November 20, 1993.
- While the proposed rule was under development, INS provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the expanded exemptions provided under the 1994 Technical Corrections Act. The Service also provided preliminary definitions of the terms concerning disability and mental impairment in the Act, based on the language in the House Report.

### The Proposed Regulation

- The Service is proposing to amend its regulations to provide definitions for the terms in the Act and to outline procedures for disabled or mentally impaired naturalization applicants to follow in seeking an exemption from the English and civics requirements for naturalization. The definitions follow the guidance in the House Report and also comport with existing federal policies and regulations for implementing nondiscriminatory disability-based programs.
- The Service proposes that an exemption shall be granted to any person "who is unable because of physical or developmental disability or mental impairment to demonstrate an understanding of the English language, as noted in [Sec. 312 provisions concerning English requirements]," or who is unable for any of the same reasons "to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States." The proposed definitions for the terms of disability are described below. The terms do not include conditions that are temporary or that have resulted from an individual's illegal drug use.

- **Developmental Disability** – Means an impairment, the onset of which precedes an individual’s 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to render an individual to be 1) unable to demonstrate an understanding of the English language as required by [the section on English requirements], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications, or 2) unable to demonstrate the knowledge required by [the section concerning history and government] or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.
- **Mental Impairment** – Means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgment that causes an individual to be 1) unable to demonstrate an understanding of the English language as required by [the section on English requirements], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications, or 2) unable to demonstrate the knowledge required by [the section concerning history and government requirements] or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications. This definition does not include a mental impairment that is not the result of a physical disorder.
- **Physical Disability** – A physical impairment that substantially limits an individual’s major life activities in a way that causes that individual to be 1) unable to demonstrate an understanding of the English language as required by [the section on English requirements], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications, or 2) unable to demonstrate the knowledge required by [the section concerning history and government requirements] or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.
- The proposed rule states that disabled individuals will be required to submit appropriate documentation of their physical disability or mental impairment from a civil surgeon or other qualified individuals or entities designated by the Attorney General. Civil surgeons not experienced in diagnosing developmental disabilities or other cognitive impairments shall be required to consult with qualified physicians and psychologists who have such experience prior to providing certification of a disability. The civil surgeons may also require the person seeking a disability-based exemption to furnish evidence from a medical specialist or psychologist supporting the person’s claim. Such additional information would be only for the civil surgeon’s review. The certification of disability to be submitted to the INS shall be a letter-sized one-page document, signed and dated by the civil surgeon or other qualified individual.
- The INS fully intends to work with the civil surgeons and other qualified individuals or entities in developing guidance and procedures for the preparation of the certification needed by an applicant with a disability for this particular exception.

- The proposed rule also provides that an exemption will be granted only to those individuals with disabilities who, because of the nature of their disability, cannot demonstrate the required understanding of the English language and knowledge of American history and government. The provision is not a blanket exemption from the testing requirements. All exemption eligibility determinations will be based on the individual assessments by civil surgeons, or qualified individuals or entities designated by the Attorney General, who determine that the applicant has a disability that renders the individual unable to demonstrate the required knowledge of English and civics, even with reasonable modifications, to participate in the testing procedures for naturalization.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others. An applicant will be deemed unable to participate in the testing procedures only in those situations where there are no reasonable modifications that would enable him or her to participate.
- While disabled naturalization applicants are eligible to apply for an exemption from the Section 312 requirements, the Technical Corrections Act did not offer disabled naturalization applicants exemptions from the other requirements for naturalization.



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425 I Street NW.  
Washington, DC 20536

## FACT SHEET

### SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)

This Fact Sheet provides state and local officials with a description of the existing INS alien status verification program. The Systematic Alien Verification for Entitlements (SAVE) program was designed to meet the requirements of the Immigration Reform and Control Act of 1986. This information does not necessarily represent INS guidance or policy for implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Act requires the Attorney General, in consultation with the Secretary of Health and Human Services, to promulgate new regulations on verification for federal public benefits within 18 months of enactment. States have 24 months after the regulations have been adopted to implement verification systems consistent with the regulations.

The SAVE Program is an intergovernmental information-sharing initiative designed to aid eligibility workers in determining noncitizens' immigration status, and thereby ensure that only entitled noncitizens receive federally subsidized benefits. SAVE is provided by the INS as an information service for agencies and institutions issuing public benefits. The INS provides information only on a person's immigration status; it does not make determinations of any noncitizen's eligibility for a specific benefit.

Section 121 of the Immigration Reform and Control Act of 1986 (IRCA) requires verification of immigration status of noncitizens applying for benefits under certain federally funded programs (Public Law 99-603, Part C, Section 121). INS established and implemented the SAVE program in accordance with the IRCA requirement for a cost-effective system to verify the status of noncitizens applying for certain federally funded benefits.

The law mandates participation in the verification of noncitizens' documentation by the following programs: Food Stamp Program (U.S. Department of Agriculture); Aid to Families with Dependent Children, Medicaid, and Territorial Assistance Programs (U.S. Department of Health and Human Services); Unemployment Compensation (U.S. Department of Labor); Educational Assistance (U.S. Department of Education); and Housing Assistance (U.S. Department of Housing and Urban Development). Mandatory participation in the SAVE program may be waived (by the Secretary responsible for the federal program) if an agency can demonstrate that its participation is not cost effective.

While IRCA only mandates selected programs to participate in SAVE, any Federal, state or local benefit issuing authority or licensing bureau that seeks verification of noncitizen immigration status may apply for participation in the SAVE program. The nonmandated agencies which presently participate in the SAVE program are: General Services Administration; National Aeronautics and Space Administration; Department of Defense Manpower Data; Social Security Administration; Arizona Health Care Cost Containment System Program; California Department of Motor Vehicles; Alaska Department of Revenue; and the Federal Emergency Management Agency. There are presently 129 SAVE users located at over 32,000 sites throughout the nation.

INS established the Alien Status Verification Index (ASVI), a nationally accessible database of selected immigration status information on over 50 million records for use under the SAVE program. This database is stored and maintained by Lockheed Martin Information System.

The first step of verification under the SAVE program involves an automated process known as primary verification. The SAVE user accesses the database by inputting an alien identification number into the system through one of a number of possible access methods. If a corresponding record is found in ASVI, the system will provide the user with information to verify the alien's identity and immigration status. This information can be tailored to meet the needs of the participating agency.

The SAVE program requires participating agencies and institutions to use a manual process, known as secondary verification, when directed by an ASVI system message during primary verification or when the automated check or initial inspection of a noncitizen's documentation reveals material discrepancies. This involves completing a form and copying and transmitting copies of the noncitizen's documents to INS for further review and comparison with INS databases. Agencies that have received waivers from mandatory participation in the SAVE program because the use of ASVI is not cost-effective in their state may also submit requests through the secondary verification process.

Since the SAVE program was implemented in fiscal year 1989, there have been over 24 million queries into the ASVI database.

### **Steps to Join the SAVE Program**

1. The requesting agency provides INS with information on the estimated alien population and number of applicants for program benefits in its geographical location. This information is important to INS for assessing the workload impact to the INS District Offices which would support the SAVE secondary verification process.

2. The requesting agency executes an agreement with INS in order to access ASVI. The Memorandum of Understanding (MOU) identifies the rights, duties, and restrictions regarding the ASVI data to which the SAVE user agency and INS must agree prior to INS authorization to access the system. INS prepares the MOU and transmits it to the requesting entity for official signature.

3. INS provides a briefing to the benefit issuing agency on the various methods to access the ASVI database. The requesting agency determines the best access method based on the size and scope of the estimated alien population.

4. After execution of the MOU with INS, the requesting agency prepares a purchase order or funding obligation document for teleprocessing services and mails it to the INS SAVE Branch at the following address: Immigration and Naturalization Service, ATTN: SAVE Branch, 425 I Street N.W., ULLICO, Fourth Floor, Washington, DC 20536.

5. INS reviews and approves the purchase order and mails the information to Lockheed Martin Information Systems, the private contractor that administers ASVI.

6. Lockheed Martin enrolls the user in ASVI and provides the requesting agency with appropriate user identification numbers, authorization codes and access telephone numbers.

<u>System Resource Unit</u>	<u>Units of Measurement</u>	<u>Base Rate</u>	<u>Prime Time Unit Charge</u>	<u>Non-Prime Time Unit Charge</u>
1 3270	<i>per query</i>	\$0.16	\$0.16	\$0.16
2 Asynch Dial-in Connect Surcharge	<i>per minute</i>	\$0.37	\$0.37	\$0.37
3 Asynch Access Query Cost	<i>per query</i>	\$0.15	\$0.15	\$0.15
4 Touch Tone/Voice	<i>per query</i>	\$0.79	\$0.79	\$0.79
5 Touch Tone/Voice Repeat	<i>per query</i>	\$0.25	\$0.25	\$0.25
6 Point-of-Sale Device	<i>per query</i>	\$0.23	\$0.23	\$0.23
7 PC Transfer File	<i>per query</i>	\$0.06	\$0.06	\$0.06
8 Remote Job Entry (RJE)	<i>per query</i>	\$0.02	\$0.02	\$0.02
9 Magnetic Tape	<i>per query</i>	\$0.01	\$0.01	\$0.01

A minimum of \$25 is charged per month for query of the Alien Status Verification Index (AVSI) regardless of the number of queries. However, if no query of AVSI is completed during the month, there is no charge.



**U.S. Department of Justice  
Immigration and Naturalization Service**

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*425 I Street NW.  
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**STEP-BY-STEP  
NATURALIZATION PROCESS**

**OBTAIN APPLICATION** from the INS Forms Line, 1-800-870-FORM (1-800-870-3676, immigration attorney, community service organizations, or INS office,

**APPLICATION FILED** (may be filed up to 3 months before applicant's eligibility date.)

The application is mailed to one of the four regional mail-in centers or to the local INS office (the applicant should follow the specific mailing instructions provided with the application form.)

Application includes fee, photographs and fingerprints. INS sends applicant's name and fingerprints to F.B.I. for a check of criminal records.

**NOTIFICATION** letter to the applicant that the application has been received and to await notification of interview date.

(If application was not completed correctly, applicant will be advised of the steps necessary to complete the application.)

**APPOINTMENT** letter notifies the applicant of the date, time and location of the naturalization interview.

**INTERVIEW** Under oath, an INS officer interviews the applicant to ensure that the applicant meets the legal requirements of residence, good moral character, and attachment to Constitutional principles. The applicant is also tested on his/her knowledge of U.S. government and history, and the ability to read, write and speak English to a basic standard. (The applicant may take the reading, writing and government/history test at INS-approved community testing sites before the interview.)

## **OUTCOMES**

### **1) APPROVED**

**NOTICE OF CEREMONY** is provided to applicant in person, or by mail, and specifies the date, time and location of the naturalization ceremony he/she has been invited to attend.

### **CEREMONY**

Applicant must attend a naturalization ceremony in order to complete the naturalization process. Depending on the location, the ceremony may be conducted by INS or by a judge. At the ceremony the applicant takes the Oath of Allegiance, turns in the alien registration card, receives the Certificate of Naturalization, and becomes a citizen of the United States.

### **2) DENIED**

If the applicant does not meet the requirements necessary to apply for citizenship, a Notice of Denial will be issued and mailed to the applicant.

### **3) RESCHEDULED/CONTINUED**

The applicant will receive a second appointment letter in order to provide additional documentation; have another opportunity to pass either, or both, the U.S. history and government test and English comprehension test; or, have a more in-depth interview.

## **COMMUNITY BASED ORGANIZATIONS**

(Fees may be charged for services provided by these organizations)

**INFORMATION** source for applicant to obtain advice on how and where to apply, assistance in completing application, and testing.

**ASSISTANCE** Applicant may obtain assistance in preparation of application from community-based organizations, legal representative, church, schools, and friends.

**CLASSES** Many schools and organizations offer classes in U.S. history and government, citizenship and the English language.

**TESTING** of an applicant's ability to read and write English, and knowledge of U.S. government and history may be completed prior to the interview date through any of the designated testing sites. However, the applicant's ability to speak English will be tested during the interview with the INS officer.

**REPRESENTATION** The applicant may choose to have a representative (recognized by the Service) or legal counsel present during the interview.

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*Prepared by the Immigrant Policy Project at the National Conference of State Legislatures*

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Revised: September 5, 1996*





United States  
Department of  
Agriculture

Food and  
Consumer  
Service

3101 Park Center Drive  
Alexandria, VA  
22302-1500

AUG 26 1996

SUBJECT: FSP - Certification Period Waiver

TO: All Regional Administrators  
Food and Consumer Service

The Department has been concerned about the difficult task State agencies face in implementing the provisions of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), signed by the President on August 22, 1996. The new criteria the PRWORA establishes for the eligibility of noncitizens create some particularly challenging implementation issues. The criteria for eligibility to participate in the Program are very specific and require extensive verification to determine whether or not an alien is eligible. The Immigration and Naturalization Service, the Social Security Administration, and the Veterans Administration will be sources of verification and Federal and State officials need time to develop systems and procedures to minimize the likelihood of inaccurate ineligibility determinations.

Recognizing the challenge of implementing the PRWORA, the President has directed the Department to take necessary steps under the Secretary's authority to permit States to extend certification periods to ensure that recertifications be made fairly and accurately. Consequently, the Department is waiving 7 CFR 273.10(f) to allow State agencies to extend the certification periods of all households containing participating alien members, provided no certification period is extended to longer than 12 months, or 24 months for households in which all adult members are elderly or disabled, but not beyond August 22, 1997. This will enable States to develop procedures for more orderly implementation and allow more time for State and Federal officials to work together to develop procedures for determining alien eligibility. We are providing State agencies this option under the authority of 7 CFR 272.3(c). State agencies that take this option will notify affected households that their certification periods are extended and record the extension in the case file. They are not required to provide notification to the Department.

Our goal is to ensure that a fair and accurate determination of eligibility is made for all noncitizens affected by these new provisions. We hope this administrative action increases the ability of State agencies to implement the new legislation accurately and fairly.

Yvette S. Jackson  
Deputy Administrator  
Food Stamp Program

AUG 26 1996

Honorable Joyce Thomas  
Commissioner  
Department of Social Services  
25 Sigourney Street, 7th Floor  
Hartford, Connecticut 06106-5033

Dear Commissioner Thomas:

This letter describes the new statutory requirements for State agency implementation of the Food Stamp Program (FSP) provisions of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, signed by the President on August 22, 1996. We are also providing information regarding proposed and interim rules Food and Consumer Service (FCS) will publish and guidance relating to the Simplified Program option, FCS waiver authority, and quality control. Additional information regarding implementation of the provisions affecting noncitizens will be provided separately.

#### Provisions and implementation dates

The enclosed charts indicate the method by which FCS is implementing each provision of the legislation and the timeframe for State agency implementation. Within each chart, provisions are grouped by program area, such as certification, disqualification, claims, work requirements, and State flexibility. As indicated in the FCS implementation column, we plan to publish an interim regulation to implement the provisions of the law concerning changes in allotments, deductions, household composition, and the fair market value of vehicles. These provisions require no interpretation or discretion. The rule will, however, have a brief comment period. Proposed rules will be published addressing the other provisions.

Part A of the enclosure lists the provisions that are effective on the date of enactment. We understand the burden that immediate implementation places on State agencies; however, in the absence of specific implementation language in the legislation for these provisions, State agencies are required by Federal law to implement these provisions as of the date of enactment. Specific implementation procedures are provided on the enclosure.

Part B lists provisions for which Congress provided specific implementation requirements. These provisions have a variety of required implementation dates. Changes in allotments and deductions must be implemented as mass changes.

Part C lists options available to State agencies. State agencies need to submit amendments to the State Plan indicating the options that have been selected. One of the

options addresses the homeless shelter allowance. Prior to the PRWORA, section 11(e)(3) of the Food Stamp Act required State agencies to establish standard estimates of the shelter expenses of homeless households. This estimate was used determining the household's excess shelter expense unless the household verified higher expenses. Section 809 of the PRWORA changed the required standard estimate to an optional homeless shelter allowance and added it to section 5(e)(5) of the Food Stamp Act as a separate deduction between the child support and medical deductions. Although the legislative history indicates that the allowance was to be used in calculating an excess shelter expense deduction, the statutory language does not reflect that intent. Therefore, State agencies must discontinue use of the homeless expense estimate and may opt to use a homeless expense deduction as provided by the PRWORA.

Part D lists provisions which remove current requirements and have no mandatory implementation action. State agencies will be able to modify current procedures in accordance with their own schedules.

### **Simplified Program**

The legislation provides States agencies the option of operating a Simplified Food Stamp Program (SFSP) in a political subdivision of a State or Statewide. The SFSP is restricted to public assistance households who receive cash assistance under the Temporary Assistance to Needy Families (TANF) programs operated under Title IV-A of the Social Security Act. However, States may request inclusion of mixed nonpublic assistance (NPA) and TANF households. The Simplified Program allows a State to substitute many TANF rules for food stamp rules in an effort to streamline administration. NPA households cannot be included in the SFSP.

The operation of any SFSP must be approved by USDA. Additionally, SFSP cannot increase Federal costs for any fiscal year and must comply with certain statutory FSP requirements. If USDA withdraws approval of a State's SFSP due to noncompliance, the State is ineligible to operate a SFSP in the future. Optional provisions are also available to the State under SFSP. The specifics of the requirements and options will be included in subsequent guidance.

### **FCS Waiver Authority**

The legislation amends Section 17(b) of the Food Stamp Act to significantly expand USDA's waiver authority to conduct pilot or experimental projects that improve program administration, increase self-sufficiency, allow greater conformity with the rules of other programs, and that are consistent with the goal of providing food assistance to raise levels of nutrition among low-income individuals.

Projects have restrictions relative to the percentage of benefit reduction and affected households and duration. In addition, USDA is prohibited from approving projects that include certain components. As with the SFSP, the specifics of the statutory parameters will be provided in subsequent guidance.

### Quality Control

#### *Provisions effective upon enactment:*

Changes affecting currently participating households are to be implemented upon recertification, at the household's request, or when it is necessary to implement other changes affecting the household. The following procedures will be used for all cases with review dates after enactment of the law.

Beginning 30 days after enactment, there will be a 120-day variance exclusion period for any States that have implemented the provisions of the PRWORA. During this period, reviewers will exclude all variances that resulted from any misapplication of the new provisions. If a State has not implemented the required changes within 30 days after enactment for the required households, reviews will be conducted against the new provisions and errors will be cited as appropriate. If a State implements later than 30 days following enactment, but before the 120 days expire, the subject variances will be excluded for the number of days remaining in the 120-day period.

Reviews will be conducted against States' preimplementation policies (1) during the 30 days following enactment for all cases that have not yet been converted to the new provisions and (2) after the 30 days for all cases that were not required to have been converted to the new provisions. The 120-day variance exclusion period will be administered in accordance with 7 CFR 275.12(d)(2)(vii) as modified by the Mickey Leland Childhood Hunger Relief Act (Public Law 103-66).

#### *Provisions effective October 1, 1996 and January 1, 1997:*

Mass change provisions - Quality control reviews will be conducted based upon the new provisions for all cases with review dates on or after the effective date of the provisions. The 120-day variance exclusion period will not apply to these mass changes.

Fair Market Value provision - Quality control reviews will be conducted based upon the new provisions for all cases certified, recertified or otherwise requiring conversion after October 1, 1996. The 120-day variance exclusion period will begin October 1, 1996 for this provision for all States that have implemented.

#### *Work requirement provision of Section 824:*

States must implement this provision by notifying applicants and recipients of the application of the work requirement no later than November 22, 1996. This provision is not effective until the earlier of: (1) the date the State notifies the applicable households or

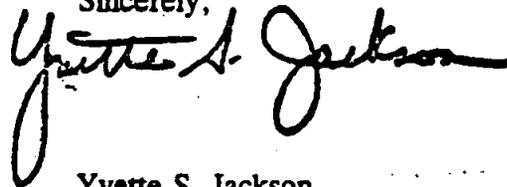
Honorable Joyce Thomas

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(2) three months following enactment. Three months following the effective date, individuals that do not meet the requirements of this provision will become ineligible. Therefore, for this provision, the 120-day variance exclusion period will begin three months following the State's effective date.

We hope the enclosed information will be helpful to you in implementing the provisions of the law. Please contact your regional office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Yvette S. Jackson". The signature is written in a cursive style with a large, looped initial "Y".

Yvette S. Jackson  
Deputy Administrator  
Food Stamp Program

Enclosures

### IMPLEMENTATION CHART GUIDE

Section	Page	Provision	Chart
109	14	Elimination of child support pass-through option	Part D - FCS Action
109	14	References	Part D - FCS Action
115	9	Drug disqualification	Part B - Drug Disqualification
402	7	Alien eligibility	Part B - Alien Eligibility
404	1	Alien notification	Part A - Certification
421	1	Sponsored aliens	Part A - Certification
801	1	Definition of certification period	Part A - Certification
803	1	Treatment of children living at home	Part A - Certification
804	8	Adjustment of Thrifty Food Plan	Part B - Allotment, Shelter and Vehicle Adjustments
805	1	Definition of homeless individual	Part A - Certification
807	1	Earnings of students	Part A - Certification
808	2	Energy assistance	Part A - Certification
809	2	Earned income deduction disallowance for failure to report	Part A - Certification
809	2	Earned income deduction disallowance on work supplementation income	Part A - Certification
809	11	Homeless shelter allowance	Part C - Miscellaneous
809	2	Standard utility allowance - switching	Part A - Certification
809	8	Excess shelter limit	Part B - Allotment, Shelter Limit, and Vehicle Adjustments
809	14	Standard deduction	Part D - FCS Action
809	11	Standard utility allowance option	Part C - Miscellaneous

**PART A - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRED TO BE IMPLEMENTED UPON ENACTMENT**

Section:	Description <i>Certification Provisions</i>	Implementation Method	
		FCS	State agency
404	Requires notification to the public and to recipients of the alien eligibility requirements of the legislation.	Impl. Memo	Notification to recipients and general public
421	The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. Beginning January 1, 1997, a quarter in which the alien received certain Federal means-tested assistance is not counted as a qualifying quarter. The deemed income and resources must be reviewed each time an alien reapplies.	Impl. Memo Proposed Rule	On date of enactment for new applicants; at next recertification for recipients.
801	Limits certification periods to 12 months, except that the certification period may be up to 24 months if all adult household members are elderly or disabled. States must have at least one contact with each certified household every 12 months.		On date of enactment for new applicants; at next recertification or when case is next reviewed for recipients.
803	Deletes a current exemption so that children under 22 years old who live with their parents and their own children or spouses must be included in the same household with their parents.	Impl. Memo Interim Rule	
805	A person whose nighttime residence is a temporary accommodation in the residence of another person may be considered homeless for no more than 90 days.	Impl. Memo Interim Rule	On date of enactment for new applicants; at next recertification or when case is next reviewed for recipients.
807	Limits exclusion to the earnings of elementary and secondary school students who are 17 or younger.	Impl. Memo Proposed Rule	On date of enactment for new applicants; at next recertification or when case is next reviewed for recipients.

**PART A - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
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Section	Description <i>Certification Provisions</i>	Implementation Method	
		FCS	State agency
808	<p>Limits energy assistance exclusion to (1) Federal energy assistance, except that provided under Title IV-A of the Social Security Act (welfare block grant), and (2) Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices.</p> <p>Retains the provision in the Low-Income Home Energy Assistance Act (LIHEAA) that requires that all expenses met with LIHEAA payments be regarded as out-of-pocket expenses qualifying for SUAs.</p> <p>Excludes from income State or local general assistance which (under State law) cannot be provided in cash directly to households.</p> <p>An expense paid on behalf of a household under State law to provide energy assistance is considered an out-of-pocket expense incurred and paid by the household.</p>	Impl. Memo Proposed Rule	On date of enactment for new applicants; at next recertification or when case is next reviewed for recipients.
809	The earned income deduction is not allowed when determining an overissuance due to the failure of a household to report earned income in a timely manner.		
809	The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.		
809	In States without mandatory standard utility allowances (SUA), households are allowed to switch between actual expenses and the SUA only at recertification.	Impl. Memo Proposed Rule	On date of enactment.
811	Removes the income exclusion for vendor payments for transitional housing for the homeless.	Impl. Memo Proposed Rule	On date of enactment for new applicants; at next recertification or when case is next reviewed for recipients.
827	Requires proration of benefits after any break in certification, except for migrant and seasonal farmworker households.		On date of enactment for applicants at initial application and recertification.

**PART A - FOOD STAMP PROVISIONS  
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RECONCILIATION ACT OF 1996  
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Section	Description <i>Certification Provisions</i>	Implementation Method	
		FCS	State agency
838	Changes expedited service timeframe to a maximum of 7 calendar days and eliminates the homeless category from those entitled to expedited service.	Impl. Memo Interim Rule	On date of enactment for new applicants.
847	The Federal Government will reimburse a State agency 50 percent of State agency costs for program informational activities, but not including recruitment activities.	Impl. Memo Proposed Rule	On date of enactment.

**PART A - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRED TO BE IMPLEMENTED UPON ENACTMENT**

Section	Description <i>Program Violation Disqualifications and Claims</i>	Implementation Method	
		FCS	State agency
813	Increases the disqualification penalty for a first intentional violation to one year. Increase the penalty for a second intentional violation (and the first involving a controlled substance) to two years.	Impl. Memo Proposed Rule	Upon enactment, following notification to applicants and recipients of the new or increased penalties on or with the application form, by mass mailings, or similar methods.
814	An individual shall be permanently disqualified if he/she is convicted of trafficking food stamp benefits of \$500 or more.		
820	An individual shall be ineligible to participate for 10 years if he/she is found to have made a fraudulent statement or representation with respect to identity and residence in order to receive multiple benefits simultaneously.		
821	Makes fleeing felons and probation/parole violators ineligible for the program.		
829, 911	Prohibits an increase in food stamp benefits when a household's income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action. Provides a State option to reduce allotments 25% or less. If the allotment is reduced for failure to perform an action required under a Title IV-A program, the State may use the rules of that program to reduce the food stamp allotment.		
837	Requires State agencies to make available, upon request, to any Federal, State, or local law enforcement officer the address, social security number, and (if available) photograph of a food stamp recipient if the officer furnishes the recipient's name and notifies the agency that the individual is fleeing to avoid prosecution, custody, or confinement for a felony, is violating a condition of parole or probation, or has information necessary for the officer to conduct an official duty related to a felony/parole violation.		

**PART A - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRED TO BE IMPLEMENTED UPON ENACTMENT**

Section	Description <i>Program Violation Disqualifications and Claims</i>	Implementation Method	
		FCS	State agency
844	(1) Replaces existing overissuance collection rules with provisions requiring States to collect any overissuance by reducing future benefits, withholding unemployment compensation, recovering from Federal pay or income tax refunds, or any other means -- unless the State demonstrates that all of the means are not cost effective. (2) Limits benefit reductions (absent intentional program violation) to the greater of 10 percent of the monthly allotment or \$10 a month. (3) Provides that States must collect overissued benefits in accordance with State-established requirements for notice, electing a means of payment, and setting a schedule for payment. (4) Permits States to retain 35 percent of intentional Program violation collections and 20 percent of inadvertent household error collections. The actual retention procedures will be forwarded under separate cover.	Impl. Memo Proposed Rule	Date of enactment.

**PART A - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRED TO BE IMPLEMENTED UPON ENACTMENT**

Section	Description <i>Work Requirements</i>	Implementation Method	
		FCS	State agency
815	<p>Revises current requirements to make ineligible individuals who are physically and mentally fit and between the ages of 16 and 60 if they: (1) refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; (2) voluntarily and without good cause quit a job; or (3) voluntarily and without good cause reduce their work effort (and, after the reduction, are working less than 30 hours a week).</p> <p>Provides a State option to disqualify the household if the head of household is disqualified under a work rule for a period determined by the State that cannot exceed the lesser of the duration of the individual's ineligibility or 180 days. This option is also listed on Attachment C.</p> <p>Establishes mandatory minimum disqualification periods for individuals who fail to comply with work or workfare requirements:</p> <ul style="list-style-type: none"> <li>o First violation - The later of (1) the date they comply with work rules; (2) 1 month; or (3) a period determined by the State not to exceed 3 months.</li> <li>o Second violation - The later of (1) the date they comply with work rules; (2) 3 months; or (3) a period determined by the State not to exceed 6 months.</li> <li>o Third or subsequent violations - The later of (1) the date they comply with work rules; (2) 6 months; or (3) a date determined by the State; or (4) at State option, permanently.</li> </ul> <p>Requires USDA to determine the meaning of good cause, voluntarily quitting, and reducing work effort.</p> <p>Requires States to determine (1) meaning of other terms; (2) procedures for establishing compliance; and (3) whether individuals are complying. None of such determinations can be less restrictive than comparable determinations under a program funded by Title IV-A of the Social Security Act.</p>	Impl. Memo Proposed Rule	Upon enactment, following notification to applicants and recipients of the new requirements or increased penalties on or with the application form, by mass mailings, or similar methods.

**PART B - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
SPECIAL IMPLEMENTATION DATES**

Section	Description <i>Alien Eligibility</i>	Implementation Method	
		FCS	State agency
402	<p>Only the following noncitizens are eligible: <u>For 5 years after they obtain the designated alien status:</u> Refugees admitted under section 207 of the Immigration and Nationality Act (INA), Asylees admitted under section 208 of the INA, and Aliens whose deportation has been withheld under section 243(h) of the INA.</p> <p><u>For an unlimited period:</u> The following aliens lawfully admitted for permanent residence: Veterans who were honorably discharged for reasons other than alienage, Active duty personnel (other than active duty for training), The spouses or unmarried dependent children of these veterans and active duty personnel, and</p> <p>Aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters. Under section 435 of the law, a qualifying quarter includes one worked by a parent of an alien while the alien was under 18 and a quarter worked by a spouse during their marriage if the alien remains married to the spouse or the spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested public benefit (as defined in sections 401 and 403 of the law) is not counted as a qualifying quarter.</p>	Implementing Memo Proposed Rule	On date of enactment for new applicants; at recertification, but no later than one year from date of enactment, for recipients.

**PART B - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
SPECIAL IMPLEMENTATION DATES**

Section	Description <i>Allotment, Shelter Limit, and Vehicle Adjustments</i>	Implementation Method	
		FCS	State agency
804	Annual adjustments to the maximum allotment are based on 100% of the Thrifty Food Plan. Allotments cannot fall below the FY 1996 level.	Implementing Memo Interim Rule	10/1/96 through mass change in accordance with 7 CFR 273.12(e)(1)
809	Sets the excess shelter caps for the 48 contiguous States and D.C., Alaska, Hawaii, Guam, and the Virgin Islands, respectively as follows:  Enactment - 12/31/96: \$247, \$429, \$353, \$300, \$182 01/01/97 - 09/30/98: \$250, \$434, \$357, \$304, \$184 10/01/98 - 09/30/00: \$275, \$478, \$393, \$334, \$203 10/10/00 - : \$300, \$521, \$429, \$364, \$221		No change until 1/1/97; mass change on 1/1/97.
810	Raises fair market value of vehicles used in resource test to \$4,650 and eliminates future adjustments.		10/1/96 for applicants and at recertification for recipients.

**PART B - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
SPECIAL IMPLEMENTATION DATES**

Section	Description <i>Drug Disqualification</i>	Implementation Method	
		FCS	State agency
115	Makes ineligible individuals convicted of Federal or State felonies for possession, use, or distribution of illegal drugs after the date of enactment. Disqualified individuals are not considered household members but income and resources are attributed to their households. Requires applicants to state, in writing, whether any household member has been convicted of drug felonies. Permits States to opt out of the provision by enacting laws after the date of enactment exempting individuals or limiting the disqualification period.	Impl. Memo Proposed Rule	Required to be implemented July 1, 1997 (unless State opts out).

**PART B - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
SPECIAL IMPLEMENTATION DATES**

Section	Description <i>Work Requirement for Able-Bodied Adults Without Dependents (ABAWDS)</i>	Implementation Method	
		FCS	State agency
824	<p>Unless exempt, individuals are ineligible to continue to receive food stamps if, during the preceding 36-month period they received food stamps for at least 3 months (consecutive or otherwise) while they did not either: work at least 20 hours per week (averaged monthly); for 20 hours or more per week, participate in and comply with a Job Training and Partnership Act program, Trade Adjustment Assistance Act program, or Employment and Training program (other than a job search or job search training program); or participate in and comply with a workfare program (under Section 20 of the Food Stamp Act or a comparable State or local program).</p> <p><i>During the time that an individual is exempt</i> from this work requirement because of a personal exception (e.g., is pregnant), the waiver provision (e.g., is living in an area that, after concurrence by the Secretary, the State has determined to have an unemployment rate of over 10 percent or insufficient jobs), or because of the subsequent eligibility provision of subsection (5) of this section, any period of participation in the food stamp program does <i>not count</i> toward the individual's 3-month participation limit.</p> <p>An individual is <i>exempt</i> from this requirement if the individual is: (1) under 18 or over 50 years of age, (2) medically certified as physically or mentally unfit for employment, (3) a parent or other member of a household with responsibility for a dependent child, (4) pregnant, or (5) otherwise exempt from work requirements under subsection (d)(2) of the Food Stamp Act.</p> <p>On the request of a State agency, the Secretary may waive the work requirement for any group of individuals if the Secretary determines that the area in which the individuals reside (1) has an unemployment rate of over 10 percent, or (2) does not have a sufficient number of jobs to provide employment for the individuals.</p> <p>Individuals denied eligibility under the new work rule can regain eligibility if during a 30-day period the individual: works 80 hours or more; participates in and complies with a Job Training and Partnership Act program, Trade Adjustment Assistance Act program, or Employment and Training program (other than a job search or job search training program) for 80 hours or more; or participates in and complies with a workfare program (under Section 20 of the Food Stamp Act or a comparable State or local program) for 80 hours or more. If individuals subsequently lose this employment or cease participation in work or workfare programs, participation can continue for up to 3 consecutive months (beginning from the date the State is notified that work has ended), after which the only cure during the 36-month period will be to comply with the work requirement or to become exempt under other provisions of the requirement. Households adversely affected shall be notified in accordance with 7 CFR 273.13.</p>	<p>Impl. Memo</p> <p>Guidance on submitting waivers for groups of individuals to be sent out within 30 days.</p> <p>Proposed Rule</p>	<p>States must implement this provision by notifying applicants and recipients of the application of the work requirement no later than November 22, 1996. The 36-month period begins the <i>earlier of</i>: 3 months after enactment, or the date the State notifies recipients or applicants of the application of this provision. Case reviews will not be required; recipients will become ineligible at recertification or when the State becomes aware that the individual has participated 3 months without either complying with the work requirement or falling within one of the exceptions.</p>

**PART C - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
STATE AGENCY OPTIONS**

Section	Description <i>Miscellaneous Certification Provisions</i>	Implementation Method	
		FCS	State agency
809	Permits States to make use of standard utility allowances mandatory for all households if (1) the State has developed separate standards for households with and without heating or cooling costs and (2) USDA finds that the standards will not result in increased Federal costs.	Impl. Memo Proposed Rule	State Plan amendment
809	Permits State agencies to develop a standard homeless shelter allowance not to exceed \$143 per month for such expenses as may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. The State agency may make a household with extremely low shelter costs ineligible for the allowance. This allowance is to be deducted from net income after the child support deduction and before the medical deduction.		
812	Requires USDA to establish (within 1 year after enactment) a procedure which will not increase Federal costs whereby States can submit a method to be approved by USDA for determining reasonable estimates, instead of the actual costs, of producing self-employment income.		
818	The State agency may, at its option, count all of the income of an alien ineligible under the Food Stamp Act in determining the eligibility and benefits of the remaining members. The PRWORA does not address the treatment of income and resources of the newly ineligible aliens. This issue will be addressed in separate correspondence.		
828	Makes the issuing of combined allotments (prorated first month's allotment plus full second month's allotment) to expedited service applicants a State option.		
830	Permits States to divide a month's food stamp benefits between a drug or alcoholic treatment center and the individual, if the individual leaves the center.  Permits States to require the resident to designate the treatment center as his or her authorized representative.		
839	The State agency may, at its option, permit households to withdraw fair hearing requests orally as well as in writing. If it is an oral request, the State agency must provide written notice confirming the request and provide the household with another opportunity to request a fair hearing.		
840	Makes use of the income and eligibility verification system (IEVS) and the alien status verification system (SAVE) optional.		

**PART C - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
STATE AGENCY OPTIONS**

Section	Description <i>Optional Disqualification Provisions</i>	Implementation Method	
		FCS	State agency
819	Allows States the option to extend disqualifications for failure to perform actions required by other means-tested programs to the Food Stamp Program.	Impl. Memo Proposed Rule	State Plan amendment
822	<p>Permits States to require cooperation with the Child Support Enforcement (CSE) Program as a condition of eligibility for the FSP for applicants or participants who live with and exercise parental control over children under 18 years of age who have absent parents that are not providing appropriate support. Cooperation entails establishing paternity of the children and obtaining support for themselves or the child.</p> <p>Permits States to establish payment of legally-obligated child support as a condition of food stamp eligibility for non-custodial parents.</p> <p>Food stamp State agencies would have to develop safeguards to restrict the use of information obtained from Title IV-D agencies.</p> <p>Neither custodial nor non-custodial parents could be charged a fee or other cost for CSE services.</p> <p>The food stamp State agency would determine whether custodial parents have good cause for not cooperating and develop procedures for determining refusal to cooperate by non-custodial parents using guidelines developed by USDA in consultation with DHHS.</p>		
823	Permits States to disqualify individuals who are in arrears in court-ordered child support unless a court is allowing delayed payments or payments are being made in accordance with a court- or CSE-approved payment plan.		

**PART C - FOOD STAMP PROVISIONS  
OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
STATE AGENCY OPTIONS**

Section	Description <i>Optional Work Requirements</i>	Implementation Method	
		FCS	State agency
815	Provides a State option to disqualify the household if the head of household is disqualified under a work rule for a period determined by the State that cannot exceed the lesser of the duration of the individual's ineligibility or 180 days.	Impl. Memo Proposed Rule	State Plan amendment.
816	Permits States to lower the age at which a child exempts a parent/caretaker from food stamp work rules to between 1 and 6 years of age. This provision only applies to States (Wisconsin, Michigan, Montana and Kansas) that had waiver requests denied as of August 1, 1996, and may be implemented by these States for a period of no more than 3 years.		
849	New provision of the Food Stamp Act (section 16(b)) that provides States the option to use the cash value of a household's food stamp allotment to subsidize a job for a household member participating in a work supplementation or support program—under which public assistance is provided to an employer to be used for hiring and employing a public assistance recipient. States must describe in their State plans how recipients in the program will, within a specified period of time, be moved to employment that is not supplemented or supported.		
852	States are eligible to adopt an Employment Initiatives Program (EIP) if at least 50% of the food stamp caseload in the summer of 1993 also received AFDC. Under EIP, States may provide households the option to receive food stamp benefits in cash if an adult member (1) has worked in unsubsidized employment for at least the last 90 days, has earned at least \$350 per month for at least the last 90 days, and is continuing to do so; and (2) is eligible for Title IV-A benefits or becomes ineligible because of earnings. Requires States to provide USDA a written evaluation (content to be determined by States with the concurrence of USDA) of the impact of cash assistance after operating 2 years under this provision. Requires States to increase cash benefits, with State funds, to compensate households for State or local sales taxes on food purchases.		

**PART D - FOOD STAMP PROVISIONS OF  
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRING NO IMMEDIATE ACTION BY STATE AGENCIES**

Section	Description <i>FCS Action</i>	FCS Implementation Method
109	Eliminates the option in Section 5(d)(13) of the act and 7 CFR 273.9(c)(12) for State agencies to exclude from unearned income up to \$50 monthly of Title IV-D child support payments if they pay FCS for the cost of the additional benefits. (No State agency currently uses this option.)	Interim Rule
109	Changes references to "AFDC" and a "plan" to a program funded under Title IV-A. (States will have to change their manuals, but no action required by caseworkers).	Implementing Memo Interim Rule
809	Freezes the standard deduction amounts at their current level--no future adjustments.	
826	Eliminates the adjustment factor for the \$10 minimum allotment for 1- and 2-person households.	
851	<p>Adds section 17(b)(1)(D) to the Food Stamp Act.</p> <p>Within 60 days after receiving a waiver request, USDA must approve or deny the request, or seek further clarification from the submitting State.</p> <p>If USDA fails to act within 60 days, the waiver request will be considered approved, unless approval is specifically prohibited by the Food Stamp Act.</p> <p>If USDA denies a waiver request, it must provide a copy of the request and a description of the reasons for its denial to the House Agriculture Committee and to the Senate Agriculture, Nutrition, and Forestry Committee.</p>	Implementing Memo Proposed Rule

**PART D - FOOD STAMP PROVISIONS OF  
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRING NO IMMEDIATE ACTION BY STATE AGENCIES**

Section	Description <i>State Flexibility</i> (States may continue current practices or develop new procedures)	FCS Implementation Method												
817	<p>Streamlines administrative requirements for States:</p> <ul style="list-style-type: none"> <li>• Requires E&amp;T components to be delivered through a statewide workforce development system, if available.</li> </ul> <p>States can adopt provision which:</p> <ul style="list-style-type: none"> <li>• Expands the existing State option to apply all work requirements to applicants (currently limited to job search).</li> <li>• Removes specific rules governing job search components (i.e., tying them to those under title IV-A).</li> <li>• Removes provisions for E&amp;T work experience and/or training components that require they serve a useful public purpose and use (to the extent possible) recipients' prior training and experience.</li> <li>• Removes specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&amp;T requirements.</li> <li>• Removes the requirement to serve volunteers in E&amp;T programs.</li> <li>• Removes the requirement for conciliation procedures for resolution of disputes involving participation in an E&amp;T program.</li> <li>• Removes the requirement that reimbursements for dependent care are at least as high as the dependent care deduction cap.</li> <li>• Removes requirements for E&amp;T performance standards.</li> </ul> <p>Allocates to States to carry out E&amp;T programs:</p> <table border="0"> <tr><td>FY 97</td><td>\$79 million</td></tr> <tr><td>FY 98</td><td>\$81 million</td></tr> <tr><td>FY 99</td><td>\$84 million</td></tr> <tr><td>FY 00</td><td>\$86 million</td></tr> <tr><td>FY 01</td><td>\$88 million</td></tr> <tr><td>FY 02</td><td>\$90 million</td></tr> </table> <p>Allocations will be based on a reasonable formula (as determined by USDA) that gives consideration to the population in each State subject to work requirements. Minimum State allocation: \$50,000. State to promptly notify USDA if it determines it will not expend all of its allocated E&amp;T funds.</p>	FY 97	\$79 million	FY 98	\$81 million	FY 99	\$84 million	FY 00	\$86 million	FY 01	\$88 million	FY 02	\$90 million	Implementing Memo Proposed Rule
FY 97	\$79 million													
FY 98	\$81 million													
FY 99	\$84 million													
FY 00	\$86 million													
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**PART D - FOOD STAMP PROVISIONS OF  
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRING NO IMMEDIATE ACTION BY STATE AGENCIES**

Section	Description <i>State Flexibility</i> (States may continue current practices or develop new procedures)	FCS Implementation Method
835	<p>Replaces many current client service requirements with broad requirements that States establish procedures that best serve households in the State including households with special needs (elderly, disabled, rural poor, homeless, households on reservations, and people who do not speak or read English); provide timely, accurate, and fair customer service to all applicants and recipients; and develop applications containing necessary information.</p> <p>Permits States to establish operating procedures that vary for local food stamp offices.</p> <p>Makes clear that nothing in the Food Stamp Act prohibits electronic storage of application and other information, including signatures.</p> <p>Deletes requirements for a uniform national application, placing information about rights and responsibilities on the application, waiving office interviews for elderly or disabled applicants and households with transportation or other difficulties, and providing telephone or mail information to households that have transportation difficulties or similar hardships.</p> <p>Deletes requirements that States (1) inform applicants how to cooperate in completing the application process; including obtaining verification, (2) assist applicants in obtaining verification and completing applications, (3) use current verified information already available, and (4) not deny applications for failure of non-household members to cooperate.</p> <p>Deletes requirements that States provide a description of reporting requirements at certification and recertification; and provide a toll-free, local, or collect telephone number that households may use to reach the State.</p> <p>Deletes requirements for displaying posters and providing materials in food stamp and PA offices about nutrition and eligibility for other USDA nutrition programs, using mail issuance in rural areas or other areas where low-income households face transportation problems, conducting a single interview when households apply for both food stamps and AFDC, combining food stamp applications with PA and Statewide general assistance (GA) applications, providing food stamp applications and information at local GA offices if the same agency administers GA and PA, and using verified information available in PA/GA files.</p>	Implementing Memo Proposed Rule
836	Deletes all Federal requirements for State employee training.	

**PART D - FOOD STAMP PROVISIONS OF  
THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY  
RECONCILIATION ACT OF 1996  
REQUIRING NO IMMEDIATE ACTION BY STATE AGENCIES**

<b>Section</b>	<b>Description</b> <i>State Flexibility</i> (States may continue current practices or develop new procedures)	<b>FCS Implementation Method</b>
848	The State agency is no longer required to establish standards for the effective and efficient operation of the program, including periodic review of hours that food stamp offices are open. The State agency is no longer required to submit reports specifying administrative actions to meet the standards.	Implementing Memo Proposed Rule

## STATE OPTIONS PROVIDED IN WELFARE REFORM LEGISLATION

### Sec. 806: State Option for Eligibility Standards

- o Explicitly permits nonuniform standards of eligibility for food stamps.

### Sec. 809: Deductions from Income

- o Permits States to make use of standard utility allowances mandatory for all households if (1) the State has developed separate standards that do and do not include the cost of heating and cooling and (2) USDA finds that the standards will not result in increased Federal costs.
- o Permits States to establish a homeless shelter allowance deduction capped at \$143. States may prohibit use of the deduction for households with extremely low shelter costs.

### Sec. 815: Disqualification

- o Provides a State option to disqualify the household if the head of household is disqualified under a work training rule for a period determined by the State that cannot exceed the lesser of the duration of the individual's ineligibility or 180 days.

### Sec. 816: Caretaker Exemption

- o Permits States, which have had waivers denied by August 1, 1996, to lower the age at which a child exempts a parent/caretaker from food stamp work rules from 6 years old to not under 1 year old for a period of not more than 3 years.

### Sec. 817: Employment and Training

- o Streamlines administrative requirements for States by expanding the existing State option to apply work rules to applicants to include all work requirements (now, limited to job search), and removing many rules and requirements pertaining to the employment and training function.

### Sec. 818: Food Stamp Eligibility

- o Provides States the option to count all of ineligible aliens' income as available to their households.

### Sec. 819: Comparable Treatment for Disqualification

- o Allows States the option to extend penalties for non-compliance from other means-tested programs to the FSP.

**Sec. 822: Cooperation with Child Support Agencies**

- o Permits States to require cooperation with the Child Support Enforcement (CSE) Program as a condition of eligibility for the FSP for applicants or participants who live with and exercise parental control over children under 18 years of age who have absent parents that are not providing appropriate support.
- o Permits States to establish payment of legally-obligated child support as a condition of food stamp eligibility for non-custodial parents.

**Sec. 823: Disqualification Relating to Child Support Arrears**

- o Provides States an option to disqualify individuals who are in arrears in court-ordered child support unless a court is allowing delayed payments or payments are being made in accordance with a court- or CSE-approved payment plan.

**Sec. 825: Encouragement of Electronic Benefit Transfer Systems**

- o Permits State agencies (subject to Federal standards) to procure and implement an EBT system under the terms, conditions, and design the agency considers appropriate.
- o Permits State agencies to collect a charge for replacing EBT cards by reducing allotments.
- o Permits State agencies to require that EBT cards contain a photograph of one or more household members and requires that, if a State requires a photograph, it must establish procedures to ensure that other appropriate members of the household and authorized representatives may use the card.

**Sec. 828: Optional Combined Allotment for Expedited Households**

- o Makes the issuing of combined allotments (pro-rated first month's allotment plus full second month's allotment) to regular and expedited service applicants a State option.

**Sec. 829: Failure to Comply with Other Means-Tested Public Assistance Programs**

- o Provides a State option to reduce allotments 25% or less. If the allotment is reduced for failure to perform an action required under a family assistance block grant (TANF) program, the State may use the rules of that program to reduce the food stamp allotment.

**Sec. 830: Allotments for Households Residing in Centers**

- o Permits States to divide a month's food stamp benefits between a drug or alcoholic treatment center and the individual, if the individual leaves the center.
- o Permits States to require the resident to designate the treatment center as his or her authorized representative.

**Sec. 835: Operation of Food Stamp Offices**

- o Replaces many current client service requirements with broad requirements providing increased State flexibility in a number of areas.

**Sec. 839: Withdrawing Fair Hearing Requests**

- o At State option, permits households to withdraw (orally or in writing) requests for a fair hearing.

**Sec. 840: Income, Eligibility, and Immigration Status Verification Systems**

- o Makes use of the income and eligibility verification system (IEVS) and the immigration status verification system (SAVE) optional.

**Sec. 849: Work Supplementation or Support Program**

- o Provides a State option to use a household's benefits to subsidize a job for a household member in the State's WSSP.

**Sec. 852: Employment Initiatives Program**

- o Provides an option for States in which at least 50% of the food stamp caseload in the summer of 1993 also received AFDC to provide certain households with cash in lieu of food stamps.

**Sec. 854: Simplified Food Stamp Program**

- o Allows States to operate an SFSP throughout the State or in political subdivisions of a State for households in which all members receive Title IV-A.

**Sec. 103: Block Grants to States**

- o States cannot be prohibited from sanctioning adults in food stamp households who fail to ensure that their minor dependent children attend school as required by State law or are themselves 21-50 years old and do not have, or are not working toward, a high school diploma or recognized equivalent unless such adult has been determined medically unable to do so.

**Sec. 115: Denial of Assistance and Benefits for Certain Drug-Related Convictions**

- o Permits States to opt out of the provision, making individuals convicted of Federal or States felonies for possession, use, or distribution of illegal drugs ineligible, by enacting laws after the date of enactment which exempt individuals from the provision or limit the disqualification period.

## Implementation Timetable for Food Stamp Welfare Reform Provisions

Implementation Vehicle	Goal	Audience/Participants	Date
Roundtable discussions	<ul style="list-style-type: none"> <li>• review provisions of the Act</li> <li>• identify issues needing further development</li> </ul>	<ul style="list-style-type: none"> <li>• FCS regional food stamp directors</li> <li>• FCS headquarters staff</li> <li>• HHS staff</li> </ul>	August 8-9, 1996
Implementing Memoranda	Provide basic guidance to State welfare agencies regarding how to implement the Act	Issued by FCS to State welfare agencies	3 days after enactment
Stakeholder Meetings	<ul style="list-style-type: none"> <li>• address specific State questions regarding the Act</li> <li>• identify issues that need further development</li> <li>• obtain input on how FCS can facilitate implementation</li> <li>• coordinate implementation efforts</li> </ul>	American Public Welfare Association (APWA) Annual Conference of State Food Stamp Directors	August 26-28, 1996
		FCS-sponsored meeting of all States and 25 largest counties: "Managing for the Public Trust: Meeting the Dual Challenge of Change"	September 4-5, 1996
		National Governors' Association (NGA), APWA, and National Conference of State Legislatures (NCSL) conference	September 9-10, 1996
		HHS-sponsored meetings with State welfare agencies	To be scheduled
		USDA and FCS officials and representatives of the advocate community	Throughout implementation process
Retailer Proposed Rule	Proposed rule implementing provisions of the Act affecting food stamp retailers	Food Stamp Retailers	Discussion underway with OGC
Rules	Interim final rule for nondiscretionary provisions of the Act	State welfare agencies	Begin clearance: 11/1/96; publish 4/1/97
	Proposed rules implementing remaining provisions of the Act		
Technical Assistance on State Options	Provide guidance to State agencies on optional provisions including the Simplified Program (see attached papers) and criteria for waivers of work requirements because of high unemployment or insufficient available jobs	State welfare agencies	September, 1996 and ongoing throughout the implementation process

Side by Side Issues  
Electronic Benefit Transfer (EBT) Provisions in Welfare Reform

Current Provision	New Provision	Issues
Allows EBT implementation as an issuance option for States	Mandates EBT implementation for all States by October 1, 2002. The Agency can authorize waivers for States that face unusual barriers to implementing EBT.	
Requires that EBT systems be on line systems	Eliminates the requirement that EBT systems be on-line systems.	FCS will need to review regulations to assess their relevance and completeness in instances when alternative technologies are used.
Requires that EBT systems be cost neutral <u>in any one year</u> to the State's paper system	Retains overall cost neutrality requirement, however, annual cost neutrality requirement is removed.	Regulations will need to be revised on how cost neutrality is calculated.
No provision.	Allows States to procure and implement an EBT system under terms, conditions, and design that they consider appropriate, subject to Federal standards.	
No provision.	States should to take into account generally accepted standard operating rules based on commercial technology and the need for interstate operation and law enforcement monitoring/investigation when developing their EBT systems.	

Current Provision	New Provision	Issues
Requires USDA to establish standards for system security.	Requires USDA to establish standards for measures to maximize EBT security through use of the most recent, cost effective technology, including PINS and photos.	
No provision.	Effective no later than 2 years from enactment, requires USDA to establish standards, <u>to the extent practicable</u> , for measures that permit a system to differentiate eligible and ineligible food items.	Within the next two years FCS will conduct a study and demonstration in order to determine the feasibility of requiring this design feature.
No specific provision in law, but regulations allow a State to impose a reasonable card replacement fee.	Allows a State to collect a charge for card replacement by reducing the monthly allotment.	Will require additional system monitoring and reporting capabilities for States that wish to implement this provision.
No provision.	Allows States to require that EBT cards contain a photograph of 1 or more members of a household.	
No provision.	Prohibits companies that provide food stamp EBT equipment from lowering their costs to stores for other commercial services.	Regulations will need to address how this can be measured and monitored
No provision.	Requires EBT rules on liability for lost benefits to be similar to rules for coupon-based systems; bill also exempts FSP from regulation E liability.	

## WORK REQUIREMENTS AND WAIVER AUTHORITY

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p><b>SECTION 815: STRENGTHEN PENALTIES FOR NONCOMPLIANCE WITH WORK REQUIREMENTS</b></p> <p>Revises current requirements to make individuals who are physically and mentally fit and between the ages of 16 and 60 ineligible for benefits if they: (1) refuse to provide sufficient information to allow a determination of their employment status or job availability without good cause; (2) voluntarily quit a job without good cause; or (3) voluntarily reduce their work effort (and, after the reduction, are working less than 30 hours a week) without good cause.</p> <p>Provides States with the option to disqualify an entire household if the head of household is disqualified under a work rule. The State elected disqualification period cannot exceed the lesser of the duration of the head of household's ineligibility or 180 days.</p> <p>Establishes mandatory minimum disqualification periods for individuals who fail to comply with work or workfare requirements:</p> <ul style="list-style-type: none"> <li>o First violation - The later of (1) the date they comply with work rules; (2) 1 month; or (3) a period determined by the State not to exceed 3 months.</li> <li>o Second violation - The later of (1) the date they comply with work rules; (2) 3 months; or (3) a period determined by the State not to exceed 6 months.</li> <li>o Third or subsequent violations - The later of (1) the date they comply with work rules; (2) 6 months; or (3) a date determined by the State; or (4) at State option, permanently.</li> </ul> <p>Requires USDA to determine the meaning of good cause, voluntarily quitting, and reducing work effort.</p> <p>Requires States to determine (1) meaning of other terms; (2) procedures for establishing compliance; and (3) whether individuals are complying. None of such determinations can be less restrictive than comparable determinations under a program funded by Title IV-A of the Social Security Act.</p>	<p>State options will need to be incorporated into E&amp;T plans.</p> <p>Regulations will need to be revised.</p> <p>Need for States to modify tracking systems.</p> <p>Need to review current regulations that define good cause, voluntary quit, and reducing work effort.</p> <p>Need to coordinate with Title IV-A agency and know its requirements.</p>

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p><b>SECTION 816: CARETAKER EXEMPTION</b></p> <p>Permits States to lower the age at which a dependent child would exempt a parent/caretaker from food stamp work rules to between 1 and 6 years of age. This provision only applies to States that had waiver requests denied as of August 1, 1996, and may be implemented by these States for a period of no more than 3 years.</p>	<p>This provision will only apply to the following States: Wisconsin, Michigan, Montana, and Kansas.</p> <p>The regulation will need to be revised.</p> <p>A method of tracking State options will need to be developed.</p> <p>Those States that elect the option will need to be prepared to change the rules in three years.</p>
<p><b>SECTION 852: EMPLOYMENT INITIATIVES PROGRAM (EIP)</b></p> <p>States are eligible to adopt EIP if at least 50% of the food stamp caseload in the summer of 1993 also received AFDC.</p> <p>Under EIP, States may provide households the option to receive food stamp benefits in cash if an adult member (1) has worked in unsubsidized employment for at least the last 90 days, has earned at least \$350 per month for at least the last 90 days, and is continuing to do so; and (2) is eligible for Title IV-A benefits or becomes ineligible because of earnings.</p> <p>Requires States to provide USDA a written evaluation (content to be determined by States with the concurrence of USDA) of the impact of cash assistance after operating 2 years under this provision.</p> <p>Requires States to increase cash benefits, with State funds, to compensate households for State or local sales taxes on food purchases. Exemptions may be granted if the food items subject to sales tax are limited.</p>	<p>Which States are eligible for the option will need to be determined.</p> <p>Regulations will need to be revised or rewritten.</p> <p>Reporting requirements need to be established (separate FCS-388) so that we can track how many households choose to participate and the amount of benefits provided in cash.</p> <p>States must apply for exemption from sales tax requirement.</p>

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p><b>SECTION 817: EMPLOYMENT AND TRAINING ADMINISTRATION</b></p> <p>Revises section 6(d)(4) of the Food Stamp Act.</p> <p>Emphasizes that work is a purpose of E&amp;T.</p> <p>Streamlines administrative requirements for States:</p> <ul style="list-style-type: none"> <li>• Permits E&amp;T components to be delivered through a statewide workforce development system.</li> <li>• Expands the existing State option to apply all work requirements to applicants (currently limited to job search).</li> <li>• Removes specific rules governing job search components (i.e., tying them to those under title IV-A).</li> <li>• Removes provisions for E&amp;T work experience and/or training components that require they serve a useful public purpose and use (to the extent possible) recipients' prior training and experience.</li> <li>• Removes specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&amp;T requirements.</li> <li>• Removes the requirement to serve volunteers in E&amp;T programs.</li> <li>• Removes the requirement for conciliation procedures for resolution of disputes involving participation in an E&amp;T program.</li> <li>• Removes the requirement that reimbursements for dependent care are at least as high as the dependent care deduction cap.</li> <li>• Removes requirements for E&amp;T performance standards.</li> </ul>	<p>Regulations will need to be revised.</p> <p>Many States may elect to revise their State plans.</p>

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES												
<p><b>SECTION 817: EMPLOYMENT AND TRAINING FUNDING</b></p> <p>Revises section 16(h) of the Food Stamp Act.</p> <p>Allocates to States to carry out E&amp;T programs:</p> <table data-bbox="322 470 569 664"> <tr> <td>FY 97</td> <td>\$79 million</td> </tr> <tr> <td>FY 98</td> <td>\$81 million</td> </tr> <tr> <td>FY 99</td> <td>\$84 million</td> </tr> <tr> <td>FY 00</td> <td>\$86 million</td> </tr> <tr> <td>FY 01</td> <td>\$88 million</td> </tr> <tr> <td>FY 02</td> <td>\$90 million</td> </tr> </table> <p>Allocations will be based on a reasonable formula (as determined by USDA) that gives consideration to the population in each State subject to work requirements.</p> <p>Minimum State allocation: \$50,000.</p> <p>State to promptly notify USDA if it determines it will not expend all of its allocated E&amp;T funds. USDA will reallocate those funds appropriately and equitably.</p> <p>Limits E&amp;T funding for services to title IV-A recipients to the amount used by the State for AFDC recipients in fiscal year 1995.</p>	FY 97	\$79 million	FY 98	\$81 million	FY 99	\$84 million	FY 00	\$86 million	FY 01	\$88 million	FY 02	\$90 million	<p>A determination will need to be made on how much of a State's FY 1995 spending was limited to IV-A recipients.</p> <p>FCS needs to allocate the additional Federal funding for FY 97 as soon as possible</p>
FY 97	\$79 million												
FY 98	\$81 million												
FY 99	\$84 million												
FY 00	\$86 million												
FY 01	\$88 million												
FY 02	\$90 million												

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p><b>SECTION 849: WORK SUPPLEMENTATION OR SUPPORT PROGRAM</b></p> <p>New provision of the Food Stamp Act (section 16(b)) that provides States the option to use the cash value of a household's food stamp allotment to subsidize a job for a household member participating in a work supplementation or support program—under which public assistance is provided to an employer to be used for hiring and employing a public assistance recipient.</p> <p>The household will not receive an allotment for the period during which the member continues to participate in the work supplementation or support program.</p> <p>During periods of employment under the work supplementation or support program, individuals will be exempted from any other work requirement.</p> <p>States must describe in their State plans how recipients in the program will, within a specified period of time, be moved to employment that is not supplemented or supported.</p> <p>Work supplementation or support programs may not displace the employment of individuals who are not supplemented or supported.</p>	<p>This new provision requires the development of QC procedures. Subsidized employment components of welfare reform demonstration projects are currently excluded from QC.</p> <p>States will need to establish procedures governing employers' relations with subsidized employees. For example, subsidized employees would have to be treated the same as regular employees of the same status.</p> <p>States will need to ensure that wage supplementation programs are consistent with the provision of the ACT which mandates that the value of benefits not be considered as income or resources and not be subject to taxation.</p> <p>States will need to develop mechanisms to move clients from subsidized to non-subsidized employment?</p> <p>States will need to develop procedures to ensure that the employment of nonsupplemented/nonsupported individuals is not displaced.</p>

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p><b>SECTION 850: WAIVER AUTHORITY</b></p> <p>Revises section 17(b) of the Food Stamp Act.</p> <p>Permits USDA to "waive any requirement" of the Food Stamp Act "to the extent necessary" to conduct pilot or experimental projects that are consistent with the goal of providing food assistance to raise levels of nutrition among low-income individuals and that include an evaluation to determine the effect of the project.</p> <p>Projects may be conducted to:</p> <ul style="list-style-type: none"> <li>• Improve program administration.</li> <li>• Increase the self-sufficiency of food stamp recipients.</li> <li>• Test innovative welfare reform strategies.</li> <li>• Allow greater conformity with the rules of other programs.</li> </ul> <p>Projects that reduce benefits by more than 20 percent for more than 5 percent of households in the project area may not include more than 15 percent of the State's food stamp households and may not continue for more than 5 years unless an extension is approved by USDA.</p> <p>USDA may not conduct a project that:</p> <ul style="list-style-type: none"> <li>• Cashes out benefits, unless the project was approved prior to the enactment of these provisions.</li> <li>• "Substantially" transfers food stamp funds to services or benefits provided primarily through another public assistance program, or uses the funds for any purpose other than the purchase of food, program administration, or an employment or training program.</li> <li>• is inconsistent with specified aspects of current requirements.</li> </ul>	<p>Cost neutrality is still expected with waivers. States will need to show both a basis for projecting cost neutrality and a means of measuring it.</p> <p>We are more accustomed to behavioral waivers. New waivers may include requests to redistribute or to reduce benefits without a specific cause.</p> <p>State and Federal responsibilities for handling existing waivers under demonstration projects need to be developed.</p> <p>States will need to develop a method for ensuring the 20% / 5% rule is met.</p> <p>Need to define what constitutes a "substantial" transfer.</p>

SUMMARY OF CHANGES	IMPLEMENTATION ISSUES
<p data-bbox="227 251 746 278"><b>SECTION 851: RESPONSE TO WAIVERS</b></p> <p data-bbox="227 314 778 342">Adds section 17(b)(1)(D) to the Food Stamp Act.</p> <p data-bbox="227 378 778 470">Within 60 days after receiving a waiver request, USDA must approve or deny the request, or seek further clarification from the submitting State.</p> <p data-bbox="227 506 811 597">If USDA fails to act within 60 days, the waiver request will be considered approved, unless approval is specifically prohibited by the Food Stamp Act.</p> <p data-bbox="227 634 794 789">If USDA denies a waiver request, it must provide a copy of the request and a description of the reasons for its denial to the House Agriculture Committee and to the Senate Agriculture, Nutrition, and Forestry Committee.</p>	<p data-bbox="850 314 1405 438">What steps can be taken to expedite the waiver approval process? Should we consider a standard submission package - something like the current HHS requirement?</p>

## **SIMPLIFIED FOOD STAMP PROGRAM**

### **DESCRIPTION:**

The welfare reform legislation gives States the option to operate a Simplified Food Stamp Program (SFSP). States are allowed to operate SFSPs throughout the State or in political subdivisions of a State. Households in which all members receive cash assistance under the Temporary Assistance for Needy Families (TANF) program are categorically eligible for the SFSP. Mixed public assistance (PA)/non-public assistance (NPA) households can participate with USDA approval. Pure NPA households cannot participate. The SFSP may employ TANF or FSP rules and procedures, or a combination of both. USDA must approve plans for SFSPs that meet all statutory requirements and would not increase Federal costs for any fiscal year.

### **IMPLEMENTATION:**

This provision is effective upon enactment and is a State option, therefore the implementation of SFSPs will occur as States submit plans that are approvable and do not increase Federal costs.

To assist States in developing SFSPs and USDA in evaluating them, USDA is hiring a contractor to provide technical assistance. The contract should be awarded by October 1, 1996. The contractor will provide assistance, mostly in the form of microsimulation analyses, to States interested in developing an SFSP so that they can understand the probable effects of design choices (i.e. program reforms) on SFSP recipients and program costs before they submit a proposed SFSP plan to USDA.

### **IMPACT:**

The SFSP option creates new opportunities in the Food Stamp Program and will have an effect on the traditional Federal/State relationship. Closer cooperation between FCS and State agencies will be critical for successful operation of SFSPs.

USDA is working to develop parameters for SFSPs and will be seeking input from States and other interested parties to help us in this effort. USDA especially needs to develop methods to define and measure cost neutrality both up front and on an ongoing basis.

Protocols for States to request technical assistance from the SFSP contractor will be developed shortly after the contract is awarded.

## SIMPLIFIED FOOD STAMP PROGRAM

### PROVISION

#### **USDA APPROVAL OF SIMPLIFIED FOOD STAMP PROGRAM:**

States are allowed to operate a Simplified Food Stamp Program (SFSP) throughout the State or in political subdivisions of a State for PA households receiving TANF. Mixed NPA/public assistance households can be included only with USDA approval. NPA households cannot be included in SFSPs. USDA is authorized to approve SFSPs that (1) comply with certain rules of the Food Stamp Act (see below) and (2) would not increase Federal costs for any fiscal year.

#### **PLAN REQUIREMENTS:**

To operate a SFSP, a State must have a plan for operation of the program approved by USDA.

A State must comply with several statutory FSP requirements, including:

- (A) issuance procedures, except for staggering of benefits;
- (B) use of TFP as the basis of benefits, calculation of benefits using the 30% benefit reduction rate, and provision of a minimum allotment to one- and two-person households;
- (C) prohibitions against counting food stamp benefits as income or resources under any other Federal, State, or local law and against increasing a household's benefit due to a decrease in other public assistance or welfare benefits caused by the household's intentional violation of the rules of another public assistance or welfare program;
- (D) States' responsibility for certification, issuance, and record retention; anti-discrimination protections; submission and approval of plans of operation and administration of the FSP on Indian reservations; and measures to prevent receipt of duplicate benefits;
- (E) limits on the use and disclosure of information about food stamp households; submission of required reports and other information; reporting illegal aliens to INS; optional use of IEVS and SAVE; optional extension of disqualifications of other means-tested programs; SFSP provisions;
- (F) fair hearings; and
- (G) Quality Control.

### IMPLEMENTATION ISSUES

How many States will choose to design a SFSP?

Are there ways to minimize back and forth information needs - a standard package?

Will States design a SFSP with their first TANF or next year?

What will the review process be for SFSPs submitted by States?

Should regulations be issued to define the parameters for SFSP's? If so, when would regulations be issued?

## SIMPLIFIED FOOD STAMP PROGRAM

PROVISION	IMPLEMENTATION ISSUES
<p><b>PLAN REQUIREMENTS (CONT.):</b>                      In addition, the legislation provides direction on the following:</p> <ul style="list-style-type: none"> <li>(H) SFSPs may standardize deductions. States must explain in their plan of operation how they will address the needs of households with high shelter costs.</li> <li>(I) The plan of operation must also include the rules and procedures to be followed in determining food stamp benefits and a description of the State's QC system. USDA is prohibited from requiring States to report information on households not included in the SFSP. USDA can approve State requests to use alternative accounting periods.</li> <li>(J) SFSP plans must contain sufficient documentation that the SFSP will not increase Federal costs for any fiscal year.</li> </ul>	
<p><b>COST NEUTRALITY:</b>                      SFSPs cannot increase Federal costs for any fiscal year. USDA is required to notify a State within 30 days of a determination that its SFSP is increasing Federal costs and to allow for corrective action within 90 days. If the State does not submit and/or carry out a corrective action plan, USDA is required to end the SFSP. States with terminated SFSPs are ineligible to operate SFSPs in the future.</p>	<p>Are there ways to facilitate States' understanding of what specific proposals will and will not meet the requirements?</p> <p>Cost neutrality will be essential on an ongoing basis. How will cost neutrality be measured up front and on an ongoing basis? QC data? Are there alternatives?</p>
<p><b>TECHNICAL ASSISTANCE:</b>                      USDA is hiring a contractor to provide technical assistance to States in developing SFSP plans. The contract should be awarded by October 1, 1996.</p> <p>The contractor will provide technical assistance, mostly in the form of microsimulation analyses, to States interested in developing a SFSP so that they can understand the probable effects of design choices (i.e. program reforms) on SFSP recipients and program costs before they submit a proposed SFSP plan to USDA.</p> <p>The contractor will also provide technical assistance to the Food Stamp Program so that it can assess the cost neutrality and benefit impacts of SFSP plans submitted by States for USDA approval.</p>	<p>Protocols for States to request technical assistance will be developed shortly after the contract is awarded.</p> <p>How many States will be interested in this technical assistance?</p>

**Highlights of Food Stamp Provisions in P. L. 104-193,  
the Personal Responsibility and Work Opportunity Reconciliation Act of 1996  
(H. R. 3734)**

**New work requirement:** The law imposes a new food stamp work requirement under which able-bodied recipients age 18-50 with no dependents are ineligible unless they work for certain amounts of time. Under the law, recipients may receive benefits only three months out of each three years, and must work the remaining 33 months. However, if the working recipient loses his or her job, an additional three months' benefits are allowed once in the three year period.

"Work" also includes participating in a work program or workfare 20 hours or more a week, averaged monthly. Qualifying work programs include programs under JTPA or the Trade Adjustment Assistance Act, state or local programs approved by the Governor (including a food stamp E&T program), and workfare, but not job search or job search training programs. Work requirements may be waived in areas with unemployment over 10% or with insufficient jobs.

**EBT and Reg E:** The law exempts state- or locally-administered means-tested EBT benefit programs, including food stamps, from Reg E. Report language is included expressing Congressional intent that regulations regarding benefit replacement and loss liability may be no more restrictive than those in place for the paper coupon program. States are required to implement food stamp EBT by October 1, 2002, unless waived. Systems must be cost-neutral over their life. States are required within two years of implementation, "to the extent practicable," to implement measures under which retailer scanning devices can differentiate allowable and non-allowable food items. States may charge for replacement cards and may require photos on EBT cards. The law includes a House "anti-tying" provision under which EBT vendors may not condition their contracts on states buying additional point-of-sale service from them or an affiliate.

**Waiver Authority:** The law includes a provision for new waiver authority that would allow states to request waivers for welfare reform, work, or multi-program conformity projects, but allowable waivers are subject to a number of restrictions. The major restrictions include: no new cash-out projects; no transfer of food stamp or employment and training funds to other assistance programs; no non-time-limited projects; limitations of 15% of the caseload and five years duration if the project reduces benefits by more than 20% for more than 5% of households in the project; no adverse effect on certain vulnerable populations nor on certain rights and procedures in the Food Stamp Act; no conditions based on "behavioral" activity such as a family cap or benefit time limit; and no waivers of a provision of the Simplified Food Stamp Program option.

**Work supplementation and cash out:** The law allows work supplementation or support programs where the value of cash and food stamp benefits is provided to employers who in turn hire and pay public assistance recipients. The law also allows states where 50% or more of the caseload received AFDC in 1993 to cash out food stamp benefits to households receiving both cash grants and food stamps, and who have a member who has worked for at least three months in an unsubsidized private sector job that pays at least \$350 a month. States must increase benefits to compensate for state or local food sales taxes.

**Exclusion of LIHEAP from food stamp income:** The law exempts federal LIHEAP payments (but not state or local energy assistance payments) from being counted as food stamp income.

**Simplified Food Stamp Program:** The law includes a Simplified Food Stamp Program (SFSP) option under which states may conform the cash assistance portion of the food stamp caseload to their new cash assistance block grant plans. The law specifies that the Secretary will determine if the program is increasing federal costs; states will not be required to collect information on households not in the simplified program; the Secretary may approve alternative accounting periods in making cost determinations; and states may include in the program households with one or more non-TANF members if approved by the Secretary.

**No optional block grant:** The law does not include an optional block grant provision.

**Other state administrative options and changes:** The law allows states a degree of additional administrative flexibility in several areas. States will no longer be governed by detailed rules for application forms and procedures; they may allow verbal fair hearing withdrawals; and they may use the IEVS system and the SAVE system at their option. Two changes were made in expedited service rules: one extends the expedited service timetable from five to seven days, and the second ends automatic expedited service eligibility for homeless households. Expedited service will still have to be provided to households whose shelter costs exceed their income and resources.

States may lower the caretaker exemption age to three without restriction, and may lower the age to as low as one only if a state had requested a waiver to do so, and had had the waiver denied, as of August 1, 1996.

The law provides other administrative reforms including: allowing 12 month certification periods (24 months for elderly and disabled households) with one contact per year; requiring that late recertification benefits be prorated (rather than issued as a full month); allowing states to combine the first and second months' allotments for expedited households applying after the 15th; and prohibiting food stamp increases to make up for penalties in other assistance programs.

**Retention rates:** The law revises the percentage of overissuance collections that states may retain to 35% for fraud overissuance collections and 20% for non-fraud collections.

**Deductions and benefit levels:** The law caps the excess shelter deduction at current-law levels through December 31, 1996 (\$247 for the 48 contiguous states and D. C.), then allows the cap to rise in increments to \$300 by FY 2001. The law also freezes the standard deduction at present levels; freezes the homeless shelter allowance at current levels; disallows the earned income deduction for any income not reported timely; and sets maximum food stamp benefits at 100% of the cost of the Thrifty Food Plan rather than at 103% as under current law.

**Child support:** The law has two provisions affecting child support: states may at their option disqualify individuals during any period the individual has an unpaid liability (arrear) that is under a court child support order; and may disqualify custodial or noncustodial parents who do not cooperate with the child support program.

**Quality control:** The law leaves present QC law intact. Present QC law would also apply to the Simplified Food Stamp Program option.

**Uncapped reauthorization:** The law reauthorizes the program in its present uncapped, individual entitlement form through FY 2002.

**Drug-related felony convictions:** Individuals with drug-related felony convictions (after the date of enactment) are ineligible, but their income and resources are considered available to the households in which they are members. States can opt out of the mandate by passage of a state law.

**Aliens:** Illegal immigrants are ineligible. Legal non-citizens are ineligible until they attain citizenship, with exceptions for refugees, those who have worked for 10 years, veterans and their families, and certain others.

**Effective date:** Policy provisions are effective upon enactment, with the exception of some budgetary changes which are effective October 1.

**Major Food Stamp Provisions in P. L. 104-193,  
the Personal Responsibility and Work Opportunity Reconciliation Act of 1996  
(H. R. 3734)**

<b>Definition of certification period</b>
Sec. 801—Replaces existing certification period rules and allows states to certify households for up to 12 months, and households consisting entirely of elderly persons or persons with disabilities for up to 24 months, provided a contact is made at least once every 12 months.
\$0 *
<b>Treatment of children living at home</b>
Sec. 803—Eliminates separate household status for children under age 22 who live with one or both parents by requiring them to be included in the parents' household.
- \$1.45 billion
<b>Adjustment of Thrifty Food Plan</b>
Sec. 804—Changes the basis for allotments to 100 percent of the cost of the Thrifty Food Plan effective 10-1-96.
- \$6.28 billion
<b>Definition of homeless individual</b>
Sec. 805—A person who is temporarily residing in the home of another individual may be considered homeless only for the first three months of such residence.
- [Under \$500,000]
<b>Earnings of students</b>
Sec. 807—Counts the income of an elementary or secondary school student beginning at age 18.
- \$70 million
<b>Energy assistance</b>
Sec. 808—State and local energy assistance payments are counted as income, but LIHEAP is excluded. One-time costs of weatherization or repair or replacement of unsafe or inoperative heating devices are also excluded; households will receive a deduction for out-of-pocket expenses. Certain HUD allowances/reimbursements are disregarded (present law).
- \$1.005 billion
<b>Deductions from income; utility standard switch</b>
Sec. 809— <i>Standard deduction:</i> Freezes deduction at the FY 95 levels (\$134 for the 48 contiguous states). <i>Earned-income deduction:</i> Denies the earned-income deduction when determining overissuances for households that fail to report earnings timely, and for the public assistance portion of income earned under a work supplementation/support program. <i>Excess shelter expense deduction:</i> Continues present law (e.g., \$247 for the 48 contiguous states and D. C.) through 12-31-96; rises to \$250 through FY 98; to \$275 for FYs 99-2000; and to \$300 for FYs 2001-02. <i>Homeless shelter deduction:</i> Makes the standard homeless shelter deduction optional. <i>Utility standard:</i> Allows states to mandate utility standards under certain conditions; limits utility standard use by LIHEAP households to those that incur additional out-of-pocket expenses.
- \$5 billion (standard deduction) - \$15 million (homeless shelter) - \$3.03 billion (excess shelter) - \$425 million (utility standard)
<b>Vehicle allowance</b>
Sec. 810—Rises to \$4,650 effective 10-1-96.
- \$1.030 billion
<b>Vendor payments for transitional housing counted as income</b>
Sec. 811—Eliminates the exclusion from income of vendor payments for transitional housing.
- \$60 million

\* NOTE: Figures indicate seven-year budget impact—a minus sign (-) for savings, a plus sign (+) for costs.

<b>Simplified calculation of income for the self-employed</b>
Sec. 812—Within one year of enactment, the Secretary will establish a procedure by which states may submit proposed cost-neutral methods of estimating the cost of producing self-employment income in lieu of calculating actual costs.
\$0
<b>Doubled penalties for violating Food Stamp Program requirements</b>
Sec. 813—Doubles penalties for participant fraud and abuse from six months to one year for the first offense and from one year to two for the second violation.
- [Under \$500,000]
<b>Disqualification of convicted individuals [for trafficking]</b>
Sec. 814—Permanently disqualifies persons convicted of trafficking offenses involving \$500 or more.
- [Under \$500,000]
<b>Disqualification [for failing to comply with work programs]</b>
Sec. 815—Persons are disqualified who refuse to work, refuse to cooperate with state agencies trying to determine job status or job availability, and refuse to participate in an employment and training program; or who reduce work time below 30 hours a week or voluntarily quit a job without good cause.
Minimum disqualification periods begin at one month for the first violation and go up to six months for the third violation, and longer (up to permanent disqualification) at state option. If the violator is a household head, the whole household may be disqualified up to six months.
The Secretary determines the meaning of good cause, voluntary quit, and reduction of work effort. States may determine other procedures, which may not be less restrictive than their TANF programs.
- \$30 million
<b>Caretaker exemption [from work requirements]</b>
Sec. 816—Allows states to adjust the caretaker exemption to as low as age three, or as low as age one if the state requested a waiver to do so and was denied as of 8-1-96.
\$0
<b>Employment and training [E&amp;T program]</b>
Sec. 817—Retains food stamp E&T program but provides more flexibility in program design and options. Removes provisions for federal performance standards on states. States may spend up to the amount spent in FY 95, including amounts for Title IV-A recipients. Allocations are determined by the state's recipients subject to the new work requirement (Sec. 824). Increases federal funding to \$79 million in FY 97, rising to \$90 million in FY 2002.
Expands allowable activities eligible for 50% matching funds under E&T program to include case management and other services that promote self-sufficiency or transition to work.
+ \$56 million
<b>Food stamp eligibility [state option not to deduct pro-rata share of ineligible alien income]</b>
Sec. 818—States may count all the income and resources of an alien ineligible as available to the rest of the household.
- \$145 million
<b>Comparable treatment for disqualification</b>
Sec. 819—If a person is disqualified for violations of other needs-tested public assistance programs, states may impose the same disqualification for food stamps. Recipients disqualified may reapply after disqualification and be treated as new applicants.
- \$125 million
<b>Disqualification for receipt of multiple food stamp benefits</b>
Sec. 820—Disqualifies for 10 years any household member found to have made a fraudulent statement with respect to identity or residence to obtain any duplication of food stamp benefits.
- \$30 million
<b>Disqualification of fleeing felons</b>
Sec. 821—Denies eligibility to persons fleeing to avoid felony prosecution or custody or confinement after conviction of a felony, or violating probation or parole.
- [Under \$500,000]

<p><b>Cooperation with child support agencies</b></p> <p>Sec. 822—At state agency option, participants who are either custodial or noncustodial parents may be required to cooperate with the child support program, or be disqualified. Fees or other costs for services may not be charged.</p> <p>- \$90 million + \$71 million for administration</p>
<p><b>Disqualification relating to child support arrears</b></p> <p>Sec. 823—States may at their option disqualify a person if delinquent in paying court-ordered child support unless the court is permitting delayed payments or the person is complying with a IV-D payment plan.</p> <p>- \$130 million</p>
<p><b>Work requirement</b></p> <p>Sec. 824—Able-bodied recipients between the ages of 18 and 50 are ineligible if, during the preceding 36 months, they received food stamps for three months or more while not working (or participating in a work program or workfare) 20 hours or more a week, averaged monthly. Individuals may regain eligibility by working 80 hours or more during 30 days. An additional three months' benefits are then allowed without working, once in the three year period. The three-year period begins after states have notified recipients, but not later than three months after enactment.</p> <p>Qualifying work programs include programs under JTPA or the Trade Adjustment Assistance Act, state or local programs approved by the state agency (including a food stamp E&amp;T program), and workfare. Job search or job search training programs do <i>not</i> qualify.</p> <p>Work requirements may be waived in areas with unemployment over 10% or with insufficient jobs.</p> <p>- \$5.11 billion</p>
<p><b>Electronic benefit transfer (EBT) provisions</b></p> <p>Sec. 825—Mandates all states to implement EBT by October 1, 2002, unless waived.</p> <p>States may charge recipients for replacement of lost cards and may do so through reducing the monthly benefit allotment. States may require that EBT cards contain photos of one or more household members; but if so, the state must establish procedures to assure other household members or representatives may be able to use the card as well.</p> <p>Changes cost-neutrality requirement from one year to the life of the system. Requires states within two years of implementation, "to the extent practicable," to implement measures to differentiate allowable and non-allowable food items.</p> <p>Vendors may not condition contracts on states obtaining additional point of sale service from that vendor or an affiliate, or not obtaining such service from a competitor ("anti-tying" provision).</p> <p>Expresses the sense of the Congress that states should operate EBT systems that are compatible with each other.</p> <p>All state and locally administered EBT assistance programs are exempt from Reg E, except for electronic funds transferred directly into a consumer account held by the recipient. Regulations regarding replacement of benefits under EBT must be similar to those in effect for a paper system. The conferees intend that such regulations will not require greater replacement of benefits, nor impose greater liability, than those in effect for paper-based systems.</p> <p>- [Under \$500,000]</p>
<p><b>Value of minimum allotment</b></p> <p>Sec. 826—Repeals Leland Act provision raising the minimum \$10 allotment by indexing it for inflation.</p> <p>- \$160 million</p>
<p><b>Benefits on recertification</b></p> <p>Sec. 827—Requires prorated benefits for the first month after a late recertification, rather than a full month as in current law.</p> <p>- \$160 million</p>
<p><b>Optional combined allotment for expedited households</b></p> <p>Sec. 828—Makes optional the combining of the first and second month food stamp allotments for households qualifying for expedited service who apply after the 15th of the month.</p>
<p>\$0</p>

<p><b>Failure to comply with other means-tested public assistance programs</b></p> <p>Sec. 829—Bars increased food stamp allotments when a household's benefits are reduced under a means-tested assistance program for failure to perform a required action. States may reduce the household's allotment by up to 25%.</p> <p>- \$150 million</p>
<p><b>Allotments for households residing in centers</b></p> <p>Sec. 830—States may divide a month's benefits between the center and an individual who leaves the center; permits states to require such residents to designate an authorized representative.</p> <p>- [Under \$500,000]</p>
<p><b>Operation of food stamp offices [and other state management issues]</b></p> <p>Sec. 835—Requires states to establish procedures to serve special-needs households; requires timely, accurate, and fair services; permits differing operating procedures among states. Deletes various requirements concerning application forms, in-person interviews, certification of homeless households, verification, nutrition information, mail issuance, and single interviews.</p> <p>Sec. 836—Deletes state training requirements for certification personnel.</p> <p>Sec. 837—Requires states to furnish information to law enforcement agencies on fugitives and parole violators.</p> <p>Sec. 838—Expands expedited service timetable from five to seven business days; eliminates categorical expedited service eligibility for the homeless.</p> <p>Sec. 839—Allows verbal fair hearing withdrawals.</p> <p>Sec. 840—Makes use of IEVS and SAVE optional.</p> <p>Sec. 840, - \$30 million; all others, \$0</p>
<p><b>Collection of overissuances</b></p> <p>Sec. 844—Replaces existing overissuance collection rules with provisions requiring states to collect by reducing future benefits, recovering from federal pay or income tax refunds, or any other means unless the state shows that means are not cost effective. Changes overissuance retention to 20% for nonfraud claims (other than agency errors) and to 35% for fraud collections.</p> <p>- \$165 million</p>
<p><b>Limitation of federal match [for "recruitment activities"]</b></p> <p>Sec. 847—Prohibits federal match for "recruitment activities" under outreach activities.</p> <p>- \$12 million</p>
<p><b>Work supplementation or support program</b></p> <p>Sec. 849—States may operate work supplementation or support programs that provide the value of benefits to employers who hire recipients and use the benefits to supplement their wages. Programs must comply with standards set by the Secretary, be for new employees only, and not displace employment of those who are not supplemented or supported. Requires states to describe how program recipients will be moved to nonsupplemented employment.</p> <p>+ \$130 million</p>
<p><b>Waiver authority; response to waivers</b></p> <p>Sec. 850—States may request waivers for welfare reform, work, or multiprogram conformity projects, subject to restrictions. No new cash-out projects may be approved, and no food stamp or E&amp;T funds may be transferred to other assistance programs. Projects must be time-limited; must not have any adverse effect on certain vulnerable populations nor on certain rights and procedures in the Food Stamp Act; may not have conditions based on "behavioral" activity such as a family cap or benefit time limit; and may not waive provisions of the Simplified Food Stamp Program option.</p> <p>The prohibition in current law against further restricting income or resource standards or benefit levels is removed; however, if the secretary finds that a proposed project would reduce benefits by more than 20% for more than 5% of households in the project, the project may not cover more than 15% of the caseload, nor operate for more than 5 years unless extended by the Secretary.</p> <p>Sec. 851—If not specifically prohibited above, USDA must approve, deny, or request clarification of waivers within 60 days, otherwise they are deemed approved. Waiver denials must be reported to appropriate congressional committees.</p> <p>\$0</p>

<b>Employment initiatives program (cash-out)</b>
Sec. 852—Allows states where 50 percent or more of the caseload received AFDC in 1993 to cash out food stamp benefits to households receiving both TANF grants and food stamps, and who have a member who has worked for at least three months in an unsubsidized job paying at least \$350 a month. States must increase benefits to compensate for state or local food sales taxes. States must provide a written evaluation of the initiative.
- \$11 million
<b>Reauthorization</b>
Sec. 853—Reauthorizes the program through FY 2002 in its present uncapped, individual entitlement form.
\$0
<b>Simplified Food Stamp Program option</b>
Sec. 854—Allows state option to operate statewide, or within subdivisions, a simplified Food Stamp Program for households composed entirely of TANF recipients, using TANF rules and procedures. "Mixed" households (at least one TANF recipient) may also participate with USDA approval. States may use TANF disqualification, penalty and sanction rules in the simplified Food Stamp Program; may standardize deductions; may not increase food stamp benefits when other public assistance benefits are decreased; must apply regular food stamp gross income standards to households in the simplified program; must operate under the regular QC system; and must have a system of hearings and adequate notice policies. States must develop a plan of operation which must be approved by the Secretary.
The Secretary will determine whether a state's simplified program plan is cost neutral. States will not be required to collect information on households not in the simplified program, and may request alternative accounting periods for calculating cost neutrality. States found not to be cost neutral have an opportunity to submit a corrective plan before plan authority is terminated.
The secretary is encouraged to work with states to test methods for applying a single set of rules to "mixed" households.
+ \$80 million

**Restricting welfare and public benefits for aliens**

**Sec. 401 – Non-qualified aliens ineligible for federal public benefits –** Aliens who are not "qualified aliens" (generally, illegal immigrants and nonimmigrants such as students) are ineligible for all federal public benefits, with limited exceptions for emergency medical services, emergency disaster relief, immunizations, certain housing benefits, etc.

**Sec. 402 – Limited eligibility of qualified aliens for certain federal programs –** Legal noncitizens who are "qualified aliens" (such as permanent resident aliens, refugees, asylees, etc.) are ineligible for SSI and food stamps until they attain citizenship. States have the option of also barring cash welfare, Medicaid, and Title XX benefits. Refugees, asylees, and aliens whose deportation has been withheld are excepted for 5 years after being granted their respective statuses. Also excepted are legal permanent residents who have worked (in combination with their spouse and parents) for at least 10 years, and noncitizens who are veterans or on active duty or their spouse or unmarried child. Current recipients made ineligible by this section will have their benefits terminated at their next review, but not later than one year after enactment.

**Sec. 403 – Five-year limited eligibility of qualified aliens for federal means-tested public benefits –** This section restricts most federal means-tested benefits (including food stamps, cash, Medicaid, SSI, and Title XX) for permanent resident aliens who arrive after the date of enactment for the first five years they are in the country. Exceptions are made for refugees, asylees, and aliens whose deportation has been withheld, and noncitizens who are veterans or on active duty or their spouse or unmarried child.

**Sec. 404 – Notification and information reporting –** Agencies administering TANF, SSI, or housing assistance must notify INS at least four times annually, and upon INS request, of any information they have about aliens they know to be unlawfully in the country.

**Secs. 411-412 – Non-qualified aliens are ineligible for state and local public benefits; states may limit the eligibility of qualified aliens for state and local benefits.**

**Secs. 421-423 –** The income and resources of a sponsor and the sponsor's spouse are taken into account (deemed available) for federal means-tested program eligibility until citizenship, unless the noncitizen has worked for at least 10 years. States may impose similar deeming requirements for state and local benefits. A sponsor's affidavit of support may be required on behalf of an alien seeking permanent residency, and the federal government can seek and enforce reimbursement from sponsors of any benefits received by the alien prior to citizenship.

**Sec. 431-434 –** The Attorney General must adopt regulations to verify the lawful presence of applicants for federal benefits no later than 18 months after enactment. States must have a verification system that complies with these regulations within 24 months of their adoption, and must authorize necessary appropriations. Removes any current restrictions regarding exchange between states and INS of information regarding the immigration status of an alien.

**Denial of assistance and benefits for certain drug-related convictions**

**Sec. 115 –** Individuals convicted of any drug-related felony (after the date of enactment) under federal or state law are ineligible for cash and food stamp benefits. Other members of a household in which such an individual resides may be eligible, but the individual's income and resources will be considered available to the household. Application forms must require a statement of whether any member has ever been convicted. States may opt out of this requirement through passage of a state law.

Date: 8/23/96 5:34pm

Subject: STATEMENT RE: ELIGIBILITY FOR ALIENS TO RECEIVE FOOD STAMPS  
THE WHITE HOUSE  
Office of the Press Secretary

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For Immediate Release

August 23, 1996

August 22, 1996

**MEMORANDUM FOR THE SECRETARY OF AGRICULTURE**

**SUBJECT: Eligibility of Aliens for Food Stamps**

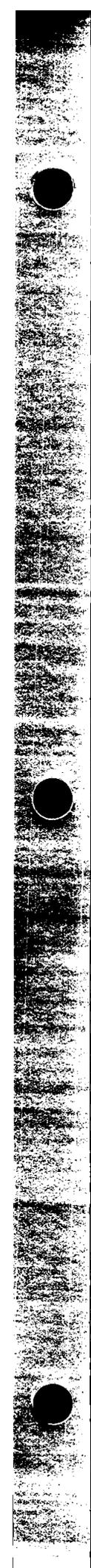
Under the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which today I signed into law, aliens receiving food stamps as of the date of enactment will continue to receive benefits until recertification of their eligibility, which shall take place not more than 1 year after enactment of the law. The results of the certification, including decisions as to an individual's immigration classification, veteran status, or work history, will determine whether the individual remains eligible for benefits under the Food Stamp program. Implementation of these new procedures will pose a substantial challenge for all involved Federal and State agencies.

To ensure that eligibility determinations are made fairly, accurately, and effectively, I direct you to take the steps necessary under your authority to permit the 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.

I further direct you to notify the States of the actions you have taken.

**WILLIAM J. CLINTON**

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ADMINISTRATION FOR CHILDREN AND FAMILIES  
Office of the Assistant Secretary, Suite 600  
370 L'Entant Promenade, S.W.  
Washington, D.C. 20447

Dear CCDBG Lead Agency Administrator:

As you know, the President has just signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title VI of the statute creates a new, integrated child care program under the Child Care and Development Block Grant. We are very excited that the program unites three child care funding streams in a way that validates the early effort of many States to construct a unified, seamless child care system out of multiple programs that often had conflicting rules. Attachment A summarizes the key provisions of this new Title. For administrative ease, we will refer to the combined three funding streams as the Child Care and Development Fund.

Title VI has an effective date of October 1, 1996. On that same date Title I of PRWORA discontinues the former title IV-A child care funding streams related to Aid to Families with Dependent Children (AFDC child care, and Transitional and At-Risk child care). The funding for those three programs has been reconfigured as a single appropriation with a Mandatory Fund and a Matching Fund component. The Mandatory Fund is approximately equal to the amount of Federal funds States previously received for their AFDC child care, and Transitional and At-Risk child care programs. No State match is required for use of the mandatory funds. A State may only use Matching Funds, however, if it meets the following three requirements: obligating all Mandatory Funds by the end of the fiscal year, expending from the State's own funds an amount that is no less than the maintenance of effort (MOE) amount on the table found at Attachment B of this letter, and providing the State's share of the Matching Funds.

The statute provides that "notwithstanding any other provisions of law, [these] amounts . . . shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990, integrated by the State into the programs established by the State under such Act, and be subject to the requirements and limitations of such Act."

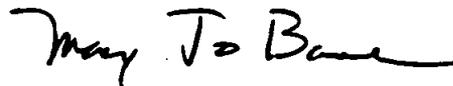
I am writing to you, therefore, to describe the process we have developed so that your State can start receiving the new child care funds as quickly as possible. This letter also provides some initial information about the process for continuing to access those funds.

- o First, we are asking that you submit to us, no later than September 20, 1996, a simple interim application that will serve as the planning document to enable us to provide you with the initial installment of the Mandatory and Matching Funds for FY 1997 that become available to you on October 1. The details of this application are spelled out in Attachment C. In the near future, we will provide you with additional guidance on the child care funding process under the revised statute. We cannot begin issuing grants until we receive this application.

- o **Second, as required by the statute, grantees should begin engaging in a comprehensive planning process, including a public hearing, that will culminate in a final, comprehensive child care plan and application due to us by July 1, 1997. The provisions of the plan will take effect on September 30, 1997, with the FY 1997 discretionary funds released on September 30, 1997, and will cover your integrated child care program for the following two years. Since the experience of so many States suggests that the quality and comprehensiveness of this planning process is extremely important to optimizing child care in your State and leveraging local resources, we will be consulting with you and your child care administrators regarding the nature and timing of the planning process and the kind of assistance we can provide.**

**Again, we at the Administration for Children and Families are extremely excited by the integrated child care program envisioned by the new statute. We believe that this program offers a heretofore unparalleled opportunity to serve children and their parents for whom child care is a critical element in family growth and stability.**

Sincerely,



**Mary Jo Bane  
Assistant Secretary  
for Children and Families**

**Attachments:**

- A - Key provisions of the Child Care and Development Block Grant Amendments of 1996**
- B - Preliminary allocation tables**
- C - Interim application process**
- D - ACF regional administrators**

## **Child Care and Development Block Grant Amendments of 1996**

### **Funding**

The Amendments authorize and appropriate a total of \$13.9 billion in mandatory funding for FYs 1997-2002 and authorize \$7 billion in discretionary funding for FYs 1996-2002. States would receive approximately \$1.2 billion of the mandatory funds each year as a capped entitlement based on federal IV-A child care expenditures in each state in FY94, FY95 or the average from FY 92-94 (whichever is greater).

The remainder of the mandatory funds (after an allocation to tribes) would be available for state match (at the 1995 FMAP rate) based on the At-Risk allocation formula . In order to be eligible for these new matching funds, a state must maintain 100% (maintenance of effort) of FY94 or FY95 state child care expenditures (whichever is greater) AND exceed the state set-aside described above.

Total funding, including mandatory funds and \$1 billion in discretionary funds for each year:

\$ 2.967 billion for FY 1997  
\$ 3.067 billion for FY 1998  
\$ 3.167 billion for FY 1999  
\$ 3.367 billion for FY 2000  
\$ 3.567 billion for FY 2001  
\$ 3.717 billion for FY 2002

Once funds are transmitted to Grantees, all funding will be subject to the requirements of the Child Care and Development Block Grant Act, as amended.

### **Effective Date**

The effective date of the Child Care and Development Block Grant Amendments is October 1, 1996. The authorization of appropriations for the discretionary funds takes effect on the date of enactment.

### **Eligibility**

Changes family income limit from 75% of State Median Income to 85%.

### Lead Agency

The Amendments retain CCDBG lead agency requirements, but allows the lead agency to administer the program through other "governmental or nongovernmental" agencies.

### Application and Plan

Under the Amendments, the parental choice provisions (requiring that parents be given the option to enroll their children in grant or contract slots or to receive a certificate) will apply to the entire program.

The Amendments expand the current law requirement for a public hearing on the state plan to specify that the state must provide sufficient time and statewide distribution of notice of the hearing.

### Administrative Costs

The Amendments limit administrative costs to 5% of the aggregate funding and specifies that administrative costs shall not include the costs of providing direct services.

Report language clarifies that the Secretary should issue regulations that define and determine true administrative costs prior to the deadline for submission of State plans. Eligibility determination and re-determination, preparation and participation in judicial hearings, child care placement, the recruitment, licensing, inspection, reviews and supervision of child care placements, rate setting, resource and referral services, training, and the establishment and maintenance of computerized child care information should not be considered administrative costs.

### Consumer Education

The Amendments replace the current law requirement that specific consumer education information be made available (concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State) with a general requirement that the state will collect and disseminate information that will "promote informed child care choices."

### Quality

The Amendments set aside not less than 4% of total funds for activities that are "designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services.)" This provision replaces the current law description of activities to improve quality (r&r; grants or loans to meet state and local standards; monitoring of compliance with licensing and regulation; training; and compensation).

### Compliance with State Licensing Requirements

The Amendments replace current law requirements that the State assure that all child care providers comply with state and local licensing or regulatory requirements, including registration, with a requirement that states have in effect licensing requirements and provide descriptions of the requirements and how they are enforced. The Amendments eliminate registration requirements.

### Health and Safety

The Amendments retain current law CCDBG Health and Safety requirements and apply them to all of the child care funds.

### Payment Rates

The Amendments add a requirement that states provide a summary of the facts used to determine that rates are sufficient to ensure equal access.

It also eliminates the requirement that payment rates take into account variations in the costs of providing care in different settings and to different age groups, and the additional costs of providing child care for children with special needs.

### Tribes

**Set-Aside:** The Amendments require a minimum set-aside for Tribes of 1% of the aggregate funding and allows the Secretary to set aside up to 2%.

**Minimum Standards:** The Amendments add a requirement that the Secretary, in consultation with tribes and tribal organizations, shall develop minimum child care standards for tribes and tribal organizations.

**Construction or Renovation of Facilities:** The Amendments give the Secretary authority to allow Tribes or tribal organizations to use program funds for construction or renovation purposes as long as that will not result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of services provided in the preceding fiscal year. The Secretary is directed to develop and implement uniform procedures for the solicitation and consideration of requests to use funds for this purpose.

**Reallotment:** The Amendments add a provision giving the Secretary authority to reallocate any portion of tribal set-aside grants to other tribes or organizations if she determines that the funds are not being used in a manner consistent with the statute and time period for which the grant or contract is made available.

**Other Organizations:** The Amendments add under the definition of tribal organizations, "Other organizations", which includes a Native Hawaiian Organization and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

### Territories

The Amendments eliminate the Trust Territory of the Pacific Islands from the list of eligible Territories and Possessions. The Amendments do not include territories in the definition of States eligible for mandatory and matching funds.

### Enforcement

The Amendments eliminate the authority of the Secretary to terminate payments for failure to comply with the state plan or any provision of the law and replaces it with disallowance authority for improperly expended funds.

### Reports & Audits

The Amendments replace the current law annual reporting requirement with requirements that states collect a specific list of data on a monthly basis and submit it to the Secretary quarterly. It also requires biannual reports from the states (beginning 12/31/97 and every six months after) containing other aggregate data. The data elements are substantially broader than current law reporting requirements.

The Amendments also require the Secretary to submit biennial reports to Congress beginning in 1997.

While the Amendments maintain current law audit requirements, it requires only that the audit entity be independent of the State, replacing the requirement that it be independent of "any agency administering activities that receive assistance under this subchapter."

### Other Definitions

**Child Care Certificates:** The Amendments add child care deposits as an allowable use of a child care certificate.

**Eligible Child:** Changes family income limit from 75% of State Median Income to 85%.

**Eligible Child Care Provider:** Adds great grandparents and non-resident siblings to list of eligible providers and eliminates the requirement that relative providers be registered.

**Other Organizations:** The Amendments add under the definition of tribal organizations, "Other organizations", which includes a Native Hawaiian Organization and a private

nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

#### Miscellaneous Deletions

The Amendments eliminate the CCDBG sections regarding the rationale for reductions in standards, review of state licensing and regulatory requirements, and supplementation/supplantation.

Strikes current law language specifying issues that may be considered during consultation with local governments on development of the State plan.

The Amendments eliminate the requirement that states dedicate funds to early childhood development or before and after school child care programs.

#### **Related Child Care Provisions in Temporary Assistance for Needy Families (TANF)**

##### Repeals

Repeals Title IV-A Child Care programs, thus eliminating guaranteed child care for needy individuals.

##### Funds Transfer

The TANF block grant allows states to transfer up to 30% of the temporary assistance funds into the child care or social services block grants. No more than a third of this amount may be used for the Social Services Block Grant.

##### Failure to Provide Child Care

The TANF block grant prohibits states from sanctioning a single parent who fails to participate in work because she cannot access child care for a child under age 6. The Secretary can impose a penalty of up to 5% of the family assistance grant amount on states that fail to maintain assistance to adult single custodial parents who cannot obtain child care for a child under age 6. The amount of the penalty will be based on the severity of the failure.

## Meeting Participation Rates/Work Requirements

### **Meeting Work Requirements**

Single parents with a child under the age of 6 are deemed to be meeting work participation requirements if the parent is engaged in work for 20 hours/week.

The TANF block grant adds to the definition of work activities: "the provision of child care services to an individual who is participating in a community service program."

### **Sense of the Congress**

The TANF block grant includes a Sense of the Congress that encourages each state to assign the highest priority to requiring adults in 2-parent families and adults in single parent families that include older preschool or school-aged children to be engaged in work activities.

### **Two-Parent Families**

With the exception of a disabled parent or families with a severely disabled child under the parent's care, the TANF block grant requires that if child care is provided by the State, both spouses in a two-parent family must work, but the second parent must only work a minimum of 20 hours per week.

### **Optional Exemption**

The TANF block grant includes a state option to exempt single parent families with a child under the age of 12 months from engaging in work. The state may disregard the parent in determining work participation rates for up to 12 months.

### Title XX

The welfare reform bill reduces Title XX funding by 15% until FY 2002.

## ESTIMATED FY 1997 STATE ALLOCATIONS FOR THE CHILD CARE AND DEVELOPMENT FUND

<u>State</u>	<u>Mandatory Funds 1/</u>	<u>State Share Requirement (MOE) 2/</u>	<u>Matching Funds 3/</u>	<u>State Share of Matching Funds 4/</u>	<u>Discretionary Funds 5/</u>
Alabama	\$16,441,707	\$6,896,415	\$11,097,223	\$4,654,690	\$20,236,065
Alaska	3,544,811	3,544,811	2,028,753	2,028,753	1,906,673
Arizona	19,890,997	10,065,324	12,763,447	6,458,612	18,512,030
Arkansas	5,300,283	1,886,541	6,627,908	2,359,086	11,896,059
California	92,945,658	92,945,659	96,164,172	96,164,172	120,466,746
Colorado	10,173,800	8,985,899	10,285,029	9,084,141	11,059,692
Connecticut	18,738,357	18,738,357	8,559,338	8,559,338	7,224,585
Delaware	5,179,351	5,179,351	1,900,182	1,900,182	2,111,607
District of Columbia	4,720,514	4,720,514	1,286,615	1,286,615	1,979,409
Florida	43,026,524	33,424,300	35,964,991	27,938,689	50,046,337
Georgia	36,522,787	22,167,213	20,202,308	12,261,629	32,157,871
Hawaii	5,220,634	5,220,634	3,323,894	3,323,894	3,662,385
Idaho	2,867,578	1,175,819	3,492,470	1,486,814	5,133,856
Illinois	59,609,473	59,609,473	33,025,568	33,025,568	37,705,575
Indiana	26,181,999	15,356,949	15,294,176	8,970,739	18,065,411
Iowa	8,877,745	5,299,427	7,298,922	4,356,974	9,229,278
Kansas	9,811,668	6,672,989	7,151,279	4,990,112	8,898,861
Kentucky	16,701,803	7,274,356	9,863,568	4,312,299	17,942,749
Louisiana	13,864,552	5,219,484	12,714,858	4,786,667	26,680,153
Maine	3,137,105	1,928,151	3,116,236	1,806,728	3,873,126
Maryland	23,301,407	23,301,407	13,667,019	13,667,019	13,203,338
Massachusetts	44,973,373	44,973,373	15,376,582	15,376,582	14,395,116
Michigan	32,081,922	24,360,587	26,216,778	19,907,040	29,217,891
Minnesota	23,367,543	19,690,395	12,863,121	10,838,963	13,483,420
Mississippi	6,293,116	1,715,431	7,756,796	2,114,413	17,359,322
Missouri	24,668,568	16,548,755	14,257,605	9,564,625	18,227,212
Montana	3,190,691	1,315,298	2,371,213	977,485	3,212,536
Nebraska	11,338,103	6,955,059	4,539,602	2,976,295	5,536,815
Nevada	2,580,422	2,580,422	4,298,070	4,298,070	4,133,817
New Hampshire	5,051,606	5,051,606	3,102,286	3,102,286	2,566,956
New Jersey	31,662,653	31,662,653	20,975,405	20,975,405	18,639,612
New Mexico	8,702,694	3,034,328	5,213,342	1,898,024	9,446,628
New York	104,893,534	104,893,534	48,586,869	48,586,869	57,492,936
North Carolina	69,639,228	37,978,185	18,951,153	10,335,129	28,149,318
North Dakota	2,506,022	1,017,135	1,720,613	782,825	2,344,978
Ohio	70,444,793	45,628,354	29,558,734	19,145,722	35,119,219
Oklahoma	24,909,979	10,650,305	8,994,937	3,845,801	15,232,903
Oregon	19,408,790	11,714,991	8,189,250	4,942,966	9,972,899
Pennsylvania	55,336,804	46,628,930	30,311,476	25,541,621	32,711,417
Puerto Rico					24,955,835
Rhode Island	6,633,774	5,321,126	2,525,420	2,025,706	2,720,600
South Carolina	9,867,439	4,087,361	9,805,962	4,061,896	18,120,663
South Dakota	1,710,869	802,897	2,095,014	983,173	3,155,183
Tennessee	37,702,045	18,975,714	13,556,698	6,823,185	20,848,597
Texas	59,844,129	34,681,426	57,033,621	33,052,654	92,920,868
Utah	12,591,564	4,474,925	6,836,604	2,467,430	9,395,745
Vermont	4,148,060	2,804,331	1,518,524	978,227	1,714,663
Virginia	21,328,766	21,328,766	17,051,693	17,051,693	19,258,060
Washington	41,948,341	38,768,113	14,818,125	13,694,719	15,904,935
West Virginia	8,840,727	2,971,393	4,132,279	1,406,969	7,719,175
Wisconsin	24,511,351	16,470,677	13,858,837	9,312,601	14,923,937
Wyoming	2,815,041	1,553,781	1,347,236	795,656	1,626,938
<b>State Total</b>	<b>\$1,199,050,700</b>	<b>\$908,252,925</b>	<b>\$723,691,800</b>	<b>\$551,286,747</b>	<b>\$972,500,000</b>

**NOTE:** Mandatory, Matching and Discretionary funds have been reduced by one quarter of one percent for technical assistance, pursuant to 45 CFR 98.60(a)(1). Mandatory and Matching Funds have been reduced by the tribal set-aside. Discretionary Funds have been reduced by the tribal set-aside. Territories are not eligible for Mandatory and Matching Funds.

**1/** Mandatory Funds are allocated based on the Federal share of expenditures for IV-A child care in FY 1994, FY 1995, or the average of FY 1992-1994, whichever is greatest. Allocations are based on expenditure data as of Feb. 28 and April 28, 1995.

**2/** Preliminary calculation based on available aggregate data; may need to be adjusted. In order to be eligible for Matching Funds, States are required to maintain the greater of FY 1994 or FY 1995 expenditures for IV-A child care.

**3/** Matching Funds are allocated according to the proportion of children under age 13 using Census data as of July 1995 (in accordance with the At-Risk Child Care program allocation formula). Each State's maximum allocation is shown; unused funds will be redistributed among States.

**4/** State expenditures above the MOE level are matched based on the FY 1995 FMAP rate.

**5/** Discretionary allocation is preliminary and based on the \$1 billion in authorized funds. Final State allocations may change. For Discretionary Funds, Puerto Rico is included in the State allocation formula.

August 22, 1996.

Attachment C

**Interim Application and Planning Document  
Child Care and Development Block Grant Amendments of 1996**

To begin accessing the funds provided under title VI of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, a letter of application, signed by the Chief Executive Officer of the lead agency for the Child Care and Development Block Grant (CCDBG), containing the following information is due to the appropriate addressees (listed below and in Attachment D) no later than September 20, 1996:

1. The name of the lead agency responsible for administering the CCDBG. (Sec. 658D(b), Child Care and Development Block Grant Act of 1990; Sec. 418, Social Security Act, as amended by PRWORA);
2. The Employer Identification Number (EIN) and appropriate suffix of the lead agency named under 1. above;
3. The name, address, telephone number, and, if applicable, FAX number of a contact person within the lead agency;
4. A brief description of how your State will operate an integrated child care program in compliance with Section 418 of the Social Security Act and the Child Care and Development Block Grant Act as amended. Include the activities to improve the quality of child care your State will carry out in FY 1997. Use section 658E(c), Requirements of a Plan, of the Child Care and Development Block Grant Act of 1990, as amended by Title VI of PRWORA, as a guide for elements of information to be included.
5. Estimates of the percentage of the Mandatory Funds that you will need and are requesting each quarter of FY 1997. There is no State matching requirement for these funds. (Attachment B contains preliminary allocation tables.)
6. Estimates in dollars of the Matching Funds that you will need and are requesting each quarter for FY 1997. These funds represent only the Federal share of expenditures for which the State must contribute its share. The Federal Medical Percentage in effect for FY 1995 will be used to determine the Federal share.

**Policy Note** — Three requirements apply to the Matching Funds. If a State fails to meet any one of the three requirements, the Matching Funds awarded to the State will be disallowed.

- o A State must obligate by the end of the fiscal year all of its Mandatory Funds. (This does not mean that the State must use all of its Mandatory Funds first. The State could use Matching Funds and Mandatory Funds simultaneously. But, by the end of the fiscal year it must have obligated all of its Mandatory Funds.)

- o The State must expend from its own funds an amount that is no less than the non-Federal share amount included as the maintenance of effort (MOE) amount on the attached table.
- o The State must provide its share of the Matching Funds.

By submitting Matching Funds estimates, a State certifies that it has available, or will have available, the State's share of the Matching Funds, that it will expend the required non-Federal share amount as discussed above, and that it will obligate its Mandatory Funds by the end of the fiscal year.

7. The following assurances and certifications --

- o in administering the integrated child care program, the grantee will follow the provisions of the Child Care and Development Block Grant Act of 1990, as amended;
- o in administering the integrated child care program, the grantee will follow the regulations at 45 CFR Parts 98 and 99 unless those regulations are contradicted by the amendments to the Child Care and Development Block Grant Act of 1990 amended by the PRWORA;
- o the parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided is given the option either:
  - (a) to enroll such child with a child care provider that has a grant or contract for the provision of service; or
  - (b) to receive a child care certificate;
- o in cases in which the parent(s) elects (elect) to enroll the child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and
- o the child care certificate offered to parent(s) shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract.
- o the grantee has procedures in place to ensure that providers of child care services for which assistance is provided under the Child Care and Development Fund afford parents unlimited access to their children and to the providers caring for their children during the normal hours of operation of such providers and whenever such children are in the care of such providers;

- o the grantee maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;
- o the grantee will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices;
- o the grantee has in effect licensing requirements applicable to child care services provided within the State;
- o there are in effect within the State (or other areas served by the grantee), under State or local law, requirements designed to protect the health and safety of children; these requirements are applicable to child care providers that provide services for which assistance is made available under the Child Care and Development Fund;
- o procedures are in effect to ensure that child care providers that provide services for which assistance is provided under the Child Care and Development Fund comply with all applicable State or local health and safety requirements;
- o payment rates under the Child Care and Development Fund for the provision of child care services will be sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-state area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs.

Your letter of application must be received no later than September 20, 1996, by the:

ACF Regional Administrator  
DHHS/ACF  
(See attachment D for addresses.)

A copy must be sent to the:

Commissioner  
Administration on Children, Youth,  
and Families,  
Attention: Child Care Bureau  
Mail Stop 320F  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

## ACF REGIONAL ADMINISTRATORS

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Seattle, WA 98121  
(206) 615-2547  
  
Electronic mail address:  
DMCCONNELL@ACF.DHHS.GOV

## FUNDS FOR CHILD CARE

The child care block grant is a fund comprised of three different funding streams with different matching requirements, effective dates and processes for federal appropriations. However, despite the multiple sources of funding, the allocation of funds, earmarks and criteria are the same for all funds inside of the child care block grant. In addition, Title XX, the Social Services Block Grant, that is used by many states as a funding source for child care, is reduced by 15% until FY2002.

### The Three Types of Funding Streams that are Pooled into the Block Grant

1) Federal Discretionary Funds: \$7 billion authorized in discretionary funding from FY 1996-20002. Formerly known as the Child Care Development Block Grant, \$1 billion dollars is authorized for each fiscal year. Each year, the \$1 billion is subject to the Congressional appropriations process.

These funds are forward funded and the discretionary funds will flow to states at the end of the fiscal year, September 30. For example, federal fiscal year 1996 funds are appropriated on September 30, 1996. Federal fiscal year 1997 funds will not be available to states until September 30, 1997. This is particularly confusing when trying to implement a new program. The \$1 billion available to states on September 30, 1996 will not be subject to any of the rules in the new welfare reform law. Instead, the earlier rule and regulations for the child care and development block grant apply.

2) Federal Mandatory Funds: \$13.9 in mandatory funds are available from FY1997-2002. Mandatory funds are capped and remain an entitlement to the states. Each state is guaranteed a base allocation of mandatory child care funds each year from a pool of \$7.2 billion of the total mandatory funding stream. State allocations are based on one of three options, whichever is greater: 1) the annual average of federal IV-A child care grants to the state between FY92-94; 2) the federal IV-A child care grants to the state in FY94; or 3) the federal IV-A child care grants to the state in FY95.

3) Federal Mandatory Funds that Require a State Match: To be eligible for mandatory child care matching funds a state must obligate its base allocation by

the end of the fiscal year and meet maintenance of effort requirements (see below). Approximately \$6.7 billion of the total mandatory funding stream is available in matching funds. States can match these federal funds at their FY95 Medicaid matching rate (FMAP). Each state will receive their matching funds at the beginning of the federal fiscal year based on their estimates of their need for matching funds and their population of children under 13 years of age. At the end of the fiscal year, HHS will perform an audit of state matching fund expenditures and states will have to repay misused or unused matching funds. All unused funds will be redistributed to qualifying states.

4) State Maintenance of Effort: To qualify for child care matching funds, states must maintain 100% of their IV-A child care expenditures for either FY94 or FY95, whichever is higher.

### SINGLE CRITERIA FOR CHILD CARE BLOCK GRANT

Entitlement: There is no federal guarantee or individual entitlement to child care. Nor is there a federal guarantee of transitional child care. However, many states have existing state statutes providing a child care guarantee to those on welfare who are required to work or for those who leave welfare for work. The absence of a federal guarantee does not necessarily eliminate the remaining state statute. Some states also have waivers that allowed them to guarantee up to two years of transitional child care.

Earmarks and Set-A-Sides: All federal child care funds (discretionary, mandatory and matching) are subject to the same earmarks and set-asides. A minimum of 1% of aggregate funding is set-aside for Tribes and the Secretary can set-aside up to 2%. Each state must then meet limited requirements for administrative costs and quality that are earmarked from all three funding streams. The law limits the funds available for administrative costs to 5%. Report language allows the Secretary to define administrative costs and a range of activities including but not limited to licensing, inspection, establishment and maintenance of computerized child care information and resource and referral service that are not considered administrative costs. States must spend not less than 4% of all of their total funds on quality.

Transferability into the Child Care Block Grant: States may transfer up to 30% of their TANF block grant to the child care block grant.

## Reporting Requirements

New Bill (Conference Report)	CCDBG Old Requirements ACF 700 (Aggregate Report)	Title IV-A Non JOBS ACF 115 (Aggregate Report)	Title IV-A JOBS ACF 108 (Disaggregate - Sample Report)
Bi-annual Report (aggregate) =====			
1. Number of child care providers receiving funds by type of care			
2. Full monthly cost of services by type of care and proportion paid by subsidy	Average hourly subsidy paid for child care by type of provider	Average monthly subsidy paid for child care by type of provider	Average monthly subsidy paid for child care by type of provider
3. Number of payments by type of payment (vouchers, contract, cash, and disregard, etc.) by type of care	Number of children receiving care by certificate or contracts/grants		
4. Manner of consumer education provided and number of parents affected			
5. Unduplicated number of children and families served	Unduplicated number of children and families served.	Average monthly number of families and children receiving care	Average monthly (duplicated count) of Number of families and children served
Quarterly Report (unaggregated monthly data) =====			
1. Family income by source (employment, IV-A, cash assistance, housing assistance, food stamps, and other assistance)	Family income in relationship to poverty levels	Number of families with and without earnings	
2. County of Residence of children receiving child care			County FIPS code
3. Gender of children receiving child care			
4. Race of children receiving child care			
5. Age of children receiving child care	Age of children receiving care		Date of birth for children receiving care
6. Whether the family has only 1 parent			Number of adults in the family
7. Number of months the family received child care benefits		Number of families by number of months receiving care	
8. Type of child care (center, home, etc.)	Children served by type of care	Families served by type of care	Children served by type of care
9. Whether child care provider is a relative	Children served by type of provider, relative/non-relative	Number of families, relative/non-relative	Children served by relative
10. Cost of child care per family	Average hourly amount paid for child care	Average monthly amount paid for child care	Average monthly amount paid for child care
11. Average hours per week of child care	Average hours per week of child care		

CHILD CARE BUREAU / ADMIN. FOR CHILDREN AND FAMILIES - 4115

**CHILD CARE AND THE TRANSITION OFF WELFARE**

By Scott Groginsky

*Child care subsidies help poor mothers get and keep a job.*

Welfare reform has focused attention on evidence that child care is integral to moving welfare families into the workforce. The U.S. General Accounting Office (GAO) found that child care subsidies make a decisive difference in the probability of poor mothers working. Yet 36 states have child care waiting lists for eligible parents, some close to two years long and some containing 20,000 or 30,000 names. In Minneapolis, nearly a quarter of low-income families waiting for child care subsidies had to quit their jobs or training and go back on welfare. Similar results were found in other states.

*Requirements that welfare recipients work will increase the need for child care.*

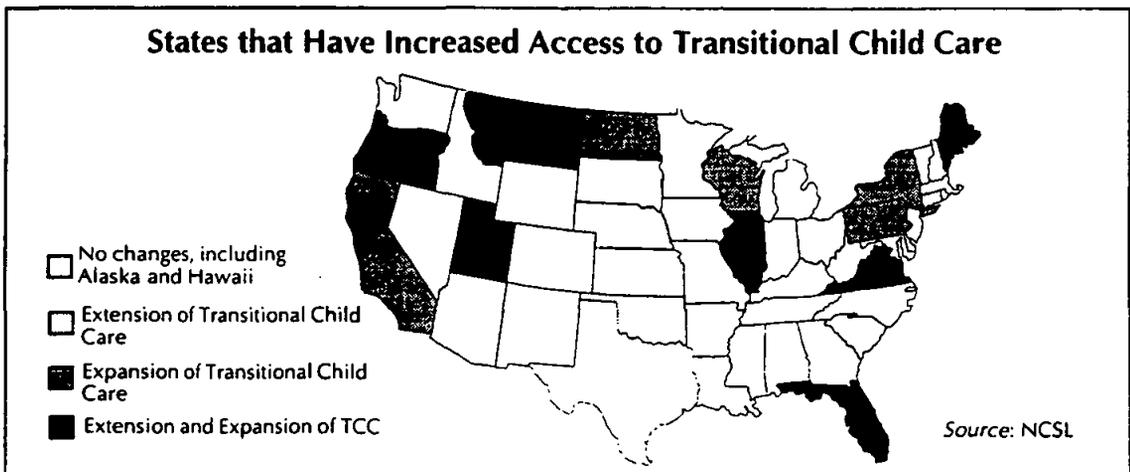
Proposed federal welfare reforms would consolidate child care programs and give states more flexibility. But they would also increase the need for child care because states would have to place more recipients in jobs. The congressional proposal would have probably underfunded child care, essentially requiring states to pay for the increased services. The Congressional Budget Office estimated that only 10 to 15 states would be able to meet the proposed federal work requirements because of the low level of federal funding for child care.

Many states already strapped for AFDC child care money have responded by exempting families from work requirements rather than increasing spending. Federal reforms would allow parents with very young children to be exempt from work requirements. Many states have increased the amount of child care money paid to welfare families by using federal funds primarily intended to support working poor families. Pointing to this issue, the GAO reported that states "may have to reconsider funding priorities and push to develop new sources of child care for both welfare recipients and the working poor alike."

*Three out of every four poor children have unsafe child care.*

The reliability and safety of child care are also key factors for welfare reform participants' success in attaining self-sufficiency, according to new research on CALIFORNIA's program. The evidence indicates that welfare families and those in poverty lack good care. A recent multistate study shows that three out of every four low-income children have unsafe and unresponsive care. Other research links good quality care with better cognitive and social development in children. These studies confirm that states' child care policies affect the next generation of workers as well as the current one.

**States that Have Increased Access to Transitional Child Care**



Source: NCSL

## State Actions

When Congress enacted welfare reform in 1988, it provided a safety net for families who could leave welfare for work, but still needed child care to keep their jobs. Based on state initiatives in **MASSACHUSETTS** and **NEW JERSEY**, Congress granted former AFDC recipients a year of Transitional Child Care (TCC) to ease the path toward self-sufficiency and prevent a return to welfare. A number of states have since extended TCC for longer than a year, expanded eligibility or arranged other child care assistance for former TCC recipients.

**UTAH**'s "single parent employment program" demonstrates that significant TCC reforms can have big payoffs. More families stayed off welfare than the national average, partly because the state made more transitional care available. **UTAH** also eliminated the one-year time limit, linked coverage to income eligibility and removed copayments in certain cases. Other states have eased the restrictions in federal rules.

Fifteen states have extended the one-year TCC time limit, most to two years. **MAINE** expanded TCC eligibility by covering families who find jobs soon after entering AFDC. Several states have provided other child care funds for families when they lose TCC after 12 months. **IOWA** enacted legislation in 1995 that placed families with the lowest incomes and those working the most hours at the head of the waiting list.

Other states enacted legislation to ensure adequate reimbursement for child care. Low reimbursement has long been cited as a reason for the inadequate supply and poor quality of child care. Prompted by a loss of infant care providers, **CALIFORNIA** increased reimbursement rates for infants and toddlers in low-income child care. **NEBRASKA** established a floor (60th percentile of the local market rate) for low-income child care reimbursement in 1995 after rates dropped significantly over the previous three years. **ILLINOIS** now directly reimburses child care providers instead of merely increasing recipients' AFDC grants by disregarding their earnings. This change was in response to a study that identified the previous system as a barrier to employment since it did not cover the costs of care. The new system also resulted in more reliable payments to providers and a 58 percent increase in working AFDC families in the program's first eight months.

Several state legislatures have recognized the importance of child care in implementing their tougher work requirements. **MARYLAND** exempted welfare parents from work requirements if they care for a child under age 3. **MASSACHUSETTS** exempted welfare families with children under school age.

## Selected References

- Smith, Shelley; Mary Fairchild; Scott Groginsky. *Early Childhood Care and Education: An Investment That Works*. Denver, Colo.: National Conference of State Legislatures, February 1995.
- U.S. General Accounting Office. *Welfare to Work: Child Care Assistance Limited: Welfare Reform May Expand Needs*. Washington, D.C., September 1995.

## Contacts for More Information

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*Transitional Child Care was meant to ease the path toward self-sufficiency.*

*Low reimbursement rates are one cause of the inadequate supply and poor quality of child care.*





**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734 Analysis:  
September 4, 1996**

PROGRAMS	PROVISIONS
<p><b>CASH ASSISTANCE (TEMPORARY ASSISTANCE TO NEEDY FAMILIES, OR TANF)</b></p>	<ul style="list-style-type: none"> <li>• States may design own cash benefit program, including eligibility requirements. Effective date of TANF is July 1, 1997 although states can accelerate this effective date with an earlier submission of their state plan to the Secretary.</li> <li>• Most penalties (including failure to report) are effective the later of July 1, 1997 or 6 months after the secretary receives a state plan.</li> <li>• Administrative Cap – A 15% administrative cap on state's use of TANF funds for administrative activities. Information technology and computerization needed for tracking and monitoring recipients is not included in the 15% cap.</li> <li>• A State may not use more than 30% of the amount of any grant made to the State under section 403(a) for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law: (A) Title XX of this Act; (B) The Child Care and Development Block Grant Act of 1990.</li> <li>• Advanced Planning Document (APD) requirement is eliminated through the block grant.</li> <li>• Data Collection – States must collect monthly, and report quarterly disaggregated information on families receiving assistance under the TANF, including: family's county of residence; if a family member is disabled; ages of family members; number of family members and relation of each to the youngest child; employment status and earnings; marital status of adults; race and educational status of adults; race and educational status of each child; if the family receives subsidized housing; medical assistance under Title XIX; food stamps; subsidized child care; amount of assistance (child care and food stamp) received; number of months assistance received; if adults participated in work and the hours spent education, subsidized private sector employment, unsubsidized employment, public sector employment, work experience, community service, job search, job skills or on the job training, or vocational education; any amount of unearned income, the citizenship of members of the family; and from a sample of closed cases if the family left the program due to employment, marriage, sanctions, state policy, or the time limit.</li> </ul> <p>(continued next page)</p>
<p><b>ADMINISTRATIVE CAP</b></p>	
<p><b>APD REQUIREMENTS</b></p>	
<p><b>DATA COLLECTION</b></p>	

**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734**

PROGRAMS	PROVISIONS
<p><b>CASH ASSISTANCE</b> (continued)</p> <p><b>OUTCOME MEASURES</b></p> <p><b>CONTRACTING</b></p> <p><b>PENALTIES</b></p> <p><b>TRIBES</b></p> <p><b>CHALLENGES</b></p>	<ul style="list-style-type: none"> <li>• Sampling – States may use scientifically acceptable sampling methods approved by the Secretary. The Secretary may develop and implement procedures for verifying quality of data submitted by states.</li> <li>• Not later than 1 year after the date of the enactment of the Reconciliation Act of 1996 the Secretary, in consultation with the National Governors Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded to achieve the goals set forth in section 401(a).</li> <li>• Other Reporting Requirements – States also are required to submit reports on: use of federal funds to cover administrative costs and overhead; state expenditures on programs for needy families; non custodial parents in work activities; and transitional services.</li> <li>• Requires by 9/30/98 reporting of outcome measures that differ from those in current law.</li> <li>• States are allowed to contract with "charitable, religious, or private organizations" to provide services under TANF. Contracting does not exempt states from data collection and reporting requirements, regardless of the systems capacity of such organizations. Contracting organizations are subject to audits as are other contractors.</li> <li>• Penalties:                      Failing to report – If the Secretary determines that a State has not, within 1 month after the end of a fiscal quarter, submitted the report required for the quarter, the Secretary shall reduce the grant for the immediately succeeding fiscal year by an amount equal to 4 % of the State family assistance grant. If the report is submitted by the state before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required the Secretary shall rescind the penalty imposed on a state.                      IEVS – 2% for failure to participate in the Income and Eligibility Verification System. The Secretary shall reduce the grant for the immediately succeeding fiscal year by an amount no more than 2% of the State family grant.</li> <li>• Indian Tribes -- Tribes are subject to all of the data collection/reporting requirements as imposed upon states under the TANF.</li> <li>• Prohibitions to providing cash assistance that will require new complex interfaces include:                      Five year life-time time limit;                      Fugitive felons; probation and parole violators;                      Individuals who have misrepresented residence in order to receive benefits for 10 years;                      Work participation rate requirement                      Family cap at State option,                      Felony drug convictions; and                      Deeming and denial of legal non citizens.</li> </ul>

**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734**

PROGRAMS	PROVISIONS
<p><b>CHILD CARE</b></p> <p><b>ADMINISTRATIVE CAP</b></p> <p><b>REPORTING</b></p>	<ul style="list-style-type: none"> <li>• Title IV-A and CCDBG funds consolidated under one block grant with three funding streams (discretionary, mandatory and matching).</li> <li>• Administrative costs - not more than 5% of the aggregate amount of funds available to the State to carryout child care may be expended for administrative costs incurred. The term administrative costs shall not include the costs of providing direct services and a State shall ensure that a substantial portion of the amounts available to the state to carryout activities shall be used to provide assistance to low-income working families other than families receiving public assistance. HHS should issue regulations to further define administrative costs.</li> <li>• Annual Reports and Audits –             <ol style="list-style-type: none"> <li>1. Quarterly Reports: States must collect information on the following data reporting elements and submit information quarterly: family income; county of residence; the gender, race and age of children receiving assistance; whether the family includes only 1 parent; sources of family income (including employment, IV-A cash assistance, housing assistance, food stamp assistance, and other assistance programs); the number of months the family has received benefits; the type of child care in which the child was enrolled; whether the child care provider was a relative; the cost of child care for families; and the average hours per week of care. The Secretary may disapprove the information collected if the state uses a sampling method.</li> <li>2. Biannual Reports: Starting no later than December 31, 1997, states must collect information on the following data reporting elements and submit information every 6 months: the number of child care providers that received funding; the monthly cost of child care services and the subsidy cost portion; the number of payments made to providers through vouchers, contracts, cash and disregards under public benefit programs, listed by the type of child care services provided; the manner in which consumer education information was provided to parents; and the total number of unduplicated children and families served.</li> <li>3. The State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.</li> </ol> </li> </ul>



**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734**

PROGRAMS	PROVISIONS
<p><b>CHILD SUPPORT</b>  <b>Newly-Required Child Support Systems and Provisions with Major Systems Implications:</b></p> <p>(Continued)</p>	<p>Other child support provisions that may have systems implications are listed below. The effective date of these provisions is 10/1/96 unless state law changes are required or otherwise noted below.</p> <ol style="list-style-type: none"> <li>1. States must have <b>privacy safeguards</b> by 10/1/97 for information where a protective order has been entered or if release may result in harm (Sec. 303) and provide IV-D applicants and parties to IV-D cases with notices of proceedings and copies of orders by 10/1/97 (Sec. 304).</li> <li>2. <b>Cooperation requirements</b> (Secs. 103, 333 for IV-D changes; IV-A changes are effective 7/1/97 or earlier at state option).</li> <li>3. <b>New paternity-related procedures, including procedures for voluntary acknowledgment of paternity</b> (Sec. 331, effective upon enactment unless state law changes are required) and procedures for contested paternity establishment (Secs. 325, 331), and new 90% paternity establishment percentage (Sec. 341).</li> <li>4. <b>Administrative modifications to orders</b> in which states must have administrative procedures to change payees and increase monthly payments on arrears and paternity and support proceedings must have statewide jurisdiction (Sec. 325).</li> <li>5. <b>New reporting, reviews and audits</b> (Sec. 342).</li> <li>6. <b>OCSE must establish uniform data definitions and collect new data</b> on (1) the number of IV-A cases that became ineligible and received child support during the month, (2) current support and arrears, (3) unpaid support, (4) former Medicaid cases. States must use revised federal data definitions and include new requirements in information submitted to OCSE for the annual report to Congress for FY 1997 (Secs. 343, 346).</li> <li>7. <b>Order review and adjustment procedures, including the options to review orders on a case-by-case basis, apply cost-of-living adjustments</b> (now conducted in one state - Minnesota), or conduct automated reviews (Sec. 351).</li> <li>8. <b>New health provisions, including medical support requirement that all IV-D orders include health care coverage, with a notice to employer to enroll the child in the absent parent's health plan</b> (Sec. 382) and transitional Medicaid requirements (Secs. 103 and 114).</li> <li>9. <b>Interstate and international procedures, including adopting UIFSA by 1/1/98, electing to electronically request interstate enforcement without a case transfer, use new enforcement procedures across state lines, and accept requests from foreign countries, keeping records, and using new interstate forms</b> (Secs. 321, 322, 323, 324, 371).</li> <li>10. <b>New provisions giving states the authority to seek work orders against noncustodial parents in arrears</b> (Sec. 365) and requiring related data reporting (Sec. 103).</li> <li>11. <b>New optional provisions allowing states to use food stamp eligibility to enforce custodial and noncustodial parents' cooperation with IV-D agencies</b> (Secs. 1031, 1032) and allowing states to use an income deduction of child support payments for food stamp eligibility (Sec. 1020).</li> </ol>



**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734**

<b>PROGRAMS</b>	<b>PROVISIONS</b>
<p><b>FOOD STAMPS ELIGIBILITY &amp; BENEFITS</b></p>	<ul style="list-style-type: none"> <li>• Numerous changes in eligibility and benefit determination include: eliminating the scheduled removal of the excess shelter expense cap and replacing it with a gradually increasing cap; elimination of separate household status for children under 21; counting of income of students at age 20 and older; freezing the vehicle allowance at \$4,600; freezing the standard income deduction at the FY '95 level; denial of the earned income deduction for non-timely reporting and for income earned in work supplementation/support programs; and extension of deeming period for sponsored legal aliens.</li> <li>• New provisions deny benefits to legal immigrants, non-custodial parents in arrears for child support or custodial parents who do not cooperate with the child support agency (at state option) and fugitive felons. Recipients who apply fraudulently for duplicate benefits (more than one state, identity, etc.) are disqualified for 10 years.</li> <li>• Able-bodied recipients aged 18-50 with no dependents who, in the preceding 36 months, have received benefits for more than three months and have not participated in any work or work-related activity for 20 hours per week (averaged monthly) will be ineligible for benefits. Those who 'cure' their ineligibility by working for at least a month, and who subsequently lose their jobs, are eligible for another three months' benefits without working, limited to one occasion during the three year period. This provision poses complex systems challenges.</li> <li>• States may opt for a Simplified Food Stamp Program, in which benefit rules for households receiving both cash and food stamps conform. The bill also provides for waiver authority to conform the non-cash caseload to these rules. Depending on USDA's interpretation of its waiver authority, states choosing this option may end up with two different sets of rules for the Food Stamp Program.</li> <li>• States may opt for a Simplified Food Stamp Program, in which benefit rules for households receiving both cash and food stamps conform. The conference agreement also provides for a limited waiver authority to change the non-cash caseload for purposes of work or conformity projects; depending, on USDA's interpretation of its waiver authority, states choosing this option may end up with two different sets of rules for the Food Stamp Program.</li> <li>• Other state administrative options include new flexibility in determining certification periods, form, design, and other administrative matters including using the option to use the IEVS verification system.</li> </ul>
<p><b>SIMPLIFIED FSP</b></p>	
<p><b>OTHER FS ADMIN OPTIONS</b></p>	

**Overview of Systems Implications/Requirements in the Welfare Bill, HR 3734**

<b>PROGRAMS</b>	<b>PROVISIONS</b>
<p><b>MEDICAID ELIGIBILITY</b></p> <p><b>TRACKING</b></p> <p><b>FUNDING</b></p> <p><b>IMMIGRANT WAIVERS</b></p>	<ul style="list-style-type: none"> <li>• Previously, individuals eligible for AFDC (Title IV-A) automatically received Medicaid coverage. Under the new bill, to determine Medicaid eligibility, states are required to use income and resource standards and methodologies contained in a State's AFDC State Plan on July 16, 1996. States will be required to establish a new medical assistance only (MAO) category which uses the income and resources standards and methodologies of the old AFDC state plan.</li> <li>• States continue to be required to track income for purposes of transitional medical assistance (TMA) for one year after the individual leaves welfare due to increased earnings. Continues current reporting requirements.</li> <li>• Individuals whose eligibility ends because of increased child support collections continue to receive four months of TMA.</li> <li>• The bill appropriates \$500 million from FY 1997-FY 2000 for administrative costs for implementation of the eligibility provisions.</li> <li>• States who elect to deny Medicaid to legal immigrants will need to modify their systems to accommodate that change.</li> <li>• States with IV-A waivers of Medicaid eligibility provisions can continue to operate under those rules permanently. If they do so, states may want to permanently modify their systems.</li> </ul>



## Selected Constitutional Issues in Welfare Reform

The new federal welfare law grants states new flexibility to fashion state welfare systems. A number of options that the law gives to states may raise constitutional issues.

### I. Distinctions Based on Length of Residence

*Shapiro v. Thompson*, 394 U.S. 618 (1969)

*Zobel v. Williams*, 457 U.S. 55 (1982)

Section 103 (Subsection 404(c)) of the welfare reform act gives a state the option to apply to a family the rules of the cash assistance program, including benefit amounts, from the family's previous state of residence if the family has moved to the new state in the 12 months before applying for benefits.

This provision raises issues discussed by the Supreme Court in *Shapiro v. Thompson* (1969) and *Zobel v. Williams* (1982). In *Shapiro*, the Court held state laws unconstitutional that denied welfare assistance to persons who were residents of the state for less than one year who met all other eligibility requirements. The basis for the decision was the constitutional guarantee of equal protection under the 14th Amendment and the right to interstate travel. In *Zobel*, the court extended its rationale to prohibit a state from establishing permanent distinctions between residents based upon their length of residency.

### II. Denial of Benefits to Legal Immigrants

*Graham v. Richardson*, 403 U.S. 365 (1971)

*Mathews v. Diaz*, 426 U.S. 67 (1986)

Sections 402(b)(1) and 412 of the welfare reform act give states the authority to prohibit legal immigrants from participating in specified, means-tested state-federal programs and most means-tested state programs.

In *Graham*, the Supreme Court struck down state laws that denied legal immigrants access to state welfare programs. The Court held that such laws violated the U.S. Constitution because they violated the 14th Amendment Equal Protection Clause and they infringed on the federal government's plenary power over immigration policy.

Under the Court's analysis of equal protection, states may not classify persons for government benefits based upon a "suspect" classification absent a compelling governmental interest. Alienage, like race or ethnicity, is a suspect classification. Once the Court has determined that the state is legislating with respect to a suspect classification, the state faces the burden of proving that its classification is justified by a compelling governmental interest. The Supreme Court held that the states' interest in reducing welfare spending was not sufficient to justify the classification.

In *Mathews v. Diaz*, the Court ruled that federal power over immigration law is broad enough to permit the federal government to make distinctions between citizens and aliens and among various groups of aliens. In reaching its decision, the Court said that states do not have a legitimate basis for treating citizens and legal immigrants differently.

It is unclear whether the present Court would extend this rationale to permit the federal government to delegate its immigration authority to the states. Furthermore, if such a delegation is permitted it is questionable whether this delegated authority would permit states violate the 14th Amendment Equal Protection Clause.

### **III. Financial Need As A Classification: Minimal Scrutiny**

*Dandridge v. Williams*, 397 U.S. 471 (1970).  
*Maher v. Roe*, 432 U.S. 464 (1977).

By eliminating the majority of rules and requirements under Title IV-A of the Social Security Act, the welfare law gives states wide latitude to set eligibility criteria and benefit levels under the new welfare system.

When a state is not dealing with a "suspect class" or a "fundamental right" and a state promulgates legislation distinguishing between different groups, its law will be upheld under the 14th Amendment Equal Protection Clause if the state can demonstrate that the legislation is reasonably related to a legitimate governmental purpose. In *Dandridge*, the Court found that making distinctions based on financial need does not create a suspect class subject to strict scrutiny. The Court upheld the Maryland AFDC program's maximum grant for a family regardless of size or need because the state had a rational basis for making this social and economic regulation. Later cases confirm this analysis. In *Maher v. Roe*, 432 U.S. 464 (1977), the Court affirmed that it had "never held that financial need alone identifies a suspect class for the purposes of equal protection."

### **IV. Enforceability of State Plans/Creating Causes of Action**

*Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990)  
*Suter v. Artist M.*, 503 U.S. 347 (1992)  
*Blessing v. Freestone*, No. 95-1441, pending before the U.S. Supreme Court, October 1996

Section 103 (Subsection 402) of the welfare reform law requires states to submit several different state plans to implement the cash assistance, child care, and child support programs they will operate under the new welfare law. The plans are a condition of eligibility for receiving federal welfare block grants or other funds under the Act.

In *Wilder*, the Court held that hospitals had a right to sue states to enforce one of the federal requirements contained in the state Medicaid plan. Two years later, in *Suter v. Artist M.*, the Court held that a foster child did not have a private right of action to sue the state to enforce a

provision of the state's foster care plan that said the state would make "reasonable efforts" to expedite foster care placements.

The plaintiffs in these cases relied upon the federal civil rights statute, 42 USC § 1983, to bring their claims. Section 1983 creates a claim for injunctive relief against the state where the state has deprived a person of their constitutional rights under color of state law. Under 42 USC § 1988, successful plaintiffs are entitled to attorney's fees. Although the remedy under Section 1983 is injunctive, states often incur substantial costs in meeting the requirements of the injunction or in paying attorneys' fees.

In *Wilder*, the Court held that the federal statute had created a cause of action for providers because it specified an enforceable right to "reasonable and adequate" reimbursement rates within the state's Medicaid plan and because it outlined specific methods for identifying such rates.

In *Suter*, the Supreme Court held that enforceable rights are not created by federal-state funding statutes unless the authorizing federal statutes unambiguously impose binding obligations on the states. The federal statute here required only "reasonable efforts" by the states and did not open the door to the plaintiff to enforce asserted benefits. The Supreme Court found that the state had complied with the requirement that the state have a plan approved by the Secretary.

After the decision in *Suter*, Congress amended the child welfare statute to ensure that individuals could bring suit in federal court "to the extent they were able to" prior to the decision in *Suter*, while also making clear that "reasonable efforts" does not provide a broad basis for a private right of action ( 42 USC Section 1320a-2, H.R. Conf. Rep. No. 761, 103d Cong., 2d Sess. 926) (1994). Congress specifically did not disapprove either the holding of *Suter* or the precedents upon which *Suter* relied.

In *Blessing v. Freestone*, the state of Arizona is appealing a decision in federal circuit court that held that the federal Child Support Enforcement Act (CSEA) confers a private right of action upon custodial parents to enforce collection. Even though Arizona met federal audit requirements under the CSEA, the plaintiffs argued that this did not constitute compliance under the CSEA. If the Supreme Court rules against the state, it could create a private right of action, guarantee services and alter state funding and administrative decisions. NCSL and NGA filed an *amicus* brief through the State and Local Legal Center and APWA also filed an *amicus* brief in support of Arizona.

## V. Due Process and Fair Hearing

*Goldberg v. Kelly* 397 U.S. 254 (1970)

Section 103 (Subsection 402(a)(1)(iii)) requires states to develop objective criteria for eligibility and benefits as well as a process to ensure that applicants receive "fair and equitable treatment." States must describe the appeals process they will put in place for those that are denied assistance.

The due process clause prohibits states from “depriving any person of life, liberty or property without due process of law.” That is, it entitles individuals to notice and a hearing. In *Goldberg v. Kelly*, the Court held that a welfare recipient’s interest in continued receipt of welfare benefits is a “statutory entitlement” and as such is “property” within the meaning of the 14th Amendment Due Process Clause. To meet the constitutional requirements of due process, the court outlined the following minimal requirements: 1) pre-termination notices; 2) the opportunity to review and present evidence; and 3) opportunity to have an impartial hearing officer as a decision maker.

### Resources

Stone, Seidman, Sunstein, Tushnet, *Constitutional Law*, Second Edition, (Little, Brown and Company: Boston, MA) 1991.

Reinstein, *The Welfare Cases: Fundamental Rights, the Poor, and the Burden of Proof in Constitutional Litigation*, 44 Temp. L.Q., 1, 39 (1970).

Guide to The Food Stamp Program, Eighth Edition, (The Food Research and Action Center: Washington, DC) 1988.

Web Site of Supreme Court Decisions:  
USSC Plus - U.S. Supreme Court on the Web  
<http://www.usseplus.com/>

### Additional information on the right to welfare.

Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 Wash. U. L.Q. 659 , 677;

Michelman. Foreward, *On Protecting the Poor through the 14th Amendment*, 83, Harv. L. Rev 7, 9, 14-19;

Bork, *The Impossibility of Finding Welfare Rights in the Constitution*, 1979 Wash. U.L.Q. 695,695-696, 699-700;

Winter, *Poverty, Economic Equality and the Equal Protection Clause*, 1972 Sup. Ct. Review 41, 100-102.

### Comments

Comments on these issues or information on relevant state court decisions should be addressed to Sheri Steisel or Jon Dunlap at the National Conference of State Legislatures, (202) 624-5400 or by FAX (202)737-1069.



**\$50 Disregard for Child Support:  
Summary of the Conflict Created by the Welfare Bill's Different Effective Dates  
for Eliminating the Disregard**

**ISSUE:** Different effective dates for elimination of mandatory \$50 disregards/rebates in IV-A and IV-D in HR 3734. (This appears to be a problem for states like Iowa that need legislative or administrative rule-making action to eliminate the \$50 disregard and that will not be able to take that action by Oct. 1, 1996.<sup>1</sup>)

**EXPLANATION:**

Title I of HR 3734 repeals Sec. 402(a)(8)(A)(vi) in Title IV-A which requires AFDC to disregard the first \$50 per month of any... nondelinquent child support collected and paid to the family pursuant to Sec. 457(b) (Title IV-D). That repeal is effective July 1, 1997 (or earlier if a state opts into the TANF block grant).

Title III of HR 3734 amends Sec. 457(b) to eliminate the mandatory \$50 rebate effective Oct. 1, 1996 or earlier at state option.

Therefore, IV-A does not require the payment of the \$50 rebate, but merely requires the disregarding of it if it is paid pursuant to IV-D distribution statute.

Therefore, it seems federal IV-D law controls distribution. Many states' IV-D administrative rules, state laws, or state constitutions require distribution of the first \$50 to the AFDC family.

**EXAMPLE of fiscal impact of the discrepant effective dates:** Assume State has an FMAP rate of 68% federal share; assume this AFDC family has a monthly child support order for \$150; assume in Oct. 1996 IV-D collected a total of \$100.

Effective 10/1/96 the new Sec. 457 requires:

\$68—to feds (pay federal share first)

\$32—Sec. 457 says the State MAY retain or distribute to the family. However, since the state cannot change its distribution rules by 10/96, it must pay this \$32 to the AFDC family. (Note: As of 10/1/96, Sec. 457(b) is all changed and no longer refers to \$50 rebates, so the cross-reference to this in 402(a)(8)(A)(vi) is a problem.)

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<sup>1</sup> Question: May a state take the following position and conclude that Sec. 302 of HR 3734 does not require elimination of mandatory \$50 disregards effective 10/1/96? Sec. 395 of HR 3734 says that even if Title III specifically provides an effective date, that it is subject to the grace period for law changes. The effective date may be the effective date of state laws implementing the provision. If a state cannot stop paying \$50 disregards until its legislature enacts a law allowing it to do so, then the effective date would be the beginning of the quarter after the next regular session ends. Sec. 454(11) of SSA requires states to distribute collections as required under Sec. 457, so distribution changes would be a state plan requirement and, therefore, eligible for a grace period extension (see Sec. 395(a)(1)).

So, if the State distributes the \$32 to the family, it doesn't appear the Feds lose or "pay" for any part of that since they already have their federal share of the entire \$100 collected (i.e., \$68). It seems the State "pays" the entire cost of the \$32 because the State didn't retain anything of the \$100 collected. In fact, if State rules or law require it to distribute the first \$50 of support collected to the family, must the State pay \$68 to the Feds, and \$50 to the family on a total of \$100 collected? (Note: the AFDC grant for 10/96 would not be reduced because the old IV-A law is still in effect.) The cost to the State would be \$50 (\$32 of the collection paid to the family, plus \$18 so the family gets the amount it's entitled to under state law.)

Finally, on this example, it doesn't seem the State would be protected by the "hold harmless" provision in Sec. 302 of Title III of HR 3734. That section says if the amount which "could be retained" by the state in a fiscal year is less than FY95, the state share shall be an amount equal to FY95. Federal law at Sec. 457 gives the State the option to retain or distribute.

(Under current IV-A and IV-D law for this same example, it seems the state would retain \$16 rather than pay \$50:  $\$100 - \$50 \text{ to family} = \$50 - \$34 \text{ to Feds } (\$50 \times .68 = \$34) = \$16 \text{ retained by state.}$ )

**Potential State Legislative Changes Needed  
to Comply with Child Support Provisions (Title III)  
in the Welfare Reform Bill, H.R. 3734  
Enacted August 22, 1996**

The following measures are those child support provisions in Title III of H.R. 3734 that may require state legislative or state constitutional changes before implementation. Not every state will require such actions for each item listed below. The required effective date for these provisions is October 1, 1996, although where state laws must be amended, the effective date is the first day of the first quarter after the close of the first regular legislative session after enactment for state laws. There is additional time for state constitutional amendments—until "1 year after the effective date of the necessary state constitutional amendment," or 5 years after the date of enactment of the Act.

- Changes to current **distribution policy** (note: some aspects of distribution become effective later than the 10/1/96 date) (Sec. 302).
- **\$50 disregard repeal**. There are conflicting effective dates for elimination of the mandatory \$50 disregard in Title I (IV-A provisions) and Title III (IV-D provisions). Title I repeals Sec. 402(a)(8)(A)(vi) effective July 1, 1997 (or earlier if a state opts into the TANF block grant) requiring AFDC to disregard (but not pay) the first \$50 per month of nondelinquent child support *if* it is paid according to IV-D distribution statute. The new IV-D law in Title III amends Sec. 457(b) to eliminate the mandatory \$50 rebate effective Oct. 1, 1996, or earlier at state option. (Secs. 103, 302). [For a detailed explanation of this issue, please see two-page analysis of the \$50 disregard for child support.]
- **New information systems requirements include:**
  1. **centralized state case registries of orders** (effective 5/1/98 for matches with new hire directory in IV-D cases; effective 10/1/00 for post-FSA changes to the statewide automated system),
  2. **state centralized disbursement unit for tracking and distribution of collections** (effective 10/1/98, or 10/1/99 for states that process non-IV-D orders through local courts),
  3. **state directories of new hires** (effective 10/1/97 for states with no directory, or 10/1/98 for states that have a directory, except that all states must transmit to the national directory by 10/1/97) and employer reporting, and
  4. **other post-Family Support Act changes as needed to the statewide automated system to comply with new locate and enforcement provisions in the bill (see child support section of information systems chart for more details) (effective 10/1/00) (Secs. 311, 312, 313).**
- States must process all IV-D and non-IV-D **income withholding** through the disbursement unit, but need only send withholding orders in IV-D cases. States must transmit withholding orders to employers within 2 days; this can be done electronically and without advance notice to obligor, but states must send a notice that withholding began. Employers must send withheld income to the disbursement unit within 7 days (Secs. 312, 314).
- States IV-D agencies must have access to expanded sources of **locate and case tracking information**, such as from motor vehicle files, law enforcement registries, financial

institutions, vital statistics, tax, property title, employment security, corrections, public assistance, utility and cable companies (pursuant to an administrative subpoena).

Amendments are made to the Fair Credit Report Act so the credit bureaus will furnish reports to IV-D agencies. Also, applicants' **social security numbers** must appear on (or be on file for) applications for commercial driver's, professional, occupational, marriage, and other licenses, as well as on divorce decrees, support orders, paternity orders, and death certificates. (Secs. 315, 317, 325, 352, 372).

- **Interstate child support provisions** include that states must adopt UIFSA by 1/1/98, use administrative procedures for interstate enforcement of support orders, and begin using uniform forms for interstate child support cases (for income withholding, liens, and administrative subpoenas) by March 1, 1997. The HHS Secretary and an advisory committee must issue these forms by October 1, 1996, (Secs. 321, 322, 324).
- All states must use expanded **expedited and administrative procedures** (1) to establish and enforce support orders without obtaining a judicial order and recognize them interstate, for genetic testing, obtaining financial or other information, responding to a state agency request, (2) to gain access to certain records of other state and local government entities (including vital statistics, state and local tax and revenue records, real and titled personal property, license, ownership, and control of business entities, employment security, public assistance, motor vehicle and corrections records), to certain records of private entities (public utilities and financial institutions), to changes in payee information. These procedures must also be used for income withholding, securing assets (lump-sum payments, assets in financial institutions, and retirement funds), imposing liens and forcing property sales, and increasing monthly payments on arrears (Sec. 325).
- Regarding **voluntary paternity establishment procedures**, states must: allow paternity establishment up to age 18; offer voluntary establishment through the state birth record agency; as prescribed by the Secretary, offer the same voluntary paternity establishment services at other entities; file paternity orders and acknowledgments with birth records agency for comparison with state case registry information; develop, use and give full faith and credit to an affidavit meeting minimum national standards (developed by HHS); give oral and written notice before parents sign an acknowledgment; include name of father on birth certificate only if both parents sign an acknowledgment; have outreach procedures for voluntary paternity establishment. An acknowledgment becomes a legal finding of paternity in 60 days unless challenged for fraud, duress, or mistake of fact. No ratification or rescission is permitted after 60 days or after a proceeding relating to the child to which the signatory is a party (Secs. 331, 332).
- Regarding **contested paternity establishment procedures**, states must have procedures in contested cases (unless barred by state law) to require the child and all parties (except those with good cause) to have genetic tests at the request of any party, if they sign a statement alleging or denying paternity. Party requests for genetic tests must be supported by a sworn statement. States must admit accredited genetic test results into evidence without foundation and may limit objections to test results to a specific number of days after receipt of results. Medical and genetic testing bills also must be admissible without a foundation and are prima facie evidence. States must create a rebuttable (or at state option, a conclusive) presumption of paternity for genetic tests indicating a threshold probability of paternity, must allow default orders to be entered, and must enter temporary support orders based on probable paternity.

- Jury trials are disallowed. Putative fathers are allowed to initiate paternity actions (Secs. 325, 331).
- **New cooperation requirements:** Responsibility for determining cooperation is transferred to the IV-D agency, but states have the option to keep good cause determinations in the IV-A and Medicaid agencies. States may not require recipients to sign a voluntary acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation). States may reduce IV-A assistance by at least 25% for failure to cooperate and may impose a full-family sanction. The IV-A block grant will be reduced by up to 5% if the IV-A program does not enforce noncooperation sanctions (Secs. 103, 333).
  - State options for **simplified process for review and adjustment of child support orders** (Sec. 351).
  - **Work requirements** for persons owing past due child support: procedures for state to have authority to require noncustodial parents in arrears to pay support in accordance with administrative- or court-ordered plan or, if the person is not incapacitated, to participated in work activities as state deems appropriate (Sec. 365).
  - Laws to improve **enforcement of orders**, including allowing IV-D agencies to void transfers of income or property to avoid paying child support; requiring the use of procedures under which liens arise; allowing suspension of drivers, professional, occupational, recreational licenses for overdue child support; requiring reporting of arrearages to credit bureaus; requiring changes to international child support enforcement; quarterly matches with all financial institutions in the state to identify non-custodial parent accounts; allowing, at state option, enforcement of orders against paternal and maternal grandparents in cases of minor parents (Secs. 364,365, 367, 369, 371, 372.)
  - Medical child support provisions, including allowing enforcement of orders for health care coverage and improving the definition of medical support under ERISA (Sec. 381, 382).
  - Grants to states for access and visitation programs (Sec. 391).