

WR
Immigrants

LEGAL IMMIGRANTS

The Ways and Means Subcommittee's proposed amendments to the welfare law violate in two ways the negotiated, bipartisan budget agreement policy to restore a minimal safety net for disabled *legal* immigrants.

The Ways and Means Subcommittee proposal fails to restore benefits for SSI beneficiaries currently on the rolls whose sponsors have income over 150% of the poverty level.

- **THE WAYS AND MEANS SUBCOMMITTEE PROPOSAL WAS NOT PART OF THE BIPARTISAN BUDGET AGREEMENT.** This proposal to severely limit the restoration of benefits to legal immigrants was not contemplated by the bipartisan budget agreement.
- **THE WAYS AND MEANS SUBCOMMITTEE PROPOSAL WOULD CUT OFF 100,000 SEVERELY DISABLED LEGAL IMMIGRANTS WHO WOULD RECEIVE BENEFITS UNDER THE BIPARTISAN BUDGET AGREEMENT.** This is one-third of the individuals whose benefits we agreed to restore in the budget agreement.
- **THE WAYS AND MEANS SUBCOMMITTEE PROPOSAL IS UNFAIR TO FAMILIES OF LIMITED MEANS.** Under this proposal, a family of four with an income as low as \$24,000 would be called upon to fully support a person with a severe disability.
- **DISABLED LEGAL IMMIGRANTS MAY NOT BE ABLE TO CALL ON THEIR SPONSORS FOR HELP.** More than half of disabled legal immigrants currently receiving benefits have been in the U.S. for over 15 years, and so they may find it difficult even to locate their sponsors. Since sponsorship agreements were not legally binding in the past, a disabled legal immigrant whose sponsor refuses to provide support would have no legal recourse and no source of income.

The Ways and Means Subcommittee's proposal would restore SSI and Medicaid benefits only to immigrants (both the disabled and non-disabled elderly) *already receiving* benefits prior to August 23, 1996; by contrast, the bipartisan budget agreement policy restores SSI and Medicaid benefits to *any* immigrant *in the country* as of that date who is or becomes disabled. This policy targets assistance to the most vulnerable individuals.

- **THE WAYS AND MEANS SUBCOMMITTEE PROPOSAL IGNORES VULNERABLE IMMIGRANTS WHO BECOME DISABLED AFTER AUGUST 22, 1996:** This proposal abandons many legal immigrants who were in the U.S. when the welfare law was signed but become severely disabled after that date. In contrast, the bipartisan budget agreement protects these immigrants.

Example: A legal immigrant family entered the country 3 years ago. Both the father and mother have worked full-time since then, and have an annual income of about \$25,000, but neither job provides health insurance for themselves or the family. Their 5 year-old son becomes severely disabled in a car accident next year. Under the budget agreement, he would be eligible for SSI and Medicaid; under the Ways and Means Subcommittee's proposal he would be denied SSI -- and potentially denied Medicaid. *(This example assumes the parents would rapidly "spend-down" due to hospital bills and become income-eligible for SSI and Medicaid.)*

Question: Doesn't the Ways and Means Subcommittee proposal treat the elderly better than the Administration's proposal, while the Administration's policy favors the disabled? Isn't this really a wash?

Answer: The parties to the budget agreement already made the decision about where limited resources should be targeted. The agreement explicitly states the policy of restoring SSI and Medicaid eligibility to immigrants who are or become disabled and who are in the U.S. as of August 22, 1996. This is one of the specific policies agreed to between the President and the Congressional leadership.

The Administration believes that the budget agreement appropriately targets the most vulnerable individuals. It provides for all immigrants in the country when the welfare law was signed who have suffered -- or may suffer in the future -- a disabling accident or illness. At the same time, the agreement will result in restoring benefits to a full 80% of the caseload as of August 22, 1996 -- including all of the disabled as well as the two-thirds of the elderly caseload who would meet the disability eligibility requirements needed to retain coverage.

Date: 02/13/97 Time: 18:58

WRepublicans look at new block grants to help immigrants

WASHINGTON (AP) Having vowed they will not reopen last year's welfare reform law, Republicans are looking at establishing new block grants to funnel money to legal immigrants who don't qualify for benefits any more.

The new grants would be outside the formal welfare program and therefore would not require changing the ban in last year's law on cash assistance, Medicaid, food stamps and disability benefits for immigrants, said Rep. Clay Shaw, chairman of the House Ways and Means Human Resources subcommittee.

"We would really be taking care of the some of the areas which are in really tough situations," Shaw, R-Fla., said Thursday. "I'd be willing to look at that and see what we could do."

Republicans contend that the new law will reduce caseloads and free up money from existing grants to address immigrants. And the Clinton administration said last month said states could use their own money to aid immigrants.

That makes the immigration issue much easier to handle, said Ari Fleicher, a spokesman for the Ways and Means Committee. "States should first look to their own resources before asking (federal) taxpayers to kick in."

Shaw noted that even if he ultimately supports immigrant block grants, he would not consider "anywhere near" as much money as Clinton requested.

Last week President Clinton asked Congress amend last year's reform bill to add \$17.9 billion over five years to restore immigrant aid.

But Republican leaders have consistently vowed not to reopen the legislation, predicting it could quickly become a rerun of last year's contentious debate. Giving states money through new block grants would avoid that possibility, Republicans said, and at the same time possibly satisfy Clinton's concerns.

"We're in a mood here in Washington to try and cooperate with the administration, not fight with them," Shaw said.

The new block grants might also satisfy governors, including Republicans in New York and California, who have complained that the burden of caring for poor immigrants will fall to them.

"We've heard the rumblings and we're definitely pleased," said Becky Fleischauer, spokeswoman for the National Governors' Association.

Michael Kharfen, a spokesman for the Health and Human Services Department, said the administration just wants "to restore equity" to legal immigrants and is not rejecting a block grant approach.

"It's the same thing by another name," said Kharfen, who works in HHS's Administration for Children and Families, which administers the cash assistance program.

Building the Republican case that last year's welfare overhaul will work, Shaw released figures Thursday predicting states will have significantly more money to spend on each welfare recipient than they once had.

Nationally, caseloads have dropped by nearly 18 percent since they peaked in March 1994. Shaw said caseloads will continue to drop over the next two years while federal funding has been established based on higher numbers.

States in 1998 will get federal funds sufficient for spending an average \$5,662 for each qualifying welfare family in 1998, compared

with \$3,624 in 1994, he said. Those figures do not include administrative costs.

APNP-02-13-97 1905EST

WR-Immigs

The National Immigration Forum's

Benefits Bulletin

A Look At How the Welfare Law Will Affect Legal Immigrants

March 20, 1997

This is another in a series of bulletins we are sending to keep you apprised of the impact the new welfare law will have on legal immigrants who are elderly or have disabilities—and on the communities in which they live. By cutting public benefits to immigrants who have no other means of support—and who are too elderly or frail to "move from welfare to work," the law will have a tremendous impact on local communities and states which will be suddenly faced with the cost of providing safety net benefits for these people.

The new federal welfare law represents a new cost shift to states. As state and local governments begin to realize the implications, governors and other elected officials are speaking out on the unfairness of the law. As the attached letter from Gov. Fife Symington notes, "By retroactively applying benefits restrictions and severely restricting federal financial support, states such as Arizona are left holding an unfair and unduly burdensome new responsibility." The governor notes that states like Arizona are in a bind: they don't have the resources to pick up these new costs, but at the same time the states cannot turn their backs on this vulnerable population. Gov. Symington is the latest voice among the governors to speak out on this new abdication of responsibility by the federal government. Below are select quotes from other governors, politicians and others on the welfare law.

Contents

- Quotes: "Leaders Call for Restoration of Public Benefits to Elderly and Disabled Legal Immigrants"
- Letter from Gov. Fife Symington of Arizona

5 Pages Total

LEADERS CALL FOR RESTORATION OF PUBLIC BENEFITS TO ELDERLY AND DISABLED LEGAL IMMIGRANTS

GOVERNORS SPEAK UP

National Governors' Association

"The nation's governors urge Congress and the Administration to work in partnership with the National Governors' Association to ... meet the needs of aged or disabled legal immigrants who cannot naturalize and whose benefits may be affected." (Final Resolution approved by the National Governors' Association, February 5, 1997)

Governor George W. Bush (R-TX)

"I've made my position clear that the disabled and elderly legal immigrants, in a look-back way, ought not to be removed from the (welfare) rolls. You can do that, and you can examine that issue without reopening welfare." (*Austin American-Statesman*, February 7, 1997)

Governor George E. Pataki (R-NY)

"I don't think that it's appropriate for states to have to pick up the tab. These legal immigrants are here in the United States, and their status is legal, because of the policies of the Federal Government." (*The New York Times*, February 3, 1997)

Governor Jim Edgar (R-IL)

"While I agree with much of federal welfare reform, I find the immigrant provisions to be misguided. They go too far. ... We will not discriminate against those who are legally here in Illinois. We will treat legal immigrants as before ... We will play by the rules, as they are, and not change the rules midstream." (Statement during a Chicago reception in honor of Hispanic Heritage Month, October 9, 1996)

Governor Fife Symington (R-AZ)

"[The welfare bill] unfairly denies some forms of public assistance to legal immigrants who were residing in this country prior to the Act's passage. By retroactively applying benefits restrictions and severely restricting federal financial support, states such as Arizona are left holding an unfair and unduly burdensome new responsibility. Aside from the fact that many of these legal immigrants have worked and paid taxes in this country and that a sizeable number are elderly and disabled, [the bill] is unfair because it provides no reasonable safety net to meet the real needs of some of our legal immigrants." (Letter to Senator John McCain, February 19, 1997)

Governor Lawton Chiles (D-FL)

"We will have chaos in the state when we cut off benefits to people who are legally there. It is totally unfair ... this is the mother of all unfunded mandates." (Reuter News Service, February 2, 1997)

Governor Gary Locke (D-WA)

"In my state we have a large population of legal immigrants who have paid local, state and Federal taxes. To deny them coverage is contrary to what America stands for." (*The New York Times*, February 3, 1997)

Governor Lincoln Almond, (R-RI)

"Rhode Island historically has been a land of immigrants. Given this history and the fact that so many of our citizens are first and second generation immigrants, I believe we have an obligation to help current immigrants who have not yet obtained citizenship." (*The Providence Visitor*, January 30, 1997)

Governor Pete Wilson (R-CA)

"Gov. Pete Wilson on Sunday joined fellow state executives in calling on Congress to provide new help for some legal immigrants who will lose benefits under last year's welfare reform bill, but he insisted that the fundamentals of the law should not be revisited. 'There is a problem here, no one disputes that.' ... Wilson said at his news conference that he had expressed concerns about the immigrant-aid cutoff when Congress was debating the measure, but that his views were not widely known." (*Los Angeles Times*, February 3, 1997)

OTHER ELECTED OFFICIALS ADD THEIR VOICES

President Bill Clinton

"We must join together to do something else, too – something both Republican and Democratic governors have asked us to do – to restore basic health and disability benefits when misfortune strikes immigrants who came to this country legally, who work hard, pay taxes and obey the law. To do otherwise is simply unworthy of a great nation of immigrants." (State of the Union Address, February 4, 1997)

Representative Bob Livingston (R-LA), House Appropriations Committee Chairman

"Mr. Livingston said he was 'not terribly opposed' to easing restrictions on benefits for legal immigrants that 'a case' could be made to help immigrants who have been 'hit adversely' after they arrived in America." (*The Washington Times*, January 28, 1997)

Representative Ileana Ros-Lehtinen (R-FL)

"I am pleasantly surprised to hear that Congressman Livingston is at least open to the idea ... If there's anyone who we want to be open to the idea, it's him, because of the fiscal impact that this change would have." (*The Washington Times*, January 28, 1997)

Representative Lincoln Diaz-Balart (R-FL)

"I opposed the welfare reform bill because of its denial of benefits to legal immigrants. That law is creating a serious crisis for thousands in our community. It is crucial that SSI and food stamps be reinstated to those who cannot become citizens because of a severe disability that they became faced with after arriving in the U.S." (Press release, February 4, 1997)

Mayor Rudolph W. Giuliani (R-NY)

"In return for the privileges of American residency, immigrants pay federal, state and local taxes at the same rate as American citizens. But under the new laws, legal immigrants are denied disability benefits and food stamps, and states may also refuse them welfare assistance and non-emergency medical care. Withholding these benefits from immigrants, who are here legally and whose taxes help pay for these very programs, is arguably unconstitutional – and certainly inequitable." (*The Wall Street Journal*, January 9, 1997)

Vice President Al Gore

"'It is just plain wrong' to deny benefits to legal immigrants who 'work here, live here legally, pay taxes, even serve in the military.'" (*The New York Times*, February 4, 1997)

San Diego County Board of Supervisors

"'It is fair to deny federal benefits to legal aliens who enter the United States after enactment ... because they will have no expectation of eligibility. It is unfair to change the rules for those who came to the country before August 22, 1996,' the date of enactment, according to a position paper distributed by [board Chairman Bill] Horn and [board Vice Chairman Greg] Cox." (*The San Diego Union-Tribune*, February 6, 1997)



STATE OF ARIZONA
EXECUTIVE OFFICE

PIFF BYMINGTON
Governor

February 19, 1997

Senator John McCain
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

As Governor of Arizona I support a great deal of the progress Congress has made on welfare and immigration reform. After much reflection, though, I believe that Congress should reconsider some of its 1996 actions regarding legal immigrants and public assistance.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) is a profound accomplishment. It enables states to make quantum leaps in moving people from welfare dependence to economic independence and it corrects flaws in the system that led to abuses by both citizens and legal immigrants. However, it unfairly denies some forms of public assistance to legal immigrants who were residing in this country prior to the Act's passage. By retroactively applying benefits restrictions and severely restricting federal financial support, states such as Arizona are left holding an unfair and unduly burdensome new responsibility.

Aside from the fact that many of these immigrants have worked and paid taxes in this country and that a sizeable number are elderly or disabled, PRWORA is unfair because it provides no reasonable safety net to meet the real needs of some of our legal immigrants. Thousands of Supplemental Security Income (SSI), Food Stamps Program and Medicaid recipients have been turned over to the state with only suspect legal provisions allowing us to bar them from some state programs.

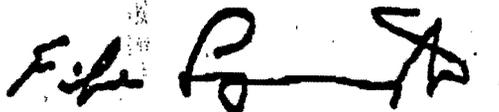
States do not currently have the resources to provide assistance to persons who previously have been covered in federally-funded or -matched programs. And we cannot turn our backs on the needy, aging and disabled members of our communities, especially when they are here legally.

Senator John McCain
February 19, 1997
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I support serious restrictions for those persons who legally arrived and will arrive in this country legally after the passage of PRWORA. For those residing here prior to passage, I am asking that Congress make changes to the law to either provide these legal immigrants continued access to SSI, Food Stamps and Medicaid, or provide financial relief to the states to help them meet their basic needs.

I am confident that this solution is the best way to move forward with welfare and immigration reform without unfairly burdening individuals and states. Your consideration of this matter is greatly appreciated.

Sincerely,



Fife Symington
GOVERNOR

3/22/97 10:55

FND

States not reporting illegal immigrants

Confusion over new welfare rules cited

By Richard Wolf
USA TODAY

A provision of the new welfare reform law that requires states to report illegal aliens to federal authorities is being widely ignored.

Not one state has submitted the first quarterly reports due to the Immigration and Naturalization Service (INS) this month, federal officials say.

The reasons vary. The law is unclear and clarifying regulations have not been issued. States also may not know who is a legal immigrant and who is illegal.

But some state officials may be ignoring the requirement altogether.

Opponents of the requirement say it may deter illegal aliens from seeking emergency care or benefits for children and other relatives who are citizens.

"That is a troubling possibility," says Christine Ferguson, director of Rhode Island's Department of Human Services. "It means you might not have children who are entitled to education getting education."

New York City Mayor Rudy Giuliani filed suit in October against the provision, contending the INS would "terrorize people." He said it could stop the estimated 400,000 illegal immigrants in his city from reporting crimes or seeking necessary services.

The welfare reform law, which went into effect Oct. 1, requires state and county welfare agencies to file quarterly reports with the names and addresses of individuals they know are illegal aliens. The first deadline passed Jan. 1.

"As far as we're concerned, it's a requirement that was imposed on the states," says INS spokesman Bill Strassberger. But with limited resources and manpower, he says, the agency might not be able to act on tips from states.

Rep. Lamar Smith, R-Texas, chairman of the House immigration subcommittee, intends "to see that those requirements are adhered to," says spokesman Allen Kay.

The delay doesn't surprise immigration opponents. "It's the same stonewalling that we have experienced consistently," says Barbara Coe, chairwoman of California Coalition for Immigration Reform.

But immigration lobbyist Cecilia Munoz of the National Council of La Raza, a Hispanic civil rights group, says states just don't know how to comply.

"The confusion here is extraordinary," she says.

*Steve W
Do you know or
could you find out
what the story is here?
Thanks
Elena
c.c. Powell*

Senators, auto execs blame regulators for 'lethal' air bag rules

By Jayne O'Donnell
USA TODAY

Amid reports that air bags may have killed five more people, U.S. senators and auto industry officials today will blame federal safety regulators for requiring air bags that are so forceful they can kill children and small adults.

"These bags are lethal! They're killing children, and they're killing women," says Sen. Dirk Kempthorne, R-Idaho. Kempthorne persuaded Senate Commerce Committee Chairman John McCain, R-Ariz., to hold the first of several hearings on air-bag deaths today.

McCain told USA TODAY he wants to give National Highway Traffic Safety Administration (NHTSA) officials a chance to "make their case."

Federal crash tests require air bags to deploy with enough force to protect adult males who aren't wearing seat belts. But the force of the bags has killed at least 32 children and 20 adults since 1991. Federal regulators are investigating whether another four children and one adult have been killed by bags. "It's an absolutely deplorable (government) standard that is causing this terrible tragedy to go on month after month," Kempthorne says. He wants NHTSA to let bags deploy less aggressively — with enough force to protect the 68% of motorists who wear seat belts.

Automakers are pushing their own plan to depower bags. Andrew Card, president of the American Automobile Manufacturers Association, says automakers could install depowered bags this year if NHTSA OK's that plan.

USA TODAY
THURSDAY, JANUARY 9, 1997

D. KATI

WR - Immigrants

GOP Governors on Restoring Benefits to Legal Immigrants

Governor Pataki:

"We think it's inappropriate to change the rules retroactively to deny benefits to those who came here under the old rules," he said Friday. "In the case of New York state, it's approximately 80,000 individuals - legal immigrants who are receiving benefits." - *AP, Jan. 25, 1997*

"It is inappropriate to change the rules retroactively" for immigrants who came here before the legislation was passed, said New York Gov. George E. Pataki in a Capitol Hill news conference. He asked Congress to reconsider the immigrant cutoff, which he said would cost New York \$ 240 million a year to make up from state revenues. - *Washington Post, Jan. 25, 1997*

New York Gov. George Pataki, complained that the legal immigrant provision unfairly burdened his state and that the federal government "was trying to balance its budget on the back of the states." - *The Record, February 2, 1997*

GOV. PATAKI: Right now their cost is being supported by the federal government, and under the legislation it would be shifted to the states so they would not be cared from. We don't want to see the federal government balance its budget at the expense of the states, and we want to see the federal government take a look to see what they can do to help this population.

MR. SESNO: What do you want from the federal government?

GOV. PATAKI: What I would like them to do is to continue to provide benefits for senior citizens who came here under the old rules, who are unable to become citizens, and who depend on Medicaid, SSI, food stamps, continue those benefits.

MR. SESNO: President Clinton would put \$13 billion or so back into the welfare system for some of these legal immigrants. Do you support that? Is that the right number?

GOV. PATAKI: Well, I don't know what the right number is for the country, and I don't want to say that the president should do it this way or Congress should do it that way. What we're looking for are solutions. - *CNN "LATE EDITON" HOST: FRANK SESNO GUESTS: NEW YORK GOVERNOR GEORGE PATAKI (R) HOUSE MAJORITY LEADER DICK ARMEY (R-TX) HOUSE MINORITY LEADER DICK GEPHARDT (D-MO) 12:00 P.M. (EST) SUNDAY, FEBRUARY 2, 1997*

Governor Edgar:

"On another controversial issue, Edgar said there was nothing in Clinton's remarks to the governors to discourage him in his efforts to seek restoration of federal funds to aid some legal immigrants. Their benefits are being cut off as a result of federal welfare reform passed by Congress last year.

Clinton reportedly will ask Congress for about \$13 billion for Illinois and other states with high immigrant populations.

It would cost Illinois about \$163 million to pick up the tab for those benefits currently being provided by the federal government, Edgar said.

"I don't see how we have the state dollars to pick up that program," he said. - *Copley News Service, February 03, 1997*

Governor Bush:

"The welfare system has failed, trapping too many Americans in a life of poverty and dependency. The reform bill is not perfect but it's an important step toward self-sufficiency for millions of our most vulnerable citizens. I wholeheartedly support the RGA resolution, and I look forward to working with members of Congress to improve this landmark legislation, to take care of the elderly and disabled, without going backward," said Gov. Bush. - *RGA press release, Feb. 3, 1997*

Texas Gov. George W. Bush raised the issue at a Republican Governors' Association meeting in Grand Rapids, Mich., last year. At the gathering of governors, Bush called it unfair to "change the rules for an 80-year-old agricultural worker who is in this country legally, and who may be in a nursing home," according to his spokesman, Karen Hughes. - *Washington Post, Jan. 25, 1997*

Governor Almond:

"The governor said he would work to avert cuts in federal assistance to immigrants, but did not spell out what he would do beyond lobbying officials in Washington." - *January Providence Journal-Bulletin 31, 1997*

Mr. Pataki, Mr. Edgar and Gov. Lincoln C. Almond of Rhode Island, a Republican, expressed their concerns at a meeting here today with Trent Lott, the Senate Republican leader. - *New York Times, Jan. 25, 1997*

In an announcement released yesterday morning, the governor pledged that he will "take a number of steps to counter the adverse effects of the federal welfare changes on Rhode Island's legal immigrants." "While federal welfare reform was well intentioned, unfortunately there are elements of the reform that will leave thousands of immigrants in Rhode Island without the important supports of Food-Stamp assistance or SSI payments," Almond said. - *Providence Journal-Bulletin, Dec. 20, 1996*

Governor Whitman:

Whitman said she still hopes "technical corrections" could address the problem, and that Clinton will include additional money for immigrants in his coming budget. Of particular concern, she said, are elderly and disabled immigrants incapable of meeting the requirements for citizenship. - *The Record, February 2, 1997*

New Jersey would spend \$2 million a year to help poor legal immigrants who are elderly or disabled become United States citizens under Gov. Christine Todd Whitman's new budget proposal, a move that might protect them from losing benefits under the new Federal welfare law. - *New York Times, Jan. 30, 1997*

A spokesman for Gov. Christine Todd Whitman (R) said the New Jersey governor also supports reopening the issue. - *Washington Post, Jan. 25, 1997*

Governor Wilson:

California Gov. Pete Wilson joined a bipartisan group of governors Sunday to endorse changes to the new federal welfare law that would reinstate benefits to the nation's most helpless, noncitizen legal immigrants. - *The Daily News of Los Angeles, February 3, 1997*

Speaking on the resolution: "It allows people who are really unable to care for themselves and unable to exist to have a continuing remedy and I think that's proper," Wilson said. - *The Daily News of Los Angeles, February 3, 1997*

Consequently, the policy calls for changes to the welfare law, but it also says changes are not necessarily needed. Asked whether that was not a contradiction, California Gov. Pete Wilson, said: "You got it." - AP, Feb. 3, 1997

Governor Voinovich:

"I am opposed to reopening the law," Voinovich said. "But when you pass a piece of legislation as complicated as welfare reform, there are some aspects of it that you may not have anticipated - for example, the issue of legal immigrants in nursing homes who are receiving Supplemental Security Income. Are we going to throw those people out on the street and wipe our hands?" - *New York Times, Feb. 2, 1997*

Despite their resolution, Gov. George V. Voinovich (R-Ohio) said the governors might look favorably on adding money for elderly immigrants to an appropriations bill, or giving refugees a longer time to receive benefits while they are getting settled. "We think some accommodations might be made in the budget." - *Washington Post, Feb. 2, 1997*

General:

"The call for change, coming as it does from Republican governors, represents an ironic twist in the long-running debate over welfare. It has largely been conservative governors who have most vocally embraced the welfare measure and pushed for its passage. But Pataki, Illinois Gov. Jim Edgar (R), and Rhode Island Gov. Lincoln C. Almond (R) are now asking Senate leaders to reconsider whether some of the revolutionary changes to welfare went too far.

Pataki said he had "significant" support from other Republican governors, and Democratic governors almost unanimously support reopening the bill." - *Washington Post, Jan. 25, 1997*

EXECUTIVE OFFICE OF THE PRESIDENT

WR-Immigs.

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

Fax #: 395-5730

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FACSIMILE COVER SHEET

DATE: _____

TO: Bruce Reed, Gene Sperling, Rahm Emmanuel,
Diana Fortuna, Pauline Abernethy

Fax Number: _____

Number of pages (including cover sheet): 3

FROM: Ken Apfel

REMARKS:
Revised Draft of Welfare
Reform Costs Q & A.

DKH 1**WELFARE REFORM LEGISLATIVE PROPOSALS**

Question: Last Summer when the President said he would sign the bill there were press reports that he wanted to restore about \$14 billion in cuts. Now we understand the budget includes \$18 billion in legislative restorations. Why the difference?

Answer: The budget includes \$18 billion in legislative proposals for Food Stamps and Immigrants that corresponds directly to the commitments the President made concerning excessive cuts. The budget estimate for legislative proposals is higher now due to technical reestimates.

The President separately made new commitments to help the private sector, states and cities move welfare recipients to work. The budget includes \$3.6 billion for these purposes.

Finally, the provision of the welfare law tightening SSI benefit eligibility for children would take away Medicaid benefits for some of the affected children. The budget includes a new \$0.3 billion legislative proposal to maintain Medicaid coverage for all these children.

Question: Why have the estimates gone up?

Answer: The major reason why the Administration's proposal costs more is a change in estimates, not a change in policy. Last year, CBO estimated that an exemption from the SSI ban on immigrants who become disabled after entering the U.S. would cost \$4.3 billion. Last year the President argued for this policy and the Administration still stands by this principle. It now estimates that this same policy would cost \$9.2 billion in SSI. If the Administration's policy were to be estimated on the same basis as last year, the total cost figure would be several billion dollars lower.

Question: In its \$18 billion policy, is the Administration proposing to make restorations in Food Stamps and Benefits to Immigrants that go beyond its proposals of last year?

Answer: Absolutely not. When the welfare bill passed, CBO estimated it cut food stamps and legal immigrants' access to assistance by almost \$43 billion over FYs 98-02. The budget proposes to restore cash and medical assistance to legal immigrants who become disabled after coming here to work, to add real work requirements to food stamps, and to ensure that Food Stamp benefits keep up with increases in the cost of living. The Budget adds back \$18 billion over FYs 98-02, to get closer to the balance originally proposed for these programs. But even with these policies, the Administration does not fully restore all the excess cuts in Food Stamps and benefits to immigrants.

Draft

Question: Are there any new welfare reform proposals in the budget?

Answer: Yes, there is one small but important provision. The budget includes \$0.3 billion for a legislative proposal to continue Medicaid health care coverage to children currently receiving SSI who would lose these health benefits under the tighter SSI eligibility standards. This proposal helps soften the transition to the new policy for children now in the program.

Question: Why don't you include the \$3.6 billion in Welfare-to-Work spending in the \$18 billion? Aren't you really proposing more than \$18 billion?

Answer: When the President announced the \$3.6 billion in targeted funding to create jobs, he also proposed offsets to pay for every penny of this proposal from outside the welfare programs. These offsets are also included in the President's budget.

Administration Legislative Proposals For Food Stamps and Immigrants Do Not Restore All Excess Cuts in Enacted Welfare Bill				
Dollars in Billions All Estimates FY98-02	CBO Estimates			OMB Estimate
	Administration FY97 Proposal	Enacted Bill	Difference	FY98 Proposal
AFDC/TANF 1/	---	+\$6	+\$6	---
Immigrants & Food Stamps (SSI Ban Exemption for Disabled 2/)	-\$22 (\$0)	-\$43 (+\$4)	-\$21 (+\$4)	+\$18 (+\$9)
Other 3/	-\$15	-\$15	-\$0	---
Total	-\$37	-\$52	-\$15	+\$18

1/ Includes related spending on child care and child support enforcement.

2/ Does not include effects on Medicaid.

3/ Includes interactions of the FY97 Administration welfare and Medicaid proposals.

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MONDAY, JANUARY 27, 1997

The Washington Times

Livingston allows 'a case' for legal-immigrant welfare

Notes Clinton's word-deed gap

By Joyce Price
THE WASHINGTON TIMES

The chairman of the House Appropriations Committee says "a case can be made" for paying welfare benefits to legal immigrants.

"If they're legal immigrants, and here with all the expectations and understandings that they wouldn't be on welfare ... but if they've been hit adversely, then I think that you can make a case to pay those benefits," Rep. Robert Livingston, Louisiana Republican, said on "Fox News Sunday."

Such a modification, sought by President Clinton, would add nearly \$24 billion over six years to the GOP-crafted welfare reform bill that Mr. Clinton signed into law last year.

That would make it more difficult to balance the budget, but Mr. Livingston did not address

that issue in his televised remarks.

The federal welfare reform law the president wants to change denies Supplemental Security Income, food stamps and some health benefits to most immigrants who are in this country legally but are not U.S. citizens.

U.S. veterans and who have worked and paid taxes in this country for 10 years are exempt.

Asked about a change in the legislation that would allow legal immigrants to receive welfare, Mr. Livingston replied: "I'm not terribly opposed to that.

"It depends on how it's phrased. I don't think that we owe any responsibility to people from outside the world that come into this country and automatically go on the dole, no."

The appropriations chief also was asked about a plan Mr. Clinton announced Saturday to spend \$43 million more on food safety.

"The president, on the one hand, says ... that the era of big government is over. He says that it's time for a balanced budget, but he's against a balanced-budget amend-

"The president's got to make up his mind."

ment," Mr. Livingston said.

"And then he comes in and says he wants to add all sorts of new spending to the level of government that exists today. The president's got to make up his mind."

Asked to enumerate spending reductions he believes could be made to help achieve a balanced budget, Mr. Livingston said, "Unless we do it in the mandatory side of the equation [entitlements], we're not going to balance the budget."

But he suggested cuts that could be made in the "discretionary portion" of the budget. For example, "we still have 163 job-training programs when we can probably do well with 25" and "we still have youth-at-risk programs that number at about 266 and we might do with 50 or 75."

Reform Party meeting ends with major schism

NASHVILLE, Tenn. (AP) — Sarah and Michael Beach drove 290 miles from Muncie, Ind., excited about the idea of helping mold a national Reform Party as a competitor to the Republican and Democratic parties.

They weren't delegates to the party's organizational meeting, just interested members who voted for Ross Perot in the 1996 presidential election.

But once here, they watched in disbelief as coalition after coalition formed and then broke apart amid disputes between backers of Perot and others who say he should relinquish his grip on the party.

The meeting ended yesterday on a contentious note, with the breakaway faction saying it would go its separate way.

"I view this as coming to a fork in the road," said Ralph Copeland of Virginia, chairman of the faction calling itself the National Reform Party Steering Committee.

"The Perot party is going down one path, and the true democratic Reform Party is going down another," Mr. Copeland said.

Sarah Beach said she felt like crying when one faction of about 40 people stormed from the meeting Saturday after former Perot campaign coordinator Russ Ver-

ney was elected chairman.

The breakaway faction doesn't want the party controlled by people picked by Mr. Perot. It contended Mr. Verney's victory would serve only to benefit the Texas billionaire — not the Reform Party movement.

"It scared me a little, but it hasn't deterred us," Mrs. Beach said.

Representatives of 42 states and the District of Columbia had met for the effort to reinforce initial efforts to create a viable third party.

Mr. Copeland said his group represents at least 11 states, including a majority of the states capable of putting the party's name on a ballot.

Mr. Perot dismissed the faction on Saturday as a "tiny, little, dissident group" representing three or four states. He had urged Reform Party members to quit bickering and focus on national issues.

Mr. Copeland said it's still possible his group could participate in a party convention planned for later this year. Mr. Verney said the group would be welcome.

"I think we have a common purpose," Mr. Verney said. "Over time, as we focus on common goals, there will be an end to this."

PRESERVATION PHOTOCOPY

These are items we might get attached on

WR-Immigrants

SUMMARY OF SENSITIVE ISSUES REGARDING BENEFITS TO IMMIGRANTS

Draft to
Rehm
Bruce
Steve
Jeremy
Thoughts?
-Ken A

1) Deporting Immigrants Who Receive Public Benefits

Background-- The House-passed immigration reform bill (H.R.2202) stipulated that immigrants that received 12 months of means-tested public benefits within the first seven years in the country were public charges and subject to deportation. An immigrant who becomes a public charge is ineligible for naturalization for seven years. The final bill drops this provision.

Some may criticize the Administration for supporting policies that allow immigrants to come to this country and become a taxpayer burden without any consequence to the immigrant.

Response -- the Administration supports strong sponsorship requirements, including requiring sponsors to sign legally enforceable affidavits of support and deeming of sponsor income. These steps require new immigrants coming to the U.S. to have the social structure necessary to ensure that they do not become public charges. The Welfare Reform law goes further and bans all new immigrants from means-tested public benefits for five years and all current and new immigrants from SSI or food stamps until citizenship. New immigrants are subject to deeming after the five year bans until citizenship.

These provisions in immigration and welfare reform provide sufficient safeguards. Legal immigrants who are exempted from welfare reform bans and meet the deeming requirements should not be subject to deportation, or prevented from naturalizing because they receive benefits that they are eligible for under the law.

2) Eligibility of Illegal Immigrants for federally funded AIDS Treatment.

Background -- Current law does not bar illegal immigrants from having access to public health services and to Medicaid-reimbursable emergency medical services. The Immigration conference bill could have restricted access to federal assistance in paying for AIDS treatment but maintained some access to HIV testing. The compromise bill drops this restriction.

Some may criticize the Administration for supporting policies that provide illegal immigrants with taxpayer-funded AIDS treatment, "at an average cost of \$119,000 a year."

Response. It is important that everyone, including illegal immigrants, have access to testing and treatment for communicable diseases. That is why the Welfare Reform restrictions on benefits to both legal and illegal immigrants contained an exemption for public health services, which would include access to federal assistance in paying for AIDS treatment. The Administration supports maintaining this exemption. Concerns with excessive costs of treating illegal immigrants could be addressed by strengthening rules for deporting illegal immigrants, changes that are made in the immigration bill.

DRAFT

The cost figure is misleading. According to a 1993 AHCPH study, the average lifetime cost (from both public and private sources) of an HIV/AIDS patient from infection until death is roughly \$119,000. Under Medicaid, illegal immigrants are only eligible to receive emergency medical treatment.

3) Income Level to be Allowed to Sponsor an Immigrant

Background — Currently, the State Department uses the poverty level as a guideline for making entry determinations. The Conference bill would have required sponsors to have incomes over 140% of poverty to sponsor spouses and minor children and 200% of poverty to sponsor others. The compromise bill drops this restriction to 125% of poverty, as was contained in the Senate passed bill.

Some may charge the Administration wants individuals who are themselves eligible for Food Stamps and SSI to be able sponsor immigrants into the country. These immigrants will be able to qualify for welfare programs which cost the taxpayers millions of dollars.

Response — The Welfare Reform bill the President signed into law denies most legal immigrants Food Stamps and SSI until citizenship and denies most other means tested programs to new immigrants for their first five years in the country. These restrictions are adequate to ensure that immigrants do not become a burden to the taxpayers. The higher income thresholds contained in the conference bills would have prevented families from reuniting.

4) Eligibility Verification Procedures

Background — The Immigration Reform bill passed by the House included specific documentary requirements for receiving means-tested public benefits. The final bill dropped these provisions.

Some may criticize the Administration for failing to support tough verification procedures that are intended to ensure only qualified persons receive benefits.

Response — Welfare reform banned new immigrants from means-tested public benefits for their first five years in the country. It also requires the Attorney General, in consultation with other Departments to develop procedures to verify the citizenship status of persons applying to a wide range of programs. Recognizing the complexity of the task, Congress provided 18 months to establish a system and 2 years for States to implement the system. During the final negotiations, the Administration concurred with Congressional desire to ensure that the verification requirements apply to all applicants, and not just to persons who identify themselves as immigrants. In developing this system, the Administration will provide guidance of acceptable forms of documentation.

DRAFT

WR-immigration

To: Franks Raines
Jack Lew
Bruce Reed
Rahn Emanuel
Larry Haas
Nancy Ann Min
Joe Minarik

From: Ken Apfel (through Jack Smallgin)

Re: Summary of key changes in
benefits for immigrants provision
in Immigration welfare bill

CHANGES FROM BENEFITS FOR IMMIGRANTS PROVISIONS IN
IMMIGRATION CONFERENCE BILL

Six month grace period for current Food Stamp recipients from
immigrant bans enacted in Welfare Reform.

- o Grace period would provide current Food Stamp recipients affected by the Welfare Reform immigration ban with benefits until April 1, 1997 in order to provide time to adjust to the denial of benefits. It would make the Food Stamp provision more consistent with the implementation schedule for the SSI immigrant ban.

Reductions in income level requirements for sponsoring legal
immigrants support family reunification.

- o The Immigration conference bill would have required immigrants to have incomes at 140% of poverty to sponsor a spouse or a son or daughter and 200% to sponsor other family members. The final bill provides for a 125% of poverty level for all immigrants and removes other obstacles to sponsoring immigrants. The changes support the goal of family reunification by establishing reasonable income standards for sponsoring family members.

Requirements to deport and deny naturalization for immigrants who
use means-tested benefits dropped.

- o The final bill drops punitive public charge provisions for immigrants who use means tested programs.

Application of deeming rules to immigrants currently in the
country dropped.

- o The Immigration conference bill would have required immigrants in the country for less than 5 years to be subject to deeming for their first five years in the country. The final bill drops this provision and makes this policy consistent with Welfare Reform.

New significant exemptions to the restrictions in Welfare Reform
law.

- o New exemption provided for non-profit charitable organizations from verification requirements in Welfare Reform.
- o New exemption provided for battered immigrants and indigent immigrants from deeming restrictions in Welfare Reform.

Drops the provision that would have restricted HIV treatment to immigrants.

- o The Immigration conference bill would have restricted HIV treatment for immigrants. The final bill drops this provision.

Burdensome verification requirements substantially moderated.

- o The Immigration conference bill would have significantly expanded the verification requirements already enacted in Welfare Reform. The final bill replaces this provision with language that ensures a person applying for benefits provides proof of citizenship in a fair and nondiscriminatory manner.

Restrictions on use of emergency medicaid dropped.

- o The Immigration conference bill would have held sponsors of immigrants legally responsible for emergency medicaid costs. The final bill drops this provision.

WR -
Immigrants

FROM 'JIU JI JIN' TO 'FU LI JIN'

Some Chinese Immigrants Mistakenly See Welfare as a 'Fringe Benefit'

BY NORMAN MATLOFF

DAVIS, CALIF.

Immigration advocates in San Francisco's Chinatown sponsored a forum in May on welfare reform that drew an overflow crowd of elderly recipients.

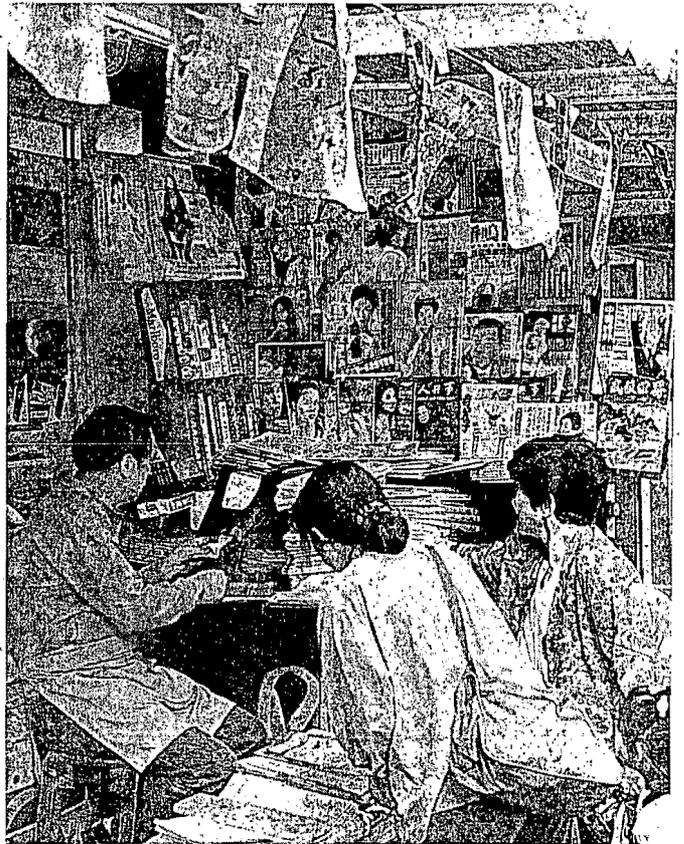
During the event, the advocates condemned proposals to restrict welfare use by immigrants as racially biased attacks on the needy. To their chagrin, the most common queries from the "needy" audience involved recipients' fears that their vacations overseas might harm their welfare eligibility. Such concerns are a far cry from those of kids in South Central Los Angeles who have never even seen the ocean, less than 10 miles away.

A new class of welfare dependents has grown at an alarming rate over the last decade or so: elderly immigrants, typically put on the dole by their children. A review of U.S. Census Bureau data and interviews with dozens of Chinese immigrants and their advocates reveal a disturbing picture of many middle- to upper-class families willing to bend or break U.S. immigration laws in order to get a share of "free money."

Nationally, welfare use among elderly legal immigrants of all races and ethnicities soared by a frightening 400 percent between 1982 and 1992. Worse yet, the annual growth rate is accelerating as word of America's "generous" welfare policies spreads abroad.

To be sure, Chinese immigrants are not the system's only abusers. However, they are disproportionately heavy welfare users, and their stories illustrate how the practice is becoming more common among other immigrant groups. U.S. Census Bureau data show that 55 percent of the Chinese seniors who immigrated to California between 1980 and 1987 were on welfare in 1990. The comparable 1990 figure was 21 percent for elderly Mexican immigrants and only 9 percent for native-born seniors.

To put it another way, most of these Chinese seniors do not speak English and do not know the meaning of standard American acronyms such as CBS, NBA, FBI, or even INS. But there is one they all know quite well: SSI, or Supplementary Security Income, the federal welfare program for older Americans.



REUTERS/BETTMANN

Census data and anecdotal information reveal a disturbing pattern of welfare abuse in America's Chinese immigrant communities. In New York City's Chinatown, shown above, many Chinese seniors' first order of business after arriving here is to get further details on welfare, says Hong Shing Lee of the City Hall Senior Center.

Consider the case of Mr. Cheng, a retired teacher from Taiwan. Cheng says he and his wife came to the United States to be reunited with their three children. But the children, all computer engineers, live in Houston, and the family "reunites" only once a year. Cheng says he and his wife settled in Sacramento rather than Texas be-

on life in America sold in Taiwan, Hong Kong, and Chinese bookstores in the United States includes a 36-page guide to SSI and other welfare benefits. Likewise, *World Journal*, the largest Chinese-language daily newspaper in America, runs a "Dear Abby"-style column on immigration matters, with welfare dominating the discussion. In the February 27, 1994 issue, for example, seven of the eight questions dealt with SSI.

In recent years, Chinese seniors have come to perceive SSI as a normal benefit of immigration whose use is encouraged, like a library card, without stigma. Taking welfare used to be anathema to the traditionally conservative, self-reliant Chinese. These days, it has full social acceptance.

Here are some recent examples of questions asked:

◆ "I currently receive \$520 per month SSI. I live with my daughter and pay her \$300 per month in rent. I would like to move to HUD-subsidized housing, since HUD policy is that one pays only one-third of one's monthly income for rent. Please tell me how to apply."

◆ "I came to the U.S. in 1989 on a tourist visa to see my children. I overstayed my visa and have been here since then, being supported by my children. I will soon receive my green card. As I have already been in the U.S. longer than the three-year period, can I immediately apply for SSI and Medicaid?"

◆ "My mother is an SSI recipient. She wishes to return home to Asia for a year and a half. Will her SSI benefits automatically be canceled? And when she returns, will she have to reapply for SSI from scratch?"

Such questions illuminate a disturbing trend in the nation's Chinese immigrant community: In recent years, the seniors have come to perceive SSI as a normal benefit of immigration whose use is encouraged, like a library card, without stigma. Taking welfare used to be anathema to the traditionally conservative, self-reliant Chinese. But these days, SSI has full social acceptance. Chinese political activists have exacerbated the problem by ag-

gressively promoting SSI use, further fostering the "library card" perception.

One senior from China pointed out that a common attitude about SSI today is *mh hou sit da*—Cantonese for "don't miss this great opportunity." Another senior, from Taiwan, noted that the term Chinese seniors use for welfare has been euphemized, changing from the old *jiu ji jin* ("economic rescue funds") to *fu li jin* (roughly translated, "fringe benefits").

A growing number of Chinese social workers agree that our SSI policy is deeply flawed. As Cindy Yee of the Oakland Chinese Community Council observed: "The system is not well put together . . . not strict enough to make the sponsors responsible." Yet Chinese political activists, claiming to represent the Chinese community, have been beating a path to Washington, lobbying heavily against SSI reform.

Due to federal budget rules, every dollar spent to reform welfare will mean another dollar in taxes or another dollar taken out of another program's account. This means every dollar paid to an immigrant parent with well-off children is a dollar unavailable for helping the underclass out of the welfare cycle. Such a reverse-Robin Hood effect is unconscionable.

Most of the elderly Chinese SSI recipients are decent people who do not realize SSI is intended only for the financially desperate. The children who break pledges to support their parents, and who may even profit from the system, are not so innocent. The loopholes they use to abuse the system must be plugged. ◆

Norman Matloff is a professor of computer science at the University of California at Davis who has been immersed in California's Chinese immigrant community for 20 years. He is married to an immigrant from Hong Kong, speaks Cantonese and Mandarin, and has done extensive volunteer work in San Francisco's Chinatown.

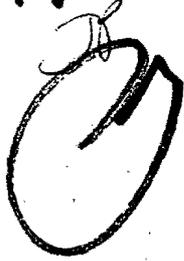
WR-Immigrants

THE WHITE HOUSE
WASHINGTON

Re: -

F.Y.I. - Hispanic Caucus
wants you to know they
have concerns w/ NCA's
welfare agreement.

To Card/Room.



Congress of the United States
House of Representatives
Washington, DC 20515

FACSIMILE

CONGRESSIONAL HISPANIC CAUCUS

223 CANNON HOB
(202) 225-4065 FAX (202) 225-1655

DATE: 2/5

TO: Leon Panetta
White House

Number: 456-2883

FROM: X CONGRESSMAN ED PASTOR, CHAIRMAN
ESTHER AGUILERA, EXECUTIVE DIRECTOR

PAGE(S) 7 (including fax cover sheet)

NOTE: We are concerned about welfare/immigrant
proposals by NGA.
I wanted to bring to your attention
the following letters outlining
earlier NGA concerns.

National Conference of State Legislatures
National Governors' Association
National Association of Counties
U.S. Conference of Mayors
National League of Cities
American Public Welfare Association

November 7, 1995

The Honorable Newt Gingrich
Speaker of the House
United States House of Representatives
H-232 Capitol Building
Washington, DC 20515

Dear Speaker Gingrich:

The National Conference of State Legislatures, the National Governors' Association, the National Association of Counties, the U.S. Conference of Mayors, the National League of Cities, and the American Public Welfare Association are very concerned about the mandates and cost shifts included in the immigrant provisions of both the House and Senate welfare reform bills. As you work toward a conference agreement, we urge you to consider the concerns we have outlined below.

We support efforts to give states and localities flexibility to reform welfare programs so that reforms will make sense for our individual communities. However, we are afraid that requirements forcing states to bar or deem immigrants from means-tested programs will severely restrict this flexibility. Mandating that states bar or deem immigrants from means-tested programs requires states and localities to verify citizenship status, immigration status, length of time in the U.S., and sponsorship status. In the case of deeming, states will also be forced to track sponsors and to enforce sponsorship agreements through law enforcement and court actions. This is a very burdensome, top-heavy approach to welfare reform which runs contrary to the logic of block grants and state and local flexibility. Moreover, because the proposed cash assistance, Title XX, and Medi-grant programs will have funding caps, the federal government does not save any money by mandating that states eliminate or limit these services to immigrants. Therefore, we urge you to let states and localities work together to make these decisions by giving states the option to bar or deem immigrants from federal, state and local government means-tested programs.

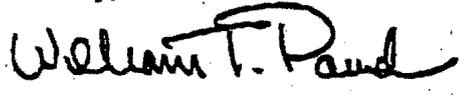
We also firmly believe that the federal government is responsible for providing funds to pay for the consequences of its immigration policy decisions. Furthermore, we believe that the elimination of federal benefits to legal noncitizens does not change a state or local government's responsibility to make services available to all legal immigrants. If legal immigrants are ineligible for federal benefits, states and localities will have to serve them under state and local programs such as General Assistance and indigent medical care. We are therefore concerned that reductions in federal support for immigrants will translate into a massive cost shift to states and localities. To

Page Two
Welfare Reform Conference
November 7, 1995

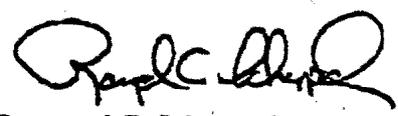
minimize these cost shifts, we urge you to maintain federal program eligibility for all classes of people who are exempted from the immigrant eligibility bars in either the House or Senate bills. The list of exemptions should include: all naturalized citizens; legal permanent residents over age 75 who have lived in the U.S. at least five years; immigrants too disabled to pass a naturalization exam; refugees, asylees, and persons granted withholding of deportation, all for their first five years in the U.S.; veterans and active duty military personnel, their spouses and dependents; victims of domestic violence; and immigrants who have worked and paid self-employment or Social Security taxes in 40 quarters.

We oppose provisions which prevent states and localities from offering Medicaid services to legal immigrants. In the past, even as it has tightened immigrant welfare eligibility rules, the Congress has always recognized that medical care is a crucial part of helping poor immigrants become self-sufficient and therefore, that Medicaid should be treated differently than other federal assistance programs. We urge you to let states and localities work together to decide if they will serve immigrants by giving states the option to bar or deem immigrants from Medicaid.

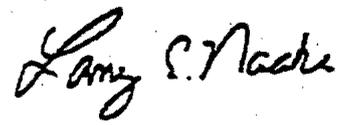
Sincerely,



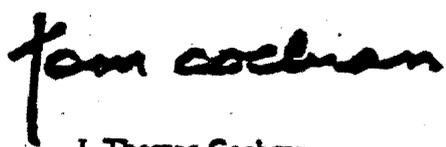
William T. Pound
Executive Director
National Conference of State Legislatures



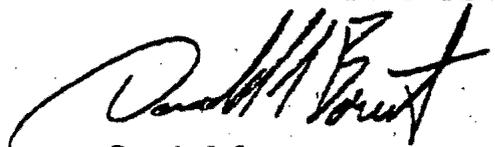
Raymond C. Scheppach
Executive Director
National Governors' Association



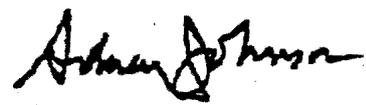
Larry E. Naake
Executive Director
National Association of Counties



J. Thomas Cochran
Executive Director
The U.S. Conference of Mayors



Donald J. Borut
Executive Director
National League of Cities



A. Sidney Johnson, III
Executive Director
American Public Welfare Association

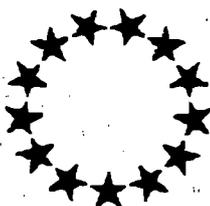
**NATIONAL
GOVERNORS
ASSOCIATION**

Tommy G. Thompson
Governor of Wisconsin
Chairman

Raymond C. Scheppach
Executive Director

Bob Miller
Governor of Nevada
Vice Chairman

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5300



October 10, 1995

Dear Conferee:

As the Senate and House work toward a conference agreement on welfare reform legislation, H.R. 4, the nation's Governors would like to provide you with some recommendations based on our experiences to date in redesigning state welfare systems. Governors believe that development of successful welfare-to-work and child care systems will require flexibility in designing programs, adequate funding for child care, and access to additional funding during times of economic downturn.

Child Care. The Governors are concerned that the work requirements in the bill could represent a significant unfunded mandate on the states if adequate child care funding does not continue to be provided at the federal level. Additionally, we believe that the funding should be provided as an entitlement to states and that states should have maximum flexibility in administering child care programs. To this end, the Governors urge House and Senate conferees to accept the following recommendations.

- Adopt the Senate provision that provides an additional \$3 billion (over five years) for child care services necessary to meet work requirements.
- Support providing all child care funding as an entitlement to states.
- Reject the Senate provision that requires all child care funds to be spent according to CCDBG rules. We oppose prescriptive earmarks that limit state flexibility in administering programs. Quality set-asides and mandated resource and referral programs detract from states' ability to provide needed child care services.
- Adopt the Senate provisions that give states options for limiting child care needs because of the work requirements. These state options include exempting families with children below age one from the work requirements and limiting the required hours of work to twenty hours per week for families with children below age six.
- If the Senate provision that prohibits states from sanctioning families who fail to work because no child care is available is adopted, then we believe that states should not be sanctioned for failing to meet state work participation rates because of lack of child care funding.

Economic Contingency Fund. The Senate bill includes a \$1 billion contingency fund that provides additional matching grants to states during periods of high and rising unemployment when states may not have the fiscal capacity to meet the growing need for assistance. The House bill does not include any such contingency grants and the House loan fund is not sufficient to help meet states' needs during economic recessions. The Governors strongly urge you to accept the Senate provision for a contingency fund.

October 10, 1995

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State Flexibility in Program Design. In the past, federal restrictions on eligibility and conditions on assistance have served to contain federal costs given the open-ended entitlement nature of federal cash assistance funding. The Governors believe that such federal "strings" have no place, however, in a block grant system where federal costs are fixed, regardless of the eligibility and benefit choices made by each state. In addition, the Governors believe that specific program design choices, such as how to structure work programs, are most appropriately left at the state level. We believe maximum flexibility should be given to states so that we can respond to different and changing needs. Accordingly, we have the following recommendations for the conferees.

- Oppose the Senate provision that requires all block grant funds to be reappropriated by state legislatures. This preempts state law or court rulings in at least six states. Congress should not use welfare reform to rewrite state laws.
- Support Senate provisions that give states the option of denying aid to teen parents or to additional children born to welfare recipients and oppose the House mandates in these areas.
- Support Senate provisions allowing states to exempt up to 20 percent of the caseload from time limits due to hardship.
- Clarify that time limits and work requirements apply only to recipients of cash aid, and not to those receiving only child care assistance.
- Support Senate provisions giving states greater latitude in the design of welfare-to-work programs. These include state options to count a limited amount of vocational educational training and to exempt families with children below age one.
- Support House provisions on the required participation rates for work programs.
- Support Senate language on welfare waiver programs.
- Support the House provision for transferability between the cash assistance and child care block grants.
- Oppose the 15% percent cap on administrative activities.
- Oppose Senate mandates for community service requirements and for personal responsibility contracts. The Governors support both of these as state options and believe states should have the flexibility to design the specific components.

Accountability. The Governors believe that states should be held accountable for the use of federal block grant funds and for paying back any misspent funds. However, we believe the penalties must be fair and not punitive as Governors face the challenge of implementing major changes within a short timeframe. Accordingly, we urge the conferees to take the following action.

- The Governors support the concept of rewarding states with high performance but not at the expense of each state's basic allocation. Therefore, we urge you to oppose the Senate financing mechanism that funds the bonuses out of the cash assistance block grant, thereby reducing every state's block grant just at the time that state costs related to work requirements and caseload growth will be rising.
- Adopt the House language with respect to the level of penalties and the House provision which limits the penalty for unlawful use of funds to the repayment of misspent funds.
- Oppose Senate penalty provisions as punitive and based on subjective determinations of when disallowed expenditures constitute intentional misuse of funds. Also oppose Senate language requiring states to replace reductions in their grant due to penalties by spending additional state funds in an amount equal to the penalty.
- Adopt the Senate language setting the effective date of the penalties at six months after the secretary issues final rules or October 1, 1996, whichever is later.
- Adopt the Senate language permitting states to enter into a corrective action or compliance plan to correct violations in lieu of paying penalties.

October 10, 1995

Page 3

- Oppose the burdensome data collection and reporting requirements in the Senate bill. These requirements are unreasonable and would impose substantial costs.

* **Immigrants.** The Governors believe that the elimination of federal benefits to legal noncitizens does not in itself change any state's legal responsibilities to make state services available to all legal immigrants. Policy adopted by the Governors clearly states that because the federal government has exclusive jurisdiction over our nation's immigration policy, all costs resulting from immigration policy should be paid by the federal government. Although we can support deeming requirements for some programs and changes to make affidavits of support enforceable, we oppose federal restrictions on aid that shift costs to states. We have the following recommendations for conferees in this area.

- Oppose the House ban on benefits to legal noncitizens from Aid to Families with Dependent Children (AFDC), food stamps, Medicaid, and Title XX.
- Support the Senate deeming requirements with the modification to restrict deeming to food stamps and cash assistance, to end deeming at citizenship and to include House and Senate exemptions for individuals.
- Support Senate Supplemental Security Income (SSI) provisions regarding noncitizens, including both House and Senate exemptions for individuals.
- For five-year prospective bar in Senate, include both House and Senate exemptions for individuals.
- Support Senate language giving states the option to deem state and local programs.

Child Support. The Governors believe that a more effective child support system is a critical component of welfare reform, and both the House and Senate bills make many changes that will strengthen the system and improve interstate collections. The Governors support a continued federal-state partnership and urge the conferees to adopt the following recommendations.

- Adopt the Senate language for the distribution of child support arrearages. This gives states the *option* of distributing to the family first the arrearages that accrued before or while the family received welfare. The Congressional Budget Office (CBO) estimates that under the House bill, which mandates distribution to the family first, the federal government would lose \$1 billion and state governments would lose \$766 million in the first three years this provision is in effect.
- Add new provision permitting states to supplement temporary assistance with current month child support payments up to the state's standard of need. This would enable states to continue "fill-the-gap" policies with child support payments.
- Adopt the Senate language for a two-year extension of the deadline and enhanced federal match for the creation of child support systems required by the Family Support Act of 1989. States are having difficulty in meeting this deadline partially because the Department of Health and Human Services failed to issue final regulations and grant approvals in a timely manner.
- Adopt the Senate language for the creation of a new performance-based incentive system with incentives paid from collections that would otherwise be reimbursed to the federal government. We urge you, however, to strike the 90 percent cap that would be imposed on reimbursements. The House bill would pay incentives by increasing the federal match, reducing states' ability to use incentive dollars for program innovations.
- Oppose Senate and House mandates for states to ban aid to those in arrears on child support. Support Senate option for states to deny food stamps to those in arrears.

Food Stamps. Governors have long supported greater conformity between the food stamp program and AFDC and appreciate provisions in both bills that will facilitate program simplification and give states

October 10, 1995

Page 4

greater flexibility in administering the food stamp program. We advise conferees to take the following action.

- Adopt the Senate provision that expands waiver authority for states. The provision permits states to request waivers to test innovative reforms, promote work, or allow greater conformity with other federal, state, and local public assistance programs. The House bill does not include a provision on waivers.
- Reject the House provisions on food stamp quality control. The House bill repeals the 1993 quality control reforms resulting in a roll-back to the provisions that were in effect in 1988. The 1993 food stamp quality control (QC) reforms received wide bipartisan support by the nations' Governors because they helped to make the system fairer and more equitable. The Senate does not make any changes to the food stamp quality control system. We urge you to strike the provisions in the House bill regarding food stamp quality control.
- Accept the Senate language that reauthorizes the food stamp program in its present uncapped form. Under current "paygo" provisions, it would be very difficult to provide additional funding beyond a cap if unforeseen circumstances such as a recession or natural disaster resulted in increased demand.
- Support Senate provisions (with minor modifications) on the simplified food stamp program, food stamp work requirements, and on funding and design of food stamp employment and training programs.

Supplemental Security Income. The Governors have the following recommendations for conferees on the SSI disability program.

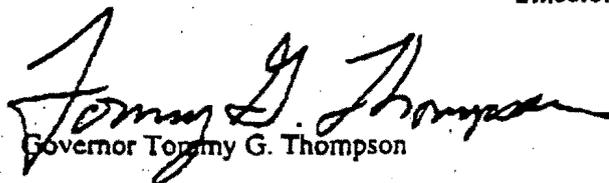
- Support Senate provisions regarding children's eligibility for SSI.
- Support the Senate provision allowing states to repeal their SSI state supplements.
- Support the House funding level for substance abuse treatment (\$400 million over five years) but funding should flow through the Substance Abuse Block Grant rather than through the Capacity Expansion Program.
- Support the Senate effective dates for all SSI changes.

Electronic Benefits Transfer. Delivery of benefits through Electronic Benefit Transfer (EBT) systems reduces costs and cuts down on fraud. The federal government should encourage and support the delivery of services through EBT. To this end, we recommend that conferees take the following action.

- Adopt the House provision that exempts all state and local government EBT programs from Regulation E. The Senate Regulation E exemption is limited to food stamp EBT programs.
- Adopt the Senate provisions that give states the option of receiving increased federal support to develop food stamp EBT systems.

We thank you for considering our views.

Sincerely,


Governor Tommy G. Thompson


Governor Bob Miller



National Coalition of Hispanic Health and Human Services Organizations

1501 Sixteenth Street, NW • Washington, DC 20036 • (202) 387-5000

April 4, 1997

Bruce Reed
Assistant to the President
Domestic Policy Council
1600 Pennsylvania Avenue, NW
Washington, DC 20500

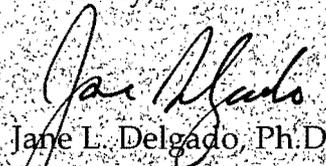
Dear Mr. Reed:

The National Coalition of Hispanic Health and Human Services Organizations (COSSMHO) strongly urges you to recommend that front-line services provided by non-profit community health centers and clinics be exempt from the interpretation of "federal means-tested public benefit" as allowed in the welfare reform bill (Public Law 104-193) signed by President Clinton on August 22, 1996.

As stated in Section 401(a) of the bill, unqualified aliens are not eligible for any federal means-tested public benefits. However, Section 401(b)(1)(D) allows the U.S. Attorney General to exempt any programs, services, or assistance that deliver in-kind services at the community level which are necessary for the protection of life or safety but do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance on the individual recipients income or resources.

Community-based health providers have been critical to our community's well-being, especially the one-third of Hispanic working families and more than one-third (39%) of Hispanic children who are uninsured. Therefore, we urge you to recommend that private, non-profit community health centers and clinics which receive federal Public Health Act grants be exempt from the definition of federal means-tested public benefits. We appreciate your consideration on this matter.

Sincerely,



Jane L. Delgado, Ph.D.

cc: Maria Echaveste

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WR - Immigration

March 7, 1996

MEMORANDUM FOR RAHM EMANUEL
BRUCE REED
RAY MARTINEZ
SUZANNA VALDEZ
MARTHA FOLEY

FROM:

Harold Ickes *(Signature)*

SUBJECT:

Raul Yzaguirre -- National Council of La Raza

Attached is a self-explanatory 5 March 1996 memo to me from Raul Yzaguirre, President of National Council of La Raza, who is concerned about the possibility that the Administration may revise the President's current position on welfare issues by further restricting legal immigrants' access to public benefits.

Please let me know your thoughts.

NCLR

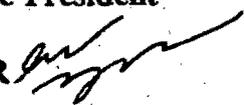
NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 785-0851

MEMORANDUM

TO: Mr. Harold Ickes, Assistant to the President
& Deputy Chief of Staff

FROM: Raul Yzaguirre, President, NCLR 

DATE: March 5, 1996

RE: Clinton Administration and Immigration Provisions

It has come to my attention that welfare issues are coming up in the context of debt ceiling negotiations. Particularly disturbing is the possibility that the Administration, in seeking a deal, may revise the President's current position by further restricting legal immigrants' access to public benefits.

We believe the current Presidential proposal addresses the issue of immigrants' access to benefits effectively, and allows the Administration to differentiate itself from the more extremist proposals being advanced by some Republicans. Such extremist proposals have proven divisive not only for the Republican party, but for the population in general; which supports stemming illegal immigration, but overall has favorable views on legal immigrants. A centrist, moderately pro-immigrant stance is therefore not only viable, but indeed essential, for a successful Clinton candidacy in 1996.

I have been advised that some individuals within the Administration are in favor of provisions contained in the Republican Welfare Reform Bill (H.R. 4).

I would like your assistance in contacting the President directly with regard to these issues. A call from you to the President on this matter would be extremely useful. Enclosed you will find some talking points outlining the main issues.

Thank you very much for your assistance in this urgent matter.



John
Guligan
3/14/96

TALKING POINTS PUBLIC BENEFITS AND IMMIGRANTS

- This could have very negative consequences, politically, for the Administration:
 - ◆ Those identified with policies that punish legal immigrants may face serious retribution from Latinos at the polls.

Virtually all legal immigrants have U.S. citizen family members. If the ability to access benefits and services supported by tax dollars paid by these legal immigrants and their family members are taken away, the citizens affected are certain to punish those responsible.

Legal immigrants are naturalizing and registering to vote in record numbers. The most conservative figures estimate that as many as 500,000 naturalized voters will be added to the rolls by Nov. 1996; 1/2 of these are in California, and 80% are Latino.

- ◆ Contrary to conventional wisdom, there is substantial evidence that a centrist stance that avoids attacks on legal immigrants is substantively tenable with the broader electorate, as well as the particularly affected groups.

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Moreover, an anti-immigrant stance from the Clinton Administration would be perceived as caving in to Buchanan at a time when the President should be distinguishing himself from Buchanan.

- Much of the public anger over illegal immigration is directed at the government, which the public believes to have "winked" at illegal immigration for decades.
 - ◆ The Administration has a solid enforcement record, reversing decades of neglect at the border, introducing innovations such as "Operation Gatekeeper," and stopping uncontrolled flows from Haiti and Cuba.
 - ◆ By contrast, many Republican proposals -- i.e., cut benefits to legal immigrants, reduce legal immigration -- are clearly and demonstrably irrelevant to the question of border control.
 - ◆ In this context, it is the more extreme proposals which are vulnerable to being painted as "business as usual," while more modest, centrist policies are framed as real change that is designed to make a difference.

- The immigration issue poses real dangers to the Republicans in general, and the Dole campaign in particular:
 - ◆ Extremist attacks on legal immigrants risk substantial Republican losses -- perhaps even permanent realignment -- among the small but growing Asian electorate. This could make a difference in several key states, including New York and California.
 - ◆ Even proposals like a national worker registry are highly problematic for Republicans. The more moderate Administration proposal signals the willingness to test the technology and employer reactions without making guinea pigs out of American workers.
- There is no pressure coming from anywhere else to do this -- the Governors' proposal was completely silent on this issue; the "Coalition," or Blue Dog Democrats, has been supportive of the Hispanic Caucus on this issue; the only people making an issue out of this are House Republicans and immigration extremists.
- The President's current proposal solves the "problem." To the extent there is a problem, it is the disproportionate use of SSI by elderly immigrants. The President's budget proposal saves between \$5 and \$7 billion dollars by deeming cash assistance programs (SSI, food stamps and AFDC), while H.R. 4 includes deeming, outright bans on assistance, and extends to many non-cash programs, e.g., student loans and job training.
- It is only by contrasting a solid record of controlling illegal immigration and supporting legal immigration that the President can:
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SUZANNA VALDEZ
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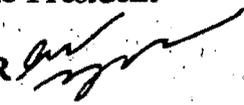
NCLR

NATIONAL COUNCIL OF LA RAZA

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Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 785-0851

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John
Gulligan
3/11/96

TALKING POINTS PUBLIC BENEFITS AND IMMIGRANTS

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 - Promoting intra-Republican divisions; and
 - Attacking weaknesses and inconsistencies in Dole's record.

**Congress of the United States
House of Representatives
Washington, DC 20515**

Wil - Immigrants

FACSIMILE

CONGRESSIONAL HISPANIC CAUCUS

223 CANNON HOB
(202) 225-4065 FAX (202) 225-1655

DATE: 12/11

TO: Bruce Reed

Number: 456-7431

FROM: X CONGRESSMAN ED PASTOR, CHAIRMAN
ESTHER AGUILERA, EXECUTIVE DIRECTOR

PAGE(S) 2 (including fax cover sheet)

NOTE:

ED PASTOR
2nd DISTRICT, ARIZONA

PLEASE REPLY TO:

223 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0302
(202) 225-4066

COMMITTEE ON AGRICULTURE
COMMITTEE ON HOUSE OVERSIGHT



Congress of the United States
House of Representatives

802 N. THIRD AVE
PHOENIX, AZ 85003-1440
(602) 256-0551

3432 E. BROADWAY
TUCSON, AZ 85718-6008
(520) 624-9988

281 W. 24TH STREET, SUITE 117
YUMA, AZ 85364-8546
(520) 726-7324

December 8, 1995

The Honorable William Jefferson Clinton
President
The White House
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20500

Dear Mr. President:

As Chairman of the Congressional Hispanic Caucus, I write to express our profound concern regarding the reduction in benefits for immigrants which is part of your plan to balance the budget in seven years. While we support the concept of a balanced budget, we are strongly opposed to placing a disproportionate burden on the backs of immigrants.

As we have communicated to you on numerous occasions, we strongly believe that the immigrant language in the Deal/Daschel substitutes to the Republican welfare reform bills, which were supported by every Democrat, is as far as the law should go. Your budget proposal goes far beyond what was contained in the Democratic alternatives, which makes it impossible when welfare negotiations commence to end up with anything that resembles the deal reached among Democrats.

While details are limited, it is our understanding that your proposal would deny SSI to legal immigrants, lengthen deeming provisions for SSI, Food Stamps, and AFDC until citizenship, and provide a state option to extend deeming to State funded cash assistance programs. There are several areas where your budget plan differs from the Democratic substitute. The most significant difference is the complete and retroactive ban on SSI to legal immigrants. Further, while there are exceptions for veterans, those aged 75 and over, and refugees and asylees, there is no exception for those legal immigrants who have worked more than 20 quarters, as in the Democratic substitute. In addition, the exceptions in the Democratic alternative applied to all of the programs which contained an extended deeming period.

We are extremely disappointed that your initial proposal to balance the budget drastically changes the way legal immigrants are treated in this country -- with 75% of new welfare cuts aimed at legal immigrants. We strongly encourage you to reconsider this extreme position as you continue negotiations with the Republicans in Congress.

Sincerely,

Congressman Ed Pastor, Chairman
Congressional Hispanic Caucus

WR - Illegitimacy

any further. But he continues to speak out about the case, even though he could face up to six months in prison and a \$1,000 fine.

The judge took the action after Heidelberg wrote him a letter outlining a dozen points he said warranted further investigation by another grand jury.

Those points, citing witnesses and evidence gleaned from news stories and sources, include more review of the John Doe No. 2 character reportedly spotted with McVeigh in the days before the bombing, and scientific theories that there may have been two blasts, rather than one, that destroyed the Murrah Building.

Cargo Jet Order Would Lift Calif. Aircraft Industry By Ralph Vartabedian= (c) 1995, Los Angeles Times=

LOS ANGELES The Pentagon appears virtually certain to order 80 additional McDonnell Douglas C-17 cargo jets, congressional sources said Monday, a decision that would provide an important underpinning for Southern California's aircraft industry well into the 21st century.

Senior defense officials are scheduled to begin a series of lengthy meetings Tuesday to weigh exactly how many C-17s they will buy, but the prospects for the biggest possible order have markedly improved in the past month as the aircraft has won a series of crucial endorsements.

A key member of Congress, who asked not to be identified, said senior defense officials have said in private meetings that the decision to buy the 80 aircraft is not guaranteed but now appears highly probable.

With a potential value of more than \$16 billion, the C-17 decision represents one of the biggest investments by the Pentagon in several years and will have an important influence on some of its biggest contractors.

The expected C-17 order would keep McDonnell Douglas' production line in Long Beach running until at least 2005, helping sustain a skilled labor pool and the region's competitive strength in aircraft industry. The program employs 8,500 in Long Beach and 27,000 nationwide.

A big Pentagon order would also allow McDonnell Douglas to recover the huge losses that occurred several years ago when it ran into serious technical difficulties. The company is also counting on the Pentagon order to help it win overseas sales.

Undersecretary of Defense Paul Kaminski, who will make the final decision, has received unanimous recommendations by senior military officials that he buy the maximum number of C-17s and forgo buying any Boeing 747 jets, which are under consideration as a less costly alternative to the McDonnell Douglas jet.

A Defense Department spokeswoman declined to comment on the assertions by congressional sources, citing the confidential process that the Pentagon uses in reaching acquisition decisions. But military service leaders have been uncommonly upbeat in their C-17 evaluations recently.

"There is enthusiasm for it," Air Force Secretary Sheila Widnall acknowledged in an interview last week aboard a C-17 on a flight to New Mexico. "I am very optimistic about the C-17. It was a well-designed aircraft."

The pending decision is an outgrowth of the cost and technical problems in the program two years ago, prompting the late Defense Secretary Les Aspin to put the entire program on so-called probation and see whether McDonnell Douglas could improve its performance.

The Pentagon had originally planned to buy 240 C-17s, but cut the order in half after the Cold War ended. After the C-17 began experiencing serious problems in the early 1990s, the order was cut to just 40 aircraft and the

company was put on notice that no further purchases would occur until its performance was raised.

An order for 80 more aircraft this week would restore the program to the full 120 planes.

Widnall said there was a need to restructure two years ago and set aside what had become a contentious dispute between McDonnell Douglas and the Pentagon. The effort, she said, has been successful, yielding "an extremely competitive aircraft."

Report Shatters Some Stereotypes of Unwed Mothers By Elizabeth Mehren Los Angeles Times

Policy-makers and the public alike may be surprised by the findings of a new study on out-of-wedlock childbearing commissioned by the Department of Health and Human Services.

Thirty percent of births in the United States in 1993 were to unwed mothers an almost eightfold increase since 1940 the report found. But the majority of these unmarried mothers were not teen-agers or minorities.

Sixty percent of births outside marriage in 1993 were to white women, and 70 percent were to women older than 20. (Still, because 72 percent of all teen-agers who have babies are unmarried, single motherhood remained disproportionately high for teen-agers.)

The steep rise in unwed childbearing is "not a teen problem, not a minority problem and not a poverty problem. We are looking at something society-wide. We have to think much bigger," said demographer Kristin A. Moore, author of the report's executive summary.

She said the findings also have important implications for the supposedly cherished institution of marriage. "Women are not really having more kids," Moore said. "They are having kids without getting married."

For many Americans, continued Moore, executive director of Washington, D.C.-based Child Trends Inc., "Economic and social circumstances have made marriage less attractive, less necessary or less feasible."

The survey also showed that:

Poorly educated and less affluent men are less likely to marry, but not necessarily less likely to have children. For men and women, higher wages, higher levels of education and better economic opportunities are related to lower rates of non-marital childbearing and higher levels of marriage.

"Shotgun weddings" are a thing of the past. Today, unmarried couples experiencing a pregnancy are much less likely to marry than 25 or 30 years ago. From the 1960s to the 1980s, the proportion of non-marital conceptions in which the parents married before the child was born plummeted from 31 percent to 8 percent among blacks, from 33 percent to 23 percent among Latinos, and from 61 percent to 34 percent among whites.

The risk zone for unmarried pregnancies has expanded substantially over the past few decades as Americans marry later, divorce more frequently and are more likely to engage in non-marital sex. Among married women born between 1954 and 1963, 82 percent had sex before they were married, compared with 65 percent among women born a decade earlier.

Unmarried women who are sexually active are less likely than married women to use contraceptives. Among sexually active women in 1988, 17 percent of never-married women and 11 percent of previously married women were not using contraception, compared with only 5 percent of currently married women.

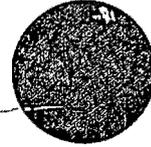
Welfare is not a significant contributor to recent increases in out-of-wedlock childbearing. Evidence linking welfare benefits with increases in non-marital births is

SEP 28 1995



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

SEP 27 1995



MEMORANDUM FOR THE HONORABLE CAROL RASCO.

SUBJECT: Policy Recommendations On Immigrant Eligibility For Benefits

The issues regarding immigrant eligibility for benefits are complex and difficult, and the accompanying debate is often emotional and misinformed. As you know, there are currently a variety of proposals -- in pending welfare and immigration bills, as well as by the Jordan Commission on Immigration Reform -- that would affect immigrant eligibility for benefits. Most of the proposals would affect hundreds of thousands of legal immigrants and -- in some cases -- even naturalized citizens.

Since many of the proposed changes would affect programs under my management, I have undertaken a thorough review of policies in this area. The attached recommendations, which I have approved, represent consensus among the operating and staff divisions in my Department. These recommendations were developed with careful consideration of the various proposals under debate. Since both welfare and immigration proposals are reaching late stages in the legislative process, I urge that these recommendations be seriously considered by the Administration in current legislative discussions.

I look forward to talking to you about these policy recommendations.

A handwritten signature in black ink, appearing to read "Donna E. Shalala".

Donna E. Shalala

Attachment

POLICY RECOMMENDATIONS ON IMMIGRANT ELIGIBILITY FOR BENEFITS

1. Deeming and Affidavits of Support

We strongly believe that immigrants should not become "public charges" after entry into the country, and that sponsors should be held responsible for immigrants they have agreed to support. Changes in deeming policies and in the affidavit of support are necessary to strengthen these obligations and responsibilities. At the same time, we also support continuation of family reunification and the equitable treatment of legal immigrants and naturalized citizens, particularly given the many positive political, economic, social and cultural contributions that immigrants and their families have made to this country. Any changes in benefit eligibility rules must strike a reasonable balance between these mutual goals.

We recommend extending the period of deeming to 10 years or until the immigrant becomes a naturalized citizen, whichever occurs first. We also recommend applying these extended deeming rules only to the three Federal programs that currently implement deeming: AFDC, SSI, and Food Stamps. These deeming changes should apply prospectively to new immigrant applicants (i.e., current recipients should be grandfathered under current deeming rules) to minimize the disruption to individuals and communities. State and local cash general assistance programs should also be allowed to use these same deeming rules.

This policy represents a significant toughening of current eligibility rules. A 10-year deeming period is double the current (temporary) 5-year SSI deeming period, and more than triple the current 3-year AFDC and Food Stamp deeming period. It sends the clear message that we take seriously the commitment made by immigrants to not become public charges. Once immigrants become citizens, however, we should recognize that they have become full partners in our society and accord them the same rights, including benefit eligibility, provided to other citizens. In addition, we have been advised by the Department of Justice that applying sponsor deeming rules beyond citizenship raises serious Constitutional issues.

We recommend administering deeming rules only in the cash or cash-like entitlement programs, although the affidavit of support would be enforceable against the receipt of other benefits (see discussion below). In particular, expanding deeming rules to the Medicaid program, public health clinics, child welfare and social services, maternal and child health block grant, etc., would undermine overall public health while increasing administrative complexity. In addition, requiring doctors, nurses, Head Start teachers, and other community providers to verify alienage and apply deeming rules making certain legal immigrant children and families ineligible for services would have a

pernicious effect on communities. It would undermine the critical authority of and respect for those individuals within their communities, and diminish the role of their institutions in many ethnic communities. These effects are counter-productive to HHS' mission to protect children and families.

We recommend making the affidavit of support legally binding on sponsors for the same period of time as deeming: 10 years or until the immigrant naturalizes. We also recommend that the affidavit commit sponsors to meet the ongoing needs of immigrants, including income, food, housing, and medical needs. The affidavit should also be enforceable with respect to similar state and local programs of assistance.

This policy unquestionably imposes greater responsibilities on sponsors compared to current law. Enforcement of deeming and affidavits of support for 10 years or until citizenship is more stringent than some proposals (e.g., the House Republican immigration bill -- H.R. 2202), and less stringent than others (the Senate Republican immigration bill -- S. 269 -- and welfare bill -- S. 1120 -- the House Republican welfare bill -- H.R. 4; and the Jordan Commission). While our recommended deeming and affidavit policy imposes much greater responsibilities on immigrants and sponsors, it is also reasonable enough to allow continued family reunification. It would be harder to immigrate under the conditions we propose, but unlike the more stringent proposals, it would not be so hard as to deny reunification to many immigrant families, particularly middle income families.

The interaction between the recommended deeming and affidavit of support policies could create a "pay-and-chase" situation for some sponsored immigrants. For example, since we are recommending not to extend deeming to Medicaid, a sponsored immigrant may become eligible for and receive Medicaid services. As long as the affidavit of support was still applicable, however, the immigrant's sponsor would be liable to reimburse the government for the cost of services rendered the immigrant. So while the sponsored immigrant is "paid" the benefit, government will be authorized by the affidavit of support to "chase" after the sponsor to compel reimbursement for the amount of benefits provided to the immigrant. We recognize that this policy may be somewhat difficult to administer, but we think it is a necessary policy choice to balance the goals of improving public health and safety while protecting and conserving public expenditures.

We recommend providing "good cause" exemptions from the new deeming and affidavit of support rules. Immigrants who can prove that their sponsors refuse to support them should be exempt from deeming, although the affidavit would be enforced against the sponsor along with a monetary penalty. Immigrants or sponsors who become severely disabled within the deeming and affidavit enforcement periods should be exempt from the deeming and affidavit rules. Similarly, a sponsor who becomes bankrupt should be exempt from the affidavit of support, and the sponsored immigrant should be exempt from the deeming rules, until the circumstances of the sponsor have improved.

The longer deeming and affidavit periods we are recommending are likely to result in more cases in which either the sponsor or the immigrant experience severe reversals of fortune. Current deeming rules exempt sponsored immigrants who become disabled after entry. This principle should be expanded to include other potential "good cause" exemptions. The situation regarding an immigrant denied support from a sponsor would lead to the same type of "pay-and-chase" situation described earlier. It should be noted that since the legally binding affidavits of support could be applied only to new entrants coming into the country, there would be some immigrants already in the U.S. to whom the extended deeming period recommended above may apply but whose sponsors would have signed the older non-binding affidavits of support (i.e., those current immigrant *residents* who are not currently benefit program *recipients* who would be grandfathered). If these immigrants became eligible for benefits as a result of the "good cause" exemption from deeming due to a delinquent sponsor, there would be no mechanism to compel reimbursement from their sponsors.

Since the affidavit of support is a document required for immigration purposes, we recommend that the Immigration and Naturalization Service -- or another law enforcement agency -- be responsible for identifying delinquent sponsors and enforcing reimbursement on behalf of government agencies that provide benefits to persons whom they have sponsored. We also recommend that some conditions be required of sponsors at the time they petition for the entry of immigrants, similar to the current practice that requires sponsors to demonstrate that with their responsibilities for the prospective immigrant they can maintain income levels above the poverty line.

Consolidating enforcement of the affidavit of support within a single law enforcement agency would be more efficient than spreading such enforcement responsibilities among many benefit programs. In addition, it would be useful to consolidate information regarding sponsors within the INS, particularly information on delinquent sponsors, since such persons should not be allowed to sponsor any additional immigrants until they have fully met their financial responsibilities.

The current requirements on sponsors petitioning for the entry of immigrants provide a modest threshold and allow middle income families to be reunited, in addition to wealthier families.

2. Health Insurance

Both the Jordan Commission and the House Republican immigration bill (H.R. 2202) would require immigrant parents (or their adult children sponsors) to purchase and maintain health insurance as long as they are living in the U.S. H.R. 2202 would require the purchase of private health insurance comparable to Medicare (parts A and B) and Medicaid long-term care coverage. The Jordan Commission has proposed allowing such immigrants to purchase upon entry Medicare insurance (parts A and B) and Medicaid

long-term care at an actuarially fair price. Immigrants over age 65 are currently eligible to purchase Medicare only after 5 years of residence.

We recommend opposing a health insurance mandate for immigrant parents because it cannot be administered and it would be inequitable. [OMB concurred with this recommendation in the Administration's bill report on H.R. 2202.]

Failure to mandate health insurance coverage could be misperceived as allowing continued reliance on taxpayer-funded services. However, as noted above, we are recommending the affidavit of support be binding with regard to taxpayer-funded health services. Therefore, we expect a significant reduction in participation in Medicaid by sponsored immigrants, particularly the elderly immigrant parents of citizen adult children.

Such a mandate would not be administrable. Private health insurance policies comparable to Medicare plus the long-term care benefits of Medicaid may be unavailable at any price. The long-term care insurance industry in particular is in its infancy. Availability, type and quality of benefits, consumer safeguards, and regulation by state insurance departments all vary widely. It is not known whether current premiums will provide sufficient revenue to pay promised benefits many years in the future. In addition, since long-term care policies generally contain far more limited benefits than Medicaid they could not be considered comparable.

There would be other complications with such a requirement. For example, insurers generally require medical examinations and tests before they will offer individual acute or long-term care policies and are unlikely to accept tests performed outside the U.S. A health insurance mandate on immigrant parents would necessitate reliance upon state insurance departments to determine the acceptability of individual policies, to monitor and enforce continued coverage, and to convey this information to consular officials worldwide. No additional resources are provided to fund this additional administrative requirement on the states.

To the extent health insurance coverage could be purchased, the cost would be prohibitive. Our preliminary estimates indicate that, for parents age 65 and over, premiums for Medicare comparable acute care coverage plus a minimally acceptable long-term care policy would average between \$7,000 and \$13,000 per person per year, with costs only slightly lower for parents under the age of 65. These insurance requirements would effectively allow only wealthy American families to bring their parents to the United States as immigrants.

Finally, such a health insurance mandate would be inequitable because it would apply only to qualifying parents and not to other classes of immigrants or U.S. citizens whose age, health, and uninsured status make them equally likely to incur uncompensated care

costs. Further, imposing a mandate upon purchasers of health insurance, absent a corresponding mandate that insurers offer such coverage on an equitable basis, would set standards that are virtually impossible to meet.

We recommend that current law be modified to allow elderly immigrants (over age 65) to purchase Medicare immediately at an actuarially fair price -- that is, nearly \$5,000 per year with non-subsidized Part B coverage.

Given that affordable health plans for elderly individuals covering doctor and hospital services are not generally available, it is appropriate to provide a realistic option to such immigrants and their families. The part B premium for such individuals would revert to the subsidized rate after 5 years residence (similar to current law).

We recommend against the option to allow immigrant parents to purchase Medicaid long-term care benefits.

There is currently no Medicaid premium or actuarial pricing of Medicaid benefits in general, let alone the long-term care portion of Medicaid. Such an option would require more personnel and new administrative structures to be established either by states or the Federal Government. If states administered the option, there would be the issue of uniformity of benefits and premiums across states. If the Federal Government administered the option, there would be the issue of imposing a uniform federal requirement on the several states.

3. Eligibility Definition, Illegal Immigrants, Number of Programs Affected, and Verification

Illegal immigrants are currently ineligible for entitlement benefits, other than emergency medical services. However, many discretionary programs -- such as Head Start, the public health clinics, and the block grant programs -- do not verify immigration status as a condition of eligibility. In addition, under the HHS entitlement programs that do verify immigration status (AFDC, Medicaid, SSI) the courts have determined that certain individuals with specific marginal legal immigration statuses (e.g., voluntary departure) should be considered "permanently residing in the U.S. under color of law" (PRUCOL), and therefore eligible for benefits.

The Administration's welfare reform bill -- the Work and Responsibility Act of 1994 (WRA) -- proposed a new, more restrictive definition (similar to the current Food Stamp definition) of eligibility that would be applied to AFDC, Medicaid and SSI. The Republican legislative proposals tighten even more the range of immigrants who would be eligible for benefits and generally apply that definition to all federal programs and benefits, including discretionary spending programs.

We recommend the more restrictive definition of eligibility proposed in the WRA, and recommend applying that definition to AFDC, Medicaid, and SSI. If absolute consistency is desired then we could suggest that Food Stamps use the same immigrant eligibility definition. State and local cash and medical general assistance programs should also be allowed to use the same definition of immigrant eligibility for their programs. [OMB communicated a similar position in the Administration's bill reports on S. 269 and H.R. 2202.]

Requiring additional discretionary programs to establish new immigrant eligibility criteria would also require such programs to begin verifying immigration status. This would be especially problematic for a number of HHS programs, such as Head Start, child welfare services, public health clinics, social services and maternal and child health block grants. Denying such services to illegal immigrants would undermine general public health and safety, and have the type of pernicious effects that would result from extending the deeming requirements to such programs.

Many immigrant families are of "mixed status" -- consisting of members who are both citizens (usually children, but also parents) and immigrants, both legal and illegal (usually parents or other adult relatives). If additional HHS programs were required to begin verifying immigration status to deny benefits to illegal immigrants, it is likely that many families would not bring their children to those programs for assistance out of fear of being identified. Even legal immigrants would avoid these services for fear of being mistaken for illegal aliens. This "chilling effect" would be harmful, increasing poverty and affecting the overall health and welfare of families and the communities they live in. HHS' mission is to protect children and families, and we strongly believe that a broad requirement to verify alienage would undermine our fundamental mission.

In addition, requiring new verification procedures under discretionary-funded programs would result in the expenditure of limited appropriations on those procedures, leaving fewer resources to provide critically needed services.

Our recommended policy of a more restrictive eligibility definition targeted to major entitlement programs would provide entitlement savings without diminishing discretionary services or the general public health and safety. It would also allow for continued reliance on the Systematic Alien Verification for Entitlements system (SAVE) which operates effectively to ensure that only legal immigrants receive entitlement benefits. While some improvements should be made to the system, particularly related to sponsorship information, this approach would not require significant new resources. If a new centralized data base is established in the future with regard to employment verification needs, as has been proposed, then it may be more efficient to use such a system for benefit eligibility verification purposes as well. However, there would still be issues related to privacy, reliability, government intrusion and potential for discrimination that would need to be considered under such an approach.

4. Reporting Illegal Immigrants To INS

Current benefit program statutes have privacy provisions that have been interpreted to effectively prevent AFDC and Medicaid from reporting illegal immigrants to INS. In addition, the SAVE system also has a statutory provision prohibiting use of information received from that system from being used for enforcement purposes.

Both the House Republican immigration bill (H.R. 2202), and the Congressional Task Force on Immigration chaired by Rep. Gallegly (R-CA), would allow program personnel to report illegal immigrants to INS. The Jordan Commission has been silent regarding such reporting requirements, although they have noted the lack of resources to carry out current apprehension and deportation priorities.

We recommend maintaining the status quo which generally prohibits health and welfare workers from reporting illegal immigrants to law enforcement agencies.

Such reporting requirements would exacerbate the pernicious and "chilling" effects summarized earlier related to expanding verification of alienage status to additional discretionary programs. Requiring HHS to assume such a law enforcement role would undermine our fundamental mission to protect children and families.

5. Refugees, Asylees and Other Sponsored Immigrants

Both the Jordan Commission and the House Republican immigration bill (H.R. 2202) propose statutorily restricting the number of refugees admitted each year. It is anticipated that Senator Simpson (R-WY) will introduce a legal immigration bill to restrict even further the number of refugees. *The Administration has opposed such provisions on the grounds that they unnecessarily restrict the flexibility of the President in setting the annual refugee ceiling, and we recommend continuing that policy. We also recommend that refugees, asylees and others who are victims of persecution be generally exempt from the benefit limitations proposed for other immigrants, such as deeming or requirements for legally binding affidavits of support.*

On a more technical issue, we are concerned that changing policies related to the migration of Cubans and residents of the former Soviet Union (primarily Jews) may create unintended consequences, particularly in light of the increased restrictions we are recommending for legal immigrants in general. *We recommend that in the case of various parolee groups, the Attorney General should identify classes of sponsored immigrants who have been paroled into the U.S. for compelling humanitarian reasons (e.g., Cubans and Jews from the former Soviet Union) and have the authority to waive the conditions of the affidavit of support. In consultation with the Attorney General, the Secretaries of HHS and Agriculture and the Commissioner of Social Security could decide to waive the deeming rules for these classes of parolees.* This approach is consistent with the one proposed in the

WRA with regard to immigrant eligibility and allows immigrants that are similar to refugees except for immigration status to be treated as refugees for purposes of public assistance.

WR-Immigrants

June 12, 1995

TO: Carol Rasco
Bruce Reed
Jeremy Ben-Ami

FR: Diana Fortuna *DF*
Steve Warnath *SW*

Here is a draft response to the President's question about a Washington Post article on elderly immigrants on SSI. Sorry it took so long, but there were some developments on this issue last week that we wanted to reflect in the response.

DRAFT

June 12, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: Carol Rasco

SUBJECT: Attached Clipping on SSI and Elderly Immigrants

You had sent me the attached Washington Post article on the growth in the number of elderly permanent residents on SSI and noted that we need a careful position on the issue.

In our welfare reform bill, we took the position that the income of an immigrant's sponsor should be deemed available to the immigrant for a period of five years for the purposes of determining eligibility for SSI, as well as AFDC and food stamps. This period would be longer if the sponsor's annual income was above the U.S. median family income. In that case, the immigrant would not be eligible for benefits until citizenship.

However, since that time, the House and the Senate Finance Committee have both acted on this issue as part of their welfare reform bills. As the article notes, the House would bar legal immigrants from receipt of Medicaid, SSI, school lunch, and other Federal programs, with an exception for those older than 75 who have lived in the U.S. for at least five years. The Senate Finance Committee approach is tougher. It would bar legal immigrants from receipt of SSI, except those who are older than 65 who have worked in the U.S. at least 10 years (long enough to qualify for SSDI and old-age benefits). Both would also exempt recent refugees and veterans. These measures result in significant savings within each bill: \$6 billion out of \$69 billion in savings in the House welfare reform bill, and approximately \$10-11 billion out of \$32 billion in savings in the Senate Finance version.

One very recent development is Senator Simpson's immigration proposal. Senator Simpson would require an immigrant's sponsor to agree to financially support the sponsored individual until the sponsored individual has worked in the U.S. for 40 qualifying quarters. The bill would save \$8.5 billion over five years. In our comments on Simpson's bill, we said that, while the Administration strongly supports making the affidavit of support legally binding, we have reservations about setting the period of obligation and deeming at 40 qualifying quarters, as it could lead to deeming even after the immigrant becomes a naturalized citizen. This feature of Simpson's bill was criticized by others in the attached Washington Post article over the weekend.

We offered to work with Simpson's Subcommittee to establish a reasonable deeming policy that addresses these concerns. We suggested that one option could be to deem sponsored immigrants for 10 years or until citizenship with certain exemptions.

We have not made this issue a priority in our comments on the welfare reform bill to date, and have therefore not been actively pushing our deeming proposal during the recent debate on the Hill. The conference will be a more appropriate time for us to weigh in, once we have ascertained how much support Senator Simpson is garnering.

cc: Leon Panetta
Anthony Lake

Senate Measure On Immigrants Draws Protest

Benefits Limits Apply Even After Citizenship

By Barbara Vobejda
Washington Post Staff Writer

The Senate welfare reform bill would make it more difficult for legal immigrants to receive benefits even after they become citizens, which immigrant groups claim would violate long-standing tradition by creating two classes of citizens.

Republican legislation in the House and Senate calls for restricting welfare aid to legal immigrants. But only in the Senate bill do the restrictions extend beyond the point at which immigrants become citizens.

"It means that a naturalized citizen doesn't have all the rights of a citizen who was born here," said Josh Bernstein, a policy analyst with the National Immigration Law Center. "We're asking people to pledge allegiance to the country, take on the full responsibilities of citizenship, but we're withholding some of the benefits of citizens."

A spokesman for Sen. Alan K. Simpson (R-Wyo.), who proposed the language, dismissed arguments that the policy would be unfair to immigrants who become citizens.

For Simpson, said Richard W. Day, chief counsel to the Judiciary immigration subcommittee, "it's a matter of principle that newcomers should be self-supporting."

Under the welfare bill approved by the House in March, most legal immigrants who have not become citizens would be barred from receiving benefits under the major welfare programs—including Aid to Families with Dependent Children, food stamps, Medicaid and Supplemental Security Income (SSI) for the elderly and disabled.

Illegal immigrants are not eligible for most programs under current law, nor would they be under the proposed changes.

Immigrant groups and others protested the House provisions affecting legal immigrants, arguing they are living in this country legally and paying taxes and should be eligible for the same programs as other Americans.

To some extent, those provisions were softened in the legislation approved by the Senate Finance Committee last month. Under the Senate bill, for example, noncitizens would be barred from only one program, SSI, rather than the five programs in the House bill.

But in other ways, the Senate bill is more restrictive than the House version.

The issue most disturbing to immigrant groups is the Senate provision that would make it more difficult for legal immigrants to qualify for benefits even after they become citizens. The added barrier to benefits is a requirement that states, when determining eligibility, take into account the income not only of the immigrants applying for assistance, but the income of the sponsors of those immigrants, and the sponsors' spouses.

For the most part, sponsors are relatives of the immigrants.

Advocacy groups argue that few immigrants could qualify for assistance under the proposed provisions, known as "deeming" rules. Also, these groups say, the relatives of immigrants are often struggling financially, and supporting another family would send them into further economic difficulty.

Under current law, the income of sponsors must be "deemed" when a noncitizen applies for three programs: AFDC, food stamps and SSI.

In the House version, the deeming requirement would end when an immigrant became a citizen. In the Senate bill, the deeming requirement would apply even after an immigrant becomes a citizen.

"To create this distinction between naturalized citizens and other citizens is a huge departure from a couple hundred years' worth of tradition in this country," said Cecilia Muñoz, deputy vice president at the National Council of La Raza.

That argument was supported by David Martin, University of Virginia professor of law. "Traditionally, the dividing line has been obtaining citizenship," Martin said. "Virtually every kind of restriction that applies to aliens ceases to apply when you become a citizen."

Day said Simpson had disagreed with the House provisions creating an outright ban on benefits to noncitizens, arguing there should be a "limited safety net" for immigrants who fall on hard times.

But when that happens, sponsors who have pledged to help support immigrants should be held to that agreement, Day said. Taking into account the income of the sponsors in determining eligibility is similar to considering the alimony or child support other welfare applicants may be receiving, he said.

"It's just like another asset that should be considered," Day said. "Folks who are their relatives should be responsible for them, not the American taxpayer."

AN UNCERTAIN OLD AGE
THE IMMIGRANT ELDERLY

Benefit Lifeline May Be Severed For Noncitizens

Part of three articles

By Lena H. Sun
Washington Post Staff Writer

Phan Hue rolls up his pants and sleeves to show the scars from four bullet and shrapnel wounds, reminders of his days in the South Vietnamese army. Now living in Falls Church, Phan, 74, and his wife survive on \$680 a month in federal benefits for the elderly poor, known as Supplemental Security Income, or SSI. They stretch those dollars by turning the heat down in the winter, sitting outside in the sun to keep warm, and seldom buying meat.

The two refugees are among hundreds of thousands of elderly immigrants, all of them legally admitted into the country, who would lose such benefits under the Republican-sponsored welfare reform bill that passed the House in March and under another bill pending in the Senate. These cuts are an essential part of the GOP proposals because they produce roughly one-third of the \$66 billion in savings over five years that backers expect to glean from the House welfare plan, and about 40 percent of the \$26 billion in savings from the Senate version.

The impact of the legislation goes far beyond dollars and cents. Already these money-saving proposals have prompted a wide-ranging debate over the place of legal immigrants in American society. For the first time, they are being judged substantially in relation to their use of publicly funded health care and other entitlements, as opposed to their

See ELDERLY, A5, Col. 3

ELDERLY, From A1

economic, social and cultural contributions to the society.

"When did we change the definition of American? . . . From Albert Einstein to Martina Navratilova; from An Wang, the founder of Wang computers, to Elie Wiesel, winner of the Nobel Peace Prize—all have come to this country and been accepted as Americans," said Rep. Norman Y. Mineta (D-Calif.) during the House floor debate.

But advocates of the new restrictions insist that legal immigrants must accept substantial sacrifices at a time of widespread cuts in federal spending on assistance programs.

"Quite frankly, I do not think that when we're cutting benefits and cutting welfare for our citizens, I don't see why we should stretch and say that we have an obligation to those that aren't even citizens of our own country," said Rep. E. Clay Shaw Jr. (R-Fla.), an author of the House welfare plan.

The issue is likely to be a major point of contention in coming months now that the welfare reform debate has moved to the Senate, where some prominent Republicans favor either adopting less restrictive measures or letting individual states decide on immigrants' eligibility.

'In Every Sense Part of Us'

Sen. Alan K. Simpson, (R-Wyo.), a longtime leader on immigration policy, often argues that legal immigrants enter into a contract with the government when they come to the United States. They pay taxes and serve in the military. To take the safety net from them, he said, "would be a very grave mistake" and goes against the spirit of House Republicans' "Con-

tract With America."

"They live in your home town. They go to the Rotary Club. They're in the service club," Simpson said. "They are in every sense part of us—except for one thing, the right to vote."

The House version of welfare reform would produce savings of between \$18 billion and \$21 billion over five years by barring most legal immigrants from receiving a range of federally funded benefits, from Medicaid to school lunches.

Exceptions would be made for legal immigrants over 75 who have lived here five years, recent refugees and veterans, among others. Undocumented aliens would continue to be barred from welfare programs and non-emergency health care welfare programs.

The Senate version of the welfare bill adopted last week by the Finance Committee would give states the option of barring legal immigrants from the basic cash welfare program, Aid to Families with Dependent Children.

But, like the House bill, the Senate legislation targets the federal program that has been used by increasing numbers of elderly immigrants and refugees in the last decade: the Supplemental Security Income program, which provides assistance to the nation's disabled and elderly poor.

The Senate version of welfare reform would produce savings of between \$10 billion and \$11 billion over five years by keeping most elderly immigrants from receiving aid under SSI.

Exceptions would be made for legal immigrants who have worked in the United States long enough to qualify for Social Security disability income or old-age benefits—at least 10 years—and for recent refugees and veterans.

An estimated 738,000 legal aliens received SSI benefits in December 1994. Legal aliens account for nearly 12 percent of all SSI recipients and 30 percent of all recipients 65 or older. Since 1982, the number of legal residents receiving SSI has risen 580 percent, reflecting a surge in immigration.

Robert Rector, a policy analyst with the Heritage Foundation who favors the new restrictions, says knowledge about these benefits has spread in immigrant communities here and overseas, attracting foreign-born elderly who are turning the U.S. welfare system into a "deluxe retirement home."

Critics of the legislation say the bills, particularly the broader House legislation, would hurt the needy and vulnerable. For immigrants who arrive too late in life to work enough time to qualify for Social Security, there is virtually no other way to get affordable health insurance except through SSI. In most states, elderly people receiving SSI automatically qualify for Medicaid, the government health insurance program for the poor and disabled.

Another category of immigrants that opponents of the cutbacks consider particularly deserving are those who worked in the United States long enough to get Social Security but were employed in such low-wage, low-benefit jobs that they now need SSI to keep them out of poverty. About one of every four legal immigrants receiving SSI, many of them former workers in the garment and service industries, also gets Social Security retirement benefits.

Juan Martinez, 71, a retired day laborer, lives in Weslaco, Tex., in the Rio Grande valley. Originally from Mexico, Martinez worked for 16 years picking cucumbers, tomatoes, strawberries and oranges in Ohio, Florida and Michigan. He retired four years ago after he became ill with diabetes. He receives \$287 a month in Social Security, and \$178 in SSI. His wife, also a retired farm worker, receives an additional spousal Social Security check of \$139 a month.

Martinez would be protected under the Senate welfare reform bill, but the House version would cut off his SSI income and force the couple to live on an annual income of \$5,112, substantially below the poverty line.

"They can check with my bosses, they can find out if I worked or not," said Martinez, his words tumbling out in Spanish. "If they get rid of the check, I couldn't pay the electric, I couldn't pay the water, I couldn't pay for the old car I got—I couldn't pay for anything."

Others who would be hard hit are refugees, with the largest numbers having fled the former Soviet Union and Southeast Asia. Refugee advocates say the United States played a central role in the political upheavals that produced the flow

of refugees during the Cold War and therefore has a special obligation to help them once they are here.

Proponents of the bill say the United States should not use welfare to compensate for misery under communism.

The group most frequently criticized by proponents of restricting benefits are elderly immigrants coming to the United States to join their American-citizen children. Many are too old or disabled to work. Advocates of welfare reform say children who sponsor their parents to come to the United States, not American taxpayers, should take care of them.

Opponents say elderly immigrants who are eligible for SSI are not cheating the system but making normal use of a benefit that native-born Americans would not deny their own families.

In the Washington area, where foreign-born residents make up 12 percent of the general population—higher than the national average—the two largest groups of legal residents receiving SSI are from Vietnam and South Korea, according to the Social Security Administration.

When Families Can't Help

Du Won Kim, a retired South Korean auto parts salesman, came to the United States 10 years ago to be with his grown daughter and son. Kim, now 74, stayed briefly with his daughter in her Silver Spring home but moved out because he did not want to live in the same house with his son-in-law's mother. He lives alone in a subsidized apartment in Rockville.

He worked for about a year in a delicatessen but stopped when he turned 65 and was eligible to receive SSI. His monthly check is \$458. He can pay his \$128 monthly rent, but he relies on his daughter for additional money to cover living expenses.

The daughter, Chong Hong, 51, is an American citizen. She owns a Rockville sandwich shop; her husband is an auto mechanic. With three daughters in college, she said, she is unable to provide full financial support for her father.

"I can't cover all his expenses," she said. "In Korea, the wives stay home, but in America, my husband and I both work hard, and still we do not have enough for everything."

Her brother, recently divorced, is also struggling and cannot provide for his father.

Kim turns 75 next year and would be exempt from the ban under the House bill, but unprotected under the Senate version. He is taking no chances. He is applying for citizenship.

Other elderly immigrants may not be as fortunate.

Phan, the former South Vietnamese army sergeant, has a third-grade education and little chance of learning enough English to pass the citizenship test. In 1987, he fled his village in central Vietnam for the Philippines on a fishing boat with six of his nine children and their families.

A year later, they arrived in the United States. The children are working—some as carpenters, one as a custodian—but their wages are low, and they cannot help their parents financially. The \$680 in monthly SSI benefits barely covers rent, utilities and food for Phan and his wife, Truong Thi Ty, 68, who arrived last year.

The blue couch in their one-bedroom Falls Church apartment is threadbare. A white Frisbee turned upside down is the tray for chipped teacups. One recent afternoon, the fiancée of one of their granddaughters brought them a bag of shrimp, a treat they seldom buy themselves.

Truong has frequent migraines, and may have diabetes. Phan suffers from severe arthritis. Because of his age, Phan would keep his benefits under the House bill, but his wife would lose her SSI stipend and Medicaid coverage. Under the Senate version, the couple would lose their entire monthly income of \$680.

"If the government does not help out the old people, I don't see how we can survive," said Phan, speaking agitatedly in Vietnamese. "The Americans helped the Vietnamese fight the Communists. I don't really don't understand about the politics here. But if America had won the war, then all the Vietnamese soldiers would be leading a much happier life everywhere."

Staff writers Guy Gugliotta and Peter Pae contributed to this report.

THE PRESIDENT HAS SEEN 5/31

Leon (CR) Tony
we need a careful
position on the
also might have some
foreign policy implications
RL

File - wk - immigrants

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

LRM NO: 1418

FILE NO: 251

5/23/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 19

TO: Legislative Liaison Officer - See Distribution below.
FROM: James JUKES *JJ* (for)
Assistant Director for Legislative Reference
OMB CONTACT: Ingrid SCHROEDER 395-3883
Legislative Assistant's line (for simple responses): 395-3454

SUBJECT: ****REVISED**** JUSTICE Proposed Report RE: S269, Immigrant Control and Financial
Responsibility Act of 1995

DEADLINE: 4pm Tuesday, May 23, 1995

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

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

COMMENTS: The attached revised report incorporates agency comments received regarding LRM #1315.

The Senate Judiciary Subcommittee on Immigration may markup S. 269 as early as the week of May 22nd. The attached report compares S. 269 to the Administration's "Immigration Enforcement Improvements Act of 1995," introduced as S. 754.

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BRUCE REED

**RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 1418
FILE NO: 251**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

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FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

SUBJECT: ****REVISED**** JUSTICE Proposed Report RE: S269, Immigrant Control and Financial Responsibility Act of 1995

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

Honorable Alan K. Simpson,
Chairman
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Simpson:

This letter presents the views of the Department of Justice concerning S. 269, the "Immigrant Control and Financial Responsibility Act of 1995." The Attorney General and the Commissioner of the Immigration and Naturalization Service have appeared before your Committee to express support for the provisions of S. 269 which advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and providing the INS with the necessary resources to be effective. Many of the provisions of S. 269 are similar to provisions in S. 754, the "Immigration Enforcement Improvements Act of 1995."

This Administration is committed to working with you to ensure passage in this Congress of legislation to control illegal immigration. With limited exceptions, we support the provisions of S. 269. Our position on the individual provisions of S. 269 are outlined in the following section-by-section discussion.

Section 101 would authorize an increase in funding for border patrol agents and support that would add 250 employees in each of the next six fiscal years beginning in 1995, an annual increase of about five percent. S. 754 would call for increases of up to 700 in each of Fiscal Years 1996, 1997, and 1998, to the maximum extent possible consistent with standards of professionalism and training. We recommend that S. 269 incorporate the Administration's proposal as increasing the Border Patrol more quickly while assuring that training and professional standards are maintained.

Section 102 would authorize funding for 100 new positions in 1995 for personnel to investigate alien smuggling and enforce employer sanctions, an increase of about thirty three-percent. We support an increase for personnel to investigate alien

smuggling and enforce employer sanctions. This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply by virtue of similar language in the 1995 DOJ Appropriations Act.

Section 111(a) requires the Attorney General, together with the Secretary of Health and Human Services (HHS), to establish within eight years a system to verify eligibility for employment and eligibility for benefits under government-funded programs of public assistance. Under section 111(b), the system must be capable of reliably determining whether the person is eligible and whether the individual whose eligibility is being verified is claiming the identity of another person. It requires any document used by the system to be tamper-proof and prohibits its use as a national identification card. Section 111(b)(3) provides that the system may not be used other than to enforce the INA, the fraud provisions of the Title 18, U.S.C., local laws relating to eligibility for Government-funded benefits, or laws relating to any document used by the system which was designed for another purpose (such as a driver's license, birth certificate, or a social security number). Section 111(c) relieves an employer from liability under section 274A of the INA if the alien appeared throughout the term of employment to be prima facie eligible for employment and the employer followed all procedures required in this new verification system. The section also gives the Attorney General the authority to restrict the use of certain documents as establishing employment authorization, if she finds the document is being used fraudulently to an unacceptable degree.

We believe that permanent verification systems should not be established until the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined through pilot projects. S. 754 authorizes employment verification pilot projects that will improve the INS databases; expand the Social Security Administration (SSA) databases; simulate links of INS and SSA databases; expand the Telephone Verification System for non-citizens to 1,000 employers; and test a new two step process for citizens and non-citizens alike to verify employment authorization using INS and SSA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years, the pilots will be graded and evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud. We will request permanent authority from Congress only for pilot projects that work. We agree that efforts to test verification techniques should not be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

As for public assistance, our current system of verifying eligibility works well for both citizens and noncitizens. For this reason we have not included the benefit programs in our proposed pilot projects. However, if in the future one of the employment pilot projects develops a system that includes both social security and immigration information, then a possible strategy would be to require benefit programs to verify eligibility using such a database.

We also urge you to clarify that the phrase "eligibility for benefits under government-funded programs of public assistance" is limited to programs that provide benefits directly to individuals, and not programs such as Federal assistance provided to schools to assist disadvantaged children.

Section 112 would direct the President to conduct 3-year demonstration projects in five States to verify eligibility for employment and for benefits under government-funded programs of public assistance. The section provides that the demonstration projects verify eligibility for benefits under government-funded programs of public assistance, as well as eligibility for employment. The Administration Bill provides for projects to test methods to accomplish reliable verification of eligibility for employment. We do not believe demonstration pilots are necessary for verification of eligibility for benefits, since we have in place the System Alien Verification of Eligibility (SAVE), enacted by section 121 of the Immigration Reform and Control Act (IRCA).

Section 113 would provide for a database for verifying employment and public assistance eligibility. The database would be administered by a newly established Office of Employment and Public Assistance Verification within the Department of Justice. We support enhancing the various immigration database systems. INS is currently undertaking significant database improvements. However, we do not support this provision. The specifics of an automated verification system should not be built into statute since there are other ways to achieve the same result without combining INS and Social Security Administration data into a single database. The Administration supports testing alternative verification approaches over the next three years to determine what is feasible and what is most effective.

Part 3 of S. 269 relates to alien smuggling.

Section 121 would amend section 2516(1) of title 18, United States Code, by granting wiretap authority for investigations of alien smuggling. A similar provision is in S. 754, but S. 754 also includes passport related statutes (18 U.S.C. §§ 1541, 1543, and 1544). We recommend that S. 269 include these statutes.

Section 122 would provide for the availability of RICO

procedures and penalties for the criminal use of fraudulent documents for financial gain and for the offenses noted in section 121. S. 754 contains a similar provision, but it does not include the document fraud offenses (18 U.S.C. §§ 1028, 1542, and 1546). We do not believe that there is a sufficient relationship between organized crime and document fraud offenses to justify adding these offenses to RICO. Unlike S. 269, S. 754 makes conspiracy to violate the alien smuggling statute a RICO predicate. This conspiracy provision is necessary because alien smuggling is often carried out by close-knit gangs or groups of dangerous criminals. It is imperative to be able to charge all members, including co-conspirators. We recommend that S.269 include conspiracy.

Section 123 would add conspiracy and aiding to alien smuggling offenses. This would subject conspirators to increased penalties for alien smuggling offenses rather than the penalty under the general conspiracy statute. We support this concept. This provision does not provide for direction to the U.S. Sentencing Commission to increase base offense levels for alien smuggling offenses. Such a provision is warranted.

Section 124 would add forfeiture of personal and real property involved in alien smuggling and harboring activity to the current authority to seize and civilly forfeit conveyances. S. 754 would make criminal forfeiture, as well as civil forfeiture, available to prosecutors for the forfeiture of such property. The availability of criminal forfeiture procedures will assure that forfeitures based on alien smuggling offenses will be able to be accomplished as part of criminal prosecutions for such offenses without the necessity of separate civil forfeiture proceedings which might implicate double jeopardy. See United States v. \$405,089.23 U.S. Currency, 33 F.3d 1210 (9th Cir. 1994). Consequently, we recommend that S. 269 also include a criminal forfeiture provision. Additionally, section 124's proposed new paragraph E to section 1324(b)(4) is unnecessary. The statute incorporated by reference therein (19 U.S.C. § 1616a(c)) is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference).

Part 4 of S. 269 relates to document fraud, misrepresentation, and failure to present documents.

Section 131 would increase the maximum term of imprisonment for violations of 18 U.S.C. 1028(b)(1) from five to 10 years for the fraudulent use of government-issued identification documents. S. 754 would enact this penalty increase, and in addition would increase the maximum term of imprisonment to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international

terrorism. S. 269 should provide for the increases in penalties in S. 754.

Section 131 would also direct the U.S. Sentencing Commission to increase the guideline offense levels for sections 1546(a) and section 1028(a) of title 18, United States Code. The Sentencing Commission recently adopted guideline amendments which will become effective on November 1, 1995 and will significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made. Thus, we believe the proposed amendments in S. 269 are unnecessary and the directive to the Commission should be deleted.

Section 132 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant. We do not object to this provision.

Section 133 would add a penalty for those aliens who present a document upon boarding a carrier bound for the United States and then fail to present a document to the inspector at the port of entry. S. 754 amends section 274C(a) of the INA to create liability for civil penalties in cases where an alien has presented a travel document upon boarding a vessel for the United States, but fails to present the document upon arrival ("document-destroyers"). A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation. This provision is necessary to ensure consistency with Article 31 of the Refugee Convention. S. 269 contains a comparable waiver provision.

Section 134 would add a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2-5 year, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both. We do not believe that a special offense is needed to prosecute a person involved in assisting in fraud in the asylum process.

Section 135 would add a new penalty to 18 U.S.C. 1546(a) for presenting a document that fails to contain any reasonable basis in law or fact. We support this provision.

Section 136 would add to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for a failure to present documents to the inspector at the port of entry. It makes excludable any alien who, in seeking entry to the United States, or upon boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is forged, counterfeit, altered, falsely made, stolen, or otherwise contains a misrepresentation of a material fact. We do not believe either of these provisions is needed. The current provision at section 212(a)(6) is broad enough to cover fraudulent documents of any nature and already makes a person who attempts to gain entry through such documents excludable. Section 212(a)(7) makes excludable both immigrants and nonimmigrants who seek to enter without the required documents. We note that S. 269 provides that aliens excludable under this provision are subject to special port-of-entry exclusions, created by section 141. For the reasons discussed below, we do not support section 141.

Section 137, a related provision, would amend section 235 of the Act to provide that aliens excludable because of document fraud are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception. Sections 136 and 137 thus have the effect of eliminating the waivers for fraud provided by the Act. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the Act currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a United States citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that these waivers are consistent with a fair and humanitarian immigration policy, and thus, are appropriate. Because we do not believe these waivers should be eliminated, we do not support the provisions of sections 136 or 137 of S. 269.

Section 138 would add a definition to section 274C of the Act for the existing violation of "falsely making any document." Under section 191, the definition would be applicable to the preparation of applications before, on, or after the date of enactment of S. 269. S. 754 incorporates this provision, with one difference. We make the definition applicable to a "document" rather than to an "application". Our language covers documents which are not applications, such as the I-9. We recommend such a change in S. 269. Otherwise, we support this provision which will clarify when the provisions of section 274C of the Act come into play.

Section 141 of S. 269 would create a special port-of-entry exclusion process with only limited administrative review for

aliens using documents fraudulently or failing to present documents that would have been required to board a carrier. These provisions would also apply to aliens described in sections 136, 137, and 148 (a section relating to aliens apprehended at sea). As discussed above, we do not believe that waivers from exclusion should be eliminated. Those waivers are determined by an immigration judge and it would not be workable to make such determinations in special exclusion proceedings. Accordingly, we do not support this section. We recommend the provision in S. 754 which authorizes the Attorney General to deport and exclude aliens without a hearing before an immigration judge when she determines that an "extraordinary situation" exists because the numbers or circumstances of alien en route to or arriving in the United States, including by aircraft, or when aliens are arriving on a vessel without prior approval. These special procedures may be in place only for 90 days, with a 90 day extension, if circumstances have not changed.

Section 142 would add a new section 106(d) to the INA to limit judicial review for causes or claims relating to the operation of sections 208(a), 212(a)(6)(C)(iii), 235(d), and 235(e) of the INA. It would provide that in habeas corpus proceedings judicial review of claims under these sections would be limited to determinations of whether the petitioner is an alien, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence and is entitled to such further inquiry as is prescribed by the Attorney General. (It should be noted that a new subsection 106(d) was added to the INA by section 130004(b) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, limiting habeas corpus review for aliens with final deportation orders.) The courts would be precluded from ordering any relief for an alien not properly excluded other than a hearing. Under section 191 of S. 269, the provisions of this section are applicable to aliens who arrive in or seek admission to the United States after the date of enactment.

We recommend that S. 269 adopt the S. 754 provisions relating to judicial review, which rewrite the entire section 106 of the INA. S. 754 provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed within 30 days after the final order in the judicial circuit in which the immigration judge completed the proceedings, similar to the provision in section 146(c), discussed below. S. 754 adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order. It also deals with aggravated felons by adding section 106(e) to the INA which provides that a petition for review filed by an

aggravated felon will be limited to whether the alien is the one described in the order, the alien has been convicted after entry of an aggravated felony, and whether the alien was afforded the appropriate deportation proceedings. The provisions of S. 754 would be effective as of date of enactment.

Section 143 of S. 269 would address an issue that has created ongoing litigation. Under section 212(c) of the INA, an alien lawfully admitted for permanent residence returning to the United States "to a lawful unrelinquished domicile of seven years" from a temporary visit abroad may be admitted, notwithstanding becoming excludable for grounds other than security or child abduction. The issue has been whether the alien remains in lawful status after deportation or proceedings have begun. Section 143 would provide that section 212(c) does "not include any period beginning after the alien has received an order to show cause." S. 754 provides that section 212(c) relief is available only in exclusion. It rewrites section 244 of the INA, relating to suspension of deportation, to create a new relief called "cancellation of deportation." Cancellation of deportation would be available to lawful permanent residents who meet requirements similar to those of current section 212(c). Aliens in deportation would be required to meet the current suspension of deportation requirements. In all cases, time for eligibility would cease to run when the alien was placed in proceedings. We recommend that S. 269 include these provisions.

Section 144 would create a new civil penalty for failing to depart after becoming subject to a final, unappealable order of deportation. The Administration supports this addition. A similar provision is included in S. 754. S. 754 provides that these fines are payable to INS as offsetting accounts, and we recommend that S. 269 also provide for this feature.

Section 145 would authorize appropriation of \$10,000,000 in a special "no-year" fund for detaining and removing aliens who are subject to final orders of deportation. The Administration supports increased funding for detention and removal of deportable aliens.

Section 146(a) would amend section 242B of the Act to eliminate the requirement that an order to show cause (OSC) be issued in Spanish to every alien. We do not oppose this section. The requirement that INS issue each OSC in Spanish involves unnecessary duplication of existing INS efforts to ensure that individuals are informed and comprehend the proceedings. It increases the time needed to prepare an OSC and takes INS investigator time away from other enforcement work. Border Patrol agents and investigators generally speak Spanish and are able to communicate the nature of the deportation charges to the aliens. Those INS employees who do not speak Spanish have access to translator services. Such services are also available for

languages other than Spanish. Furthermore, INS employees are required to advise aliens of their right to counsel, who can assist them in translating the OSC. At the actual deportation hearing, translators are provided when needed.

Section 146(b) would amend the requirement at 242B(b)(1) that an alien be given 14 days from service of an order to show cause (OSC) to obtain counsel before a hearing is scheduled, to provide that a hearing may be scheduled within three days for an alien who is detained. The section also amends section 292 to provide that the alien's right to obtain counsel must not unreasonably delay proceedings. We believe that the 14 day period gives the alien a fair opportunity to obtain counsel and question whether this provision would speed deportation proceedings. Because of the statutory right to a reasonable opportunity to obtain counsel, an immigration judge will normally provide at least one continuance to allow an alien that opportunity. The INS's experience has been that deportation proceedings move more quickly if an alien does have counsel.

Section 146(c) amends section 106(a) of the INA to require that a petition for review be filed not later than 30 days after the date of the issuance of the final deportation order, or not later than 15 days in the case of an aggravated felon. If the alien does not file a brief timely, the Attorney General may move to dismiss the appeal. The provision is applicable to all final orders of deportation entered on or after the date of enactment. S. 754 contains a similar provision, as described in our discussion on section 142, above. We support this provision.

Section 147 would amend current law to authorize withholding of nonimmigrant visas to nationals of countries that refuse to accept their nationals for deportation. Currently, the provision comes into play only when immigrants are refused. The provision is applicable to countries for which the Secretary of State has given instructions to United States consular officers on or after the date of enactment. We support this provision and have included similar language in S. 754.

Section 148 would limit withholding of deportation for excludable aliens apprehended at sea. We do not support this provision, for the same reasons given in the discussion of section 137.

Section 151 would direct the Attorney General, after consultation with the secretary of State, to establish a two-year pilot program for deterring multiple unauthorized entries. The program may include interior repatriation. S. 754 also provides for a pilot program on interior repatriation, with a report to Congress after three years. We recommend that S. 269 include the time frame set by S. 754.

Section 152 would authorize the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment, they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service. The use of closed military bases would make additional detention spaces available to INS. At present, INS is forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly, this provision is unnecessary and does not address the underlying obstacles to achieving its goal.

Section 153 would limit the confidentiality provisions relating to legalization and special agricultural worker (SAW) information. It authorizes the Attorney General to provide information furnished under these two programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of that contained in S. 390, the Administration's Omnibus Counterterrorism bill, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

Section 154 would prohibit governmental entities from restricting availability of information related to the immigration status of an alien in the United States. We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. We do not support this provision, but will work

with the Subcommittee to explore appropriate alternatives.

Section 161 would tighten parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination. We oppose placing such restrictions on the parole authority of the Attorney General. The current standard provides the Attorney General with appropriate, needed flexibility to respond to compelling situations. We are often faced with emergent situations that may involve an alien or a group of aliens that demand immediate attention and yet may neither rise to the level of "urgent humanitarian reasons or significant public interest" nor lend themselves to a case-by-case determination. We need the flexibility to deal with those cases or situations.

Section 162 would restrict the use of parole by providing that the number of parolees who remain in the country for more than a year must be subtracted from the world-wide level of immigrants for a subsequent year. The Administration opposes this provision because it would have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of U.S. citizens and permanent residents. Humanitarian parole and family sponsored immigration advance two vital, but distinct national interests. Section 162 blurs the distinction between the two and hinders both.

Section 171 would add restrictions on the filing of asylum applications by aliens using documents fraudulently or by excludable aliens apprehended at sea, subject to a "credible fear of persecution" exception. The determination that there is a "credible fear of persecution" is to be made by the asylum officer on the basis of (a) statements by the applicant, but only to the extent, in the asylum officer's judgement, it is more probable than not that the statements are true, and (b) the officer's knowledge of country conditions. For the reasons given in discussing sections 136, 137, and 141, we do not support this provision.

Section 172 would add a new subsection 208(f) to provide that an asylum applicant may not work except pursuant to this section. The Service has concluded that nonimmigrants do not lose their status by virtue of applying for asylum and it is possible that aliens applying for asylum already have work authorization. We view this provision as unnecessary and do not support it.

Section 173 would give the Attorney General the authority to expend out of funds such amounts as may be necessary for leasing or acquiring property to reduce the number of applications pending under sections 208 and 243(h). We have no objection to

this portion of the section. However, section 173 also authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)), such reemployments can now be handled administratively. Accordingly, we object to this unnecessary provision.

Section 174 would amend section 207(a) to require Congressional approval for refugee admissions above 50,000 in any fiscal year. Under current law, the annual refugee admissions are set by the President. The Administration does not support legislatively limiting annual refugee admissions. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1980, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

Section 181 would repeal the Cuban Adjustment Act, P.L. 89-732 (1966). That Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the United States and has resided here for one year. The Administration opposes repeal. Our policy decision to establish safe haven camps at Guantanamo Bay for Cubans is clearly consistent with the intent to regularize Cuban migration consistent with that for all other nationalities. The Special Cuban Migration Program relies on the parole authority of the Attorney General but fails to provide permanent residence in the U.S. Repeal of the Cuban adjustment provision would leave substantial numbers of Cubans without a mechanism to secure a permanent immigration status.

Part 1 of Title II of S. 269 contains provisions affecting the eligibility of legal and illegal aliens for certain benefits. While the Administration bill does not include comparable provisions, we support reinforcing current law restrictions that prevent illegal aliens from being eligible for most Federal public assistance. We also support reasonable extensions of the deeming policies that require sponsors to maintain a financial commitment to aliens they have sponsored. However, there are a number of specific problems under the various provisions of S. 269 as drafted that we believe should be remedied. Our positions on the individual alien eligibility provisions are outlined in the following section-by-section discussion.

Section 201 would define "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XX of the Social Security Act; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; and (5) public health assistance for immunizations and for testing and treatment for communicable diseases. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

While we support the goal of establishing a uniform definition of alien eligibility, we have reservations about section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represent a new mandate to many state and local governments; and target current immigrant beneficiaries.

The eligibility provision could be read to deny need-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. Although the Federal Government could authorize the exclusion of such alien children from elementary and secondary schools, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students. The definition of an "eligible alien" in section 201(d) could be read to exclude certain post-secondary students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

Furthermore, the definition of "eligible alien" in S. 269 does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program, nor would they be eligible for the programs listed in section 203.

We encourage you to examine the definition of eligible alien as the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994."

We recommend this definition of eligibility apply to the four primary needs-based programs--AFDC, SSI, Medicaid, and Food Stamps. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

Section 202 would require that in determining the eligibility for and amount of benefits of an eligible alien under any Federal program, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the eligible alien. This "deeming" would continue until the eligible alien became a citizen, and would apply to individuals already receiving benefits as well as future applicants.

While we support the goal of making sponsors more responsible for the immigrants they sponsor, we have reservations about section 202 as drafted. This section would target current immigrant beneficiaries; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs--including Medicaid; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 202 does not take into account the needs of the sponsor and his or her family.

In the Administration's welfare reform bill introduced last year, the "Work and Responsibility Act of 1994," we recommended establishing a uniform 5 year deeming period under SSI, AFDC, and Food Stamps for immigrants whose sponsors have moderate income. However, for sponsors whose income exceeds the median family income of the U.S., we supported continuing the deeming period until the immigrant attains citizenship. This policy would have affected future applicants only, and would have maintained the current deeming formula and exemption for immigrants who become disabled after entry. The Administration's bill also allowed state and local programs of cash general assistance to deny aid to those aliens made ineligible under Federal deeming rules.

Section 203 would define "public charge" as the receipt of benefits for an aggregate of more than 12 months in the first 5 years after entry under one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the

Federal government for which eligibility is based on need (except the exempted programs noted in section 201). Any alien who becomes a public charge from causes not shown to have arisen since entry is "deportable."

The legislation would require increased administrative efforts to ascertain whether an alien who had received benefits for more than 12 months within the first 5 years of entry was receiving such benefits due to a "pre-existing condition," or one that arose since entry. Since this section would create a number of administrative and legal complexities as drafted, we do not endorse these provisions without further clarification or amendment. For example, it should be clear that refugees would not be deportable. Furthermore, we are concerned that this provision would make conduct that has been legal--receiving federal benefits--a deportable offense.

Section 204 would set forth the requirements for a sponsor's affidavit of support. It would require that the affidavit of support be executed as a contract that is enforceable against the sponsor by Federal, state, or local governments that provide benefits to sponsored eligible aliens. These governmental jurisdictions would be given authority to seek reimbursement from sponsors of aliens who have received benefits, and would be authorized to bring suit against sponsors that do not reimburse the relevant government agencies. No cause of action could be brought against sponsors after 10 years from an alien's last receipt of benefits. The sponsor would be required to notify the Federal, state, and local governments of any change of the sponsor's address.

The Administration strongly supports making the current affidavit of support legally binding. However, in order to provide an effective enforcement mechanism, we believe that, at a minimum, an affidavit of support should provide the sponsored immigrant with the ability to bring suit against a sponsor that has financially abandoned him or her. While authorizing lawsuits among family members may be problematic, in some instances it is appropriate and has precedent in child support and related areas of the law.

Section 211 in Part Two of Title II would provide for imposition of a land border user fee. It rewrites section 286(q) of the INA to provide for imposition of a land border user fee on all persons at time of entry. It provides that funds shall be deposited into the Fee Account as offsetting receipts and remain available until expended. The funds may be used to pay for inspection services and related expenses. Unused funds may be used for Border security, including hiring additional Border Patrol agents.

5. 754 also calls for a land border user fee. We recommend

that section 211 be modified to be consistent with the key features of our proposal, which provides local flexibility on collecting such a fee. Our proposal adds a new subsection 286(s) to the INA, authorizing the Attorney General to charge and collect a border services user fee for every land border entry, including persons arriving at U.S. borders by ferry. The fee is to be collected in U.S. currency and is set at \$1.50 for each non-commercial conveyance, and \$.75 for each pedestrian. The President will soon transmit legislation authorizing the Department of Treasury to collect and spend a parallel fee for Customs-related activities. Commercial passenger conveyances will be charged the pedestrian fee for the operator and each passenger, except that ferry crewmen are not subject to the fee. S. 754 provides for a "local option" which allows each State to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the Commissioner. The Commissioner must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be given to the Councils to spend on port-related enhancements. The Commissioner will allocate enhancement funds for ports that do not set up a Border Service Council.

Section 212 would authorize additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border. S. 754 provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 269 adopt the S. 754 provision.

Section 221 establishes that the eligibility and deeming provisions in sections 201 and 202 would apply to "benefits or applications for benefits received on or after the date of enactment." Since they apply to benefits being received at the time of enactment, the new eligibility and deeming rules apply to current recipients as well as future applicants. We have reservations about applying the new deeming and eligibility provisions to current recipients.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We have emphasized the core areas of worksite enforcement, border control, criminal alien deportation and authorizing critical resources to the INS.

Of particular importance in the Administration's bill are the provisions for expedited exclusion proceedings in extraordinary migration situations; coordination of aggressive law enforcement efforts of the Department of Labor and the Department of Justice to end the job magnet for unauthorized aliens; the enhancement and support of investigatory and

prosecutorial weapons against alien smugglers and employers who profit from undocumented aliens; a border services user fee; and the measured and deliberate creation of pilot projects to establish employment verification systems that are cost-effective, free from discrimination and invasions of privacy, and not susceptible to fraud. Comprehensive immigration enforcement legislation should advance these principles and we stand ready to assist you and Subcommittee members in this regard.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Kent Markus
Acting Assistant Attorney General

WR-Immigrants

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confusion about responsibilities under the law. In addition, however, procedures should be formulated by which investigators identifying more prevalent mistakes made by employers can transfer that information to the applicable education units for development of an appropriate educational campaign. Investigators should revisit some of the employers who previously expressed confusion to determine whether they are in compliance, and thus, determine the effectiveness of the new educational efforts.

Benefits Eligibility and Fiscal Impact

The intersection of immigration policy and public benefits policy is a complex topic that episodically captures national attention, both among policymakers and the general public. In times of great labor force needs and abundant opportunity, there tends to be little attention to the domestic context of immigration. In times of slow or uncertain growth, restricted budgets, and reduced opportunity, sensitivity to domestic impact is heightened.

This year, with the economy emerging from an extended low growth period and with reform efforts underway on several major domestic policies, the effect of immigration—particularly illegal immigration—has been questioned. Immigration policy is viewed as yet another area ripe for reform. In this context, the Commission has examined closely the existing relationship between immigration and public benefit policies and their impact. The primary cause of concern to both the public and to the Commission is the lack of effective enforcement at our borders and the resulting presence of many aliens who have entered illegally. The Commission found that inconsistencies in immigration and benefits policy undermine the credibility of both. The Commission believes that to have a credible national policy in either arena, we must have public benefit policies that are

parallel to, and consistent with, our immigration policies. This section of the Commission report addresses those inconsistencies with specific recommendations.

The presence of illegal aliens, particularly of large numbers in a few areas, has dominated state-federal relations this year and is the subject of lawsuits brought by several states. States and localities point out that, although immigration policy is a federal responsibility, they pay for the effects of failed or weak enforcement. There have been specific complaints regarding the fiscal effects of federal benefits policy. These complaints are about both unfunded mandates—federal requirements to provide services without appropriating funds to do so—and the cost shift that comes from the use of state and local services when such benefits are denied under federally-funded or -assisted programs.

The presence of illegal aliens in those same communities has not, however, always been of such concern to public officials, employers, or the general public. Illegal immigrants have lived and worked in many of these jurisdictions with the tacit approval of many holding responsible positions in those communities. Many private citizens and businesses have taken advantage of the presence of illegal workers and have effectively encouraged their migration by employing them at low wages. The cost-shifting effect is not merely created by federal eligibility rules, but also created by those who have taken advantage of our weak enforcement policies for their own political or financial benefit; they contribute to the problem by shifting costs onto fellow taxpayers through higher public benefit costs at all levels of government.

Specific remedies to our border enforcement problems and the problems of illegal employment are addressed in the first two sections of this report. This section provides recommendations to resolve the

effects of benefits eligibility problems consistent with our overall immigration policy.

Eligibility

The Commission believes a clear and consistent policy on immigrant eligibility for public benefits is needed. The U.S. has the sovereign authority to make distinctions as to the rights and responsibilities of various categories of those residing on its territory—illegal aliens, legal immigrants, and U.S. citizens. Decisions about the eligibility of aliens for public benefits should be consistent with the objectives of our immigration policy.

Immigrant eligibility for public benefits has become a major focus of debate in the United States. A number of major policy issues have arisen in this context regarding such benefits as health care, public assistance, unemployment insurance, earthquake relief, and education programs. Many of the questions raised are about illegal immigrants receiving benefits, but there have also been questions raised about which, if any, benefits legal immigrants should be eligible for, and under what conditions.

The Commission believes that decisions on benefit eligibility should be consistent with and support the objectives of immigration policy. Legal immigrants enter the United States under U.S. law because their admission is considered to be in the national interest. The INA delineates several categories of admission, most of them defined by the immigrant's connection to a U.S. resident or employer. Even in the category most characterized by humanitarian rather than strict national interest—refugee admissions—priority is given to individuals facing persecution because of their ties to the U.S. government, a U.S. resident, or a U.S. company. The Commission believes that benefits policy should reaffirm that the nation considers legal immigration to be in the national interest. Both the immigrants them-

selves and the broader society have responsibilities towards ensuring that immigrants are, and continue to be, productive members of our social community who, if they need help, can benefit from the established safety nets.

By contrast, illegal aliens enter and/or remain without the express approval of the U.S. government—without inspection across a land or sea border, or overstay nonimmigrant visas and/or abuse the terms of their entry. Except in limited circumstances where humanitarian principles prevail, benefits policy should not reward aliens who enter or remain illegally.

The objectives of benefits and immigration policy are quite clear for these two categories of aliens. More complicated is the situation of aliens who enter illegally but are permitted to remain by the government, sometimes for extended periods, as their specific circumstances dictate. For example, some aliens are granted temporary protection in the U.S., others are granted stays of deportation, and still others are allowed to delay a voluntary departure. The Commission believes we must establish coherent eligibility policy regarding various public assistance programs for such aliens.

In *Mathews v. Diaz* the Supreme Court has held that "it is obvious that Congress has no constitutional duty to provide *all aliens* with the welfare benefits provided to citizens." The ruling implies that as long as the distinctions between citizens and aliens are not wholly irrational, the Congress may draw such distinctions. Through legislative and regulatory actions, distinctions have since been made between aliens residing permanently and legally in this country and undocumented aliens. The former have been eligible for federal assistance while the latter have generally been barred from these programs.

Other distinctions in benefit eligibility have been made between different types of immigrants. For example, refugees have special eligibility rules applied to them because circumstances surrounding the resettlement of refugees are different than circumstances surrounding the admission of other classes of immigrants. For example, those refugees not eligible for regular Aid to Families with Dependent Children [AFDC] or Supplemental Security Income [SSI] benefits may be eligible for special cash and medical assistance provided under the refuge resettlement program. These different rules recognize that refugees, by definition, usually arrive under duress and are often separated from family members, making eligibility for family-oriented assistance rules inappropriate. Different eligibility rules apply to sponsored immigrants and employment-based immigrants [see discussion of sponsors and deeming rules below].

The complexity of the many issues raised by the general question of benefit eligibility for immigrants—both legal and illegal—is due not only to the various differences between immigrants and immigrant statuses, but also to important differences in the benefit programs. For example, there are programs that provide cash benefits to recipients (such as SSI and AFDC), programs that pay for services provided to recipients (such as Medicaid), and programs that provide services to recipients (such as child care and social services). Some programs (such as Food Stamps) provide vouchers to be used for certain specified goods. Some benefit programs are wholly financed and administered by the federal government (such as SSI and Food Stamps), while others are jointly financed by the federal and state governments but administered by the states and localities (such as Medicaid and AFDC). Still other programs are wholly financed and administered by states and localities (such as the state/local general assistance programs that provide cash and/or medical assistance). Finally, there is a major distinction between means-tested entitlement programs for which a primary eligibility criteria is that the recipient must be needy (such as SSI, AFDC, Medicaid,

and Food Stamps) and social insurance entitlement programs for which a primary eligibility criteria is that the recipient has contributed sufficiently to the trust fund that finances benefits (such as social security retirement and disability insurance, Medicare, and unemployment compensation).

For the most part, policies establishing the eligibility rules for immigrants under the various benefit programs have evolved in an *ad hoc* fashion, often through specific benefit program statutes and in response to specific circumstances or perceived problems. There has been no concerted federal effort to establish a coherent and comprehensive policy with respect to benefit eligibility for all the various programs and all the various immigrants—legal and illegal. Neither has there been a serious effort in immigration law to address the issue of which immigrants should be potentially eligible for which benefits.

Data on the utilization of benefits by immigrants are limited and imprecise. The two primary sources for such information are census data and program data. Neither source provides unambiguous information on the specific immigration statuses of immigrants receiving various forms of public assistance and benefits. However, in spite of these limitations, some general conclusions on immigrant utilization of benefits can be drawn. Most legal immigrants do not receive public assistance; the utilization rate for these immigrants as a group is less than the utilization rate for the general population. However, within this broad group there are relatively high utilization rates for two particular types of legal immigrants: refugees; and elderly legal permanent residents [see discussion below on sponsors' financial responsibility].

The utilization rates self-reported by illegal aliens also appear to be quite low compared to the general population, which is consistent with current policies that deny most forms of public assistance to

illegal aliens. For example, a survey of legalized aliens (conducted under an INS contract) asked about their use of services during the year prior to amnesty. Slightly less than 2 percent of the families reported receiving AFDC and slightly less than 4 percent food stamps, and these data likely measure benefits received by the citizen children of illegal alien parents. Higher proportions appeared to have obtained publicly supported medical care, with about 21 percent financing a hospital stay through Medicaid or Medicare. Such reported data cannot be verified given the limitations of available identification procedures (see verification discussion below).

The issue of immigrant eligibility requires clear definitions of the rights and responsibilities of governments (federal, state, and local), as well as individuals (citizens and immigrants). The complexity of the issue of immigrant eligibility challenges policymakers to develop a solution that is both comprehensive and flexible.

Illegal Immigrants

The Commission recommends that illegal aliens should not be eligible for any publicly-funded services or assistance except those made available on an emergency basis or for similar compelling reasons to protect public health and safety (e.g., immunizations and school lunch and other child nutrition programs) or to conform to constitutional requirements.

Illegal aliens currently can not, and should not, receive public assistance except in very unusual circumstances: where there is an emergency need for specific assistance; where there is a public health, safety or welfare interest; and where eligibility is constitutionally protected. Benefit eligibility policies should send the same message as immigration policies: aliens should not enter the U.S. unlawfully and, if they do, should not generally receive public assistance.

The Commission recommends that illegal aliens should not be eligible for any publicly-funded services or assistance except those made available on an emergency basis or for similar compelling reasons to protect public health and safety (e.g., immunizations and school lunch and other child nutrition programs) or to conform to constitutional requirements.

Current law provides that illegal aliens are not eligible for federal benefits under the following programs: Aid to Families with Dependent Children; Medicaid, except for emergency conditions; Supplemental Security Income; Food Stamps; public housing; legal services; unemployment compensation; postsecondary financial aid; and job training. In general, these programs limit eligibility to U.S. citizens, legal permanent residents, and others who are legally permanently residing under "color of law" [see discussion of PRUCOL below]. In the case of job training and unemployment compensation, eligibility is also determined by work authorization—that is, individuals are ineligible for these benefits if they are not authorized to work in the U.S.

In other program areas, immigration status is not a criteria for eligibility. For example, public education must be made available to children regardless of immigration status. In 1982, the U.S. Supreme Court ruled in *Plyler v. Doe*, 457 U.S. 202, that states may not deny children access to public elementary and secondary education on the basis of alienage. Children are also eligible for the national school lunch program without regard to alienage status. There are other federal health, education, and social service programs for which illegal aliens may be eligible, as the eligibility requirements of these programs do not specifically include alien status. Such programs include, for example, the Special Supplemental Food Program for Women, Infants, and Children [WIC], community and migrant health centers, and social service programs authorized under Title XX of the Social Security Act.

Still other programs make distinctions in eligibility depending on the type of assistance requested. Emergency medical services must be provided under state Medicaid plans, an exception to the broad prohibition of illegal aliens from eligibility for that program. Response to the recent earthquake in Los Angeles resulted in similar distinctions for disaster relief. The disaster-relief package that passed

Congress permits only emergency assistance to illegal immigrants, but denies them long-term aid (for example, Department of Housing and Urban Development [HUD] eighteen-month housing vouchers).

By restricting eligibility of illegal aliens for federally-funded assistance programs to emergencies and other compelling situations, U.S. eligibility policy clearly spells out a distinction between the rights of illegal aliens and of other residents. Such a benefits policy reaffirms U.S. immigration policy, while recognizing certain basic humanitarian concerns accepted as a matter of principle in the United States, that allow—only under certain limited circumstances—benefits for the illegal alien population.

The Commission recommends that federal legislation should clearly permit states and localities to limit benefit eligibility for illegal aliens on the same criteria as the federal government. Due to various judicial decisions, states and localities are presently prohibited from making alienage an eligibility factor in their benefit programs. Thus, restrictions on illegal alien use of federal assistance programs can shift costs to states and localities. However, if the authority to limit eligibility is extended to states and localities, the use and the cost of such benefits for illegal immigrants can be reduced. Implementation of this recommendation will mean that illegal aliens may not be eligible for any public assistance benefits—federal, state, or local. For illegal aliens who require assistance, their only recourse should be return to their countries of origin.

→ LET STATES LIMIT
ELIGIBILITY

This recommendation is critical to achieving a fair, effective, and enforceable national policy with regard to illegal alien benefit eligibility. If states are not given the authority to deny eligibility to undocumented immigrants for state public assistance benefits, there can be no adequate enforcement of a policy that seeks to limit the payment of assistance benefits to unauthorized immigrants. Instead,

states will be forced to continue to assume the costs avoided by the federal government and undocumented immigrants will still be eligible to receive public assistance benefits in this country. Such a result may jeopardize the federal/state partnership necessary to implement fair and effective national immigration policy.

It should be noted that this recommendation may raise judicial issues. Until 1971, states were generally permitted to set their own citizenship and alienage requirements when administering state authorized and funded programs. Some states did deny eligibility on the basis of alienage. The Supreme Court in the 1971 case *Graham v. Richardson* held these state restrictions to be unconstitutional because they violated the equal protection clause of the 14th Amendment and encroached upon the exclusive federal power to regulate immigration. It is not entirely clear whether federal legislation granting states authority to limit the eligibility of illegal aliens for benefits consistent with federal policies would be sufficient to overcome the 14th Amendment's equal protection clause. However, previous court rulings imply that, where it is established that national interests are supported by such delegation of authority, Congress can delegate specific authority to states to determine benefit eligibility—if any—for illegal aliens.

In order to improve procedures for ensuring that only authorized persons receive public benefits, the Commission recommends that:

- The pilot programs on work authorization also be used for verification of benefit eligibility. Identification and verification of alien status is an administrative necessity in programs where alien status is relevant to an individual's potential eligibility for a publicly-funded program. Through verification of status, illegal aliens are denied benefits for which they are ineligible and legal immigrants are identified for those benefits they are entitled to receive. An effective eligibility verification system

is, therefore, a critical component of a credible immigration benefits policy.

Currently, the primary mechanism for establishing that an alien applicant is in a legal status that permits eligibility for federal assistance programs is the Systematic Alien Verification for Entitlement (SAVE) process. SAVE was established by IRCA to provide a means for ensuring that aliens who are not in a status that permits eligibility for key federal assistance programs do not receive benefits under those programs. As part of the eligibility determination for any of the six federal programs for which SAVE is mandated, applicants are required to identify whether or not they are citizens. Those not declaring U.S. citizenship are required to provide information about their current immigration status, and this information is verified via electronic communication with a dedicated database administered by INS. Programs currently verify citizenship in a manner designated under their particular statutes and regulations, but most require a birth certificate or other valid identification of citizenship (such as a passport).

The six federal programs mandated by IRCA to participate in SAVE (AFDC, Medicaid, Food Stamps, unemployment compensation, federal housing programs, and Title IV Educational Assistance programs) are programs funded wholly or in part by the federal government and through which the federal government provides essential subsistence support to those in need. Three of the programs (AFDC, Medicaid, and Food Stamps) are means-tested entitlement programs—applicants must establish that they meet eligibility criteria—and appropriations are available in whatever amount necessary, to serve all eligible applicants. Because of the nature of these programs, the rights of potential recipients to apply for benefits and to receive assistance if found eligible are extensively protected. The ability of

the SAVE process to perform in an accurate and timely manner is of critical interest to program officials and those concerned about the rights of needy families and individuals in this country.

IRCA allows a state to request a waiver of the requirement to use SAVE if it can verify immigration status through some other competent and more efficient procedure. It has been suggested that federal agencies may see an increase in waiver requests with the advent of reduced federal shares for administrative costs. Effective April 1, 1994, the full federal reimbursement provided as an incentive for states to implement SAVE ceased and the standard 50/50 sharing of administrative costs was restored. Regardless of the motivation for requesting a waiver, however, it is unclear whether alternative verification mechanisms can make a quick, accurate verification and avoid discriminatory practices based on legal status, ethnic identity, or language skills. With similar concerns raised about employer hiring practices as a precedent, this is a legitimate concern for eligibility determination.

While the SAVE system has been an improvement over prior verification procedures, the experience with SAVE provides reasons for further improvements. Critics have noted several effectiveness and efficiency problems with the SAVE system. For example, applicants claiming citizenship are not processed in SAVE, setting up separate procedures and systems for determining immigrant and citizenship status.

The Commission recommends that the proposed approach to verify work authorization [discussed in the previous section] be applied to verification of benefit eligibility. The system would enable benefit programs to use the database to confirm

citizenship or immigration status in order to make eligibility determinations.

As discussed above, the new verification system requires improvements in the database currently used by the SAVE program. Some critics claim that the INS database is not kept up to date, leading to false negative matches (not affirming a correct claim of lawful status) and/or making necessary a secondary verification of the claim. Secondary verifications are conducted by hand and are time consuming and administratively costly. These problems must be solved if a verification process is to be credible.

As most public assistance programs already use applicants' social security numbers in developing each application for assistance, the Commission's recommendation would result in no significant increased workload requirements on program administrators nor additional requirements on applicants. Pilot programs provide an opportunity to determine if the proposed verification process leads—as we believe it will—to a simpler, more fraud-resistant verification procedure accessible to all eligibility determination workers. The pilot programs will also enable data collection to determine if the verification system effectively prevents discrimination and disparate treatment of foreign-looking or -sounding applicants. As for the verification procedures proposed for work authorization, protections of civil liberties and privacy of information must be established and evaluated in the verification procedures for benefit eligibility determinations. Also similar to the work authorization recommendations, pilot testing of this system of verification of status for benefit eligibility purposes can help ensure that accurate databases have been developed prior to any decision on national implementation.

- An equitable policy based on immigration status must be adhered to in cases of mixed households (i.e., households in which some members are citizens and/or legal residents and others are illegal aliens). Some benefits could be prorated in order to provide them only to eligible recipients in a household.

To achieve a consistent and fair benefits eligibility policy based on immigration status, we must adhere to the same standards in cases of mixed household living situations. The Commission believes that regardless of a family's economic situation, only authorized immigrant or citizen members should receive routine benefits.

The relationship between the eligibility unit and the living unit is a complex aspect of eligibility determination in many programs. Determining whether or not an individual is eligible for assistance, as well as the amount of assistance that may be provided, depends on the nature of the eligibility unit itself. The eligibility unit varies by program, and may be an individual, a family, a household, or other—such as the concept of "assistance unit" used in the AFDC program. This variation derives from the purpose of the assistance and the statutory basis for meeting that purpose. Most benefit programs determine eligibility with regard to alien statuses for the applicant and—if applicable—other members of the eligibility unit and determine the benefit according to preset increments for the number of eligible members in the unit. For example, under the Food Stamp program, eligibility is determined for, and benefits are provided to, persons who reside and function as a household. AFDC, on the other hand, is available to single parent nuclear families and nuclear families with two parents, one of whom is unemployed and participating in the program's work search requirements. SSI is available to individuals and couples. These eligibility unit definitions apply regardless of the composition of the living unit.

although frequently the income and resources of individuals beyond the eligibility unit are taken into account in determining need and the amount of assistance to be provided.

On the other hand, the living unit is often made up of individuals who have diverse family and nonfamily relationships to each other, as well as differing immigration statuses. While defining the eligibility unit as a "family" or "household" may make good sense from a programmatic perspective, it can be problematic when it is necessary to introduce the consideration of alien status as an eligibility criterion. Migration—legal and illegal—often separates family members, if only temporarily, and also reunites within the same living unit relatives and friends of all kinds. Chain migration, wherein families are led in immigration by certain "seed" members, to be followed—as resources, opportunity, and preferences allow—by other close family and relatives, produces extended households of varying immigration statuses.

In determining benefit eligibility, the primary problem is the presence within a living unit of unauthorized aliens—who are *ineligible* for benefits—along with legal immigrants or citizens—who are *eligible* for benefits. For example, it is not unusual to find families in which one or both parents and possibly one or more children entered the country illegally, while other children/siblings born here have U.S. citizenship. (As currently interpreted, the 14th Amendment requires that citizenship be bestowed on all individuals born in the U.S., regardless of the status of their parents.) Because of the large number of aliens legalized under IRCA, it is also not uncommon to find households where one parent is a legalized immigrant, one is here illegally, and the children are U.S. citizens.

The existence of multiple status households presents several major social dilemmas. Of particular concern in many immigrant-receiving states is the caseload of citizen children who are eligible for AFDC. Orange County, California claims, for example, that there are approximately nine thousand citizen children eligible for and receiving AFDC benefits whose undocumented parents are ineligible. The parents receive, as legal caretaker, the benefit on behalf of their child(ren). Since the citizen children's parents are, by law, prohibited from working, there is no legal means for them to support their children. Nor can these parents be subjected to the work requirements that are the program's main mechanism for helping recipients obtain employment and eventually earn their way off of assistance. Local officials ask what this situation means for the economic support of citizen children and whether it is official U.S. policy that they are to be supported by AFDC because the parents cannot legally work.

→ Deem their income?

These parents escape the family support collection requirements and the mandatory training and work requirements that welfare reform proposals may place on the parents of AFDC children who do have legal status. Hence the perception can arise that undocumented parents receive favorable treatment. Clearly, this is an area for further study within the welfare reform and immigration policy arenas. What does not require further study, however, is the fact that enhanced deterrence of illegal immigration will tend to keep this problem from arising in the first place.

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The mixed family issue is somewhat more difficult regarding eligibility for housing. The 1987 Housing Act amended section 214 to add a paragraph concerning the preservation of families that is applicable to any family with an ineligible individual who was receiving assistance on the date of enactment. The 1987 Housing Act defines "family" as, "head of household, any spouse, any parents of the head of household or the spouse, and

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any children of the head of household or spouse." Section 214 (c)(1)(A) gives the Public Housing Authority and the Secretary of HUD discretion to continue assistance indefinitely to a family "whose head of household or spouse does have eligible status" but contains at least one person who lacks eligible status, if continuation of assistance is necessary to "avoid the division of the family."

The Commission recommends that the Department of Housing and Urban Development revise its public housing policies to provide eligibility only for legal permanent resident or citizen family members. In the alternative, housing benefits could be prorated and provided only to eligible recipients in a given household. This would dramatically change the current system, whereby an entire household receives public housing, regardless of immigration status, if one member of the "family" qualifies. The Commission believes that the current system amounts to a reward for illegal aliens and other nonqualifying legal aliens who live with one or more qualified family member.

→ Deny housing to
HOUSEHOLDS w/ ILLEGAL ALIEN
(OR PRORATE)

The Commission acknowledges that there is no way to further immigration policy goals—that is, to set benefit eligibility requirements in accordance with legal status—without running into undesirable side effects. Some illegal aliens will benefit from the resources made available to citizen members of their household, but denying the citizen members access to the assistance would be inequitable and illegal. Similarly, some of the aims of the benefit policies may be undermined by the exclusion of illegal aliens (such as work requirements for parents), but immigration policy requires that those without lawful status be so excluded. The best that can be done in these situations is to ensure that benefits are provided only to those with legal status or that the benefit be prorated according to the proportion of legal residents in the household or family unit. Again, better

The Commission recommends against any broad, categorical denial of public benefits to legal immigrants.

enforcement of the borders and of the work authorization procedures also should help to prevent and deter the entry of unauthorized immigrants in the first place, thereby decreasing the number of mixed-household cases.

Legal Immigrants

The Commission recommends against any broad, categorical denial of public benefits to legal immigrants.

No federal benefit program currently denies eligibility on the basis of alienage to legal immigrants. In some needs-based public assistance programs (i.e., SSI, AFDC, and Food Stamps), as a means of enforcing the public charge provisions for exclusion and deportation, current law requires that program eligibility workers "deem" sponsor income as available to immigrants in determining financial eligibility [see discussion of sponsor deeming below]. In other social insurance programs (such as social security and Medicare) an immigrant becomes eligible on the same basis as citizens—through sufficient payroll contributions to the trust funds (there is a five-year residency requirement for enrollment for elderly immigrants who have not contributed sufficiently to the Medicare trust funds).

A considerable amount of public debate has focussed on the issue of eligibility of legal immigrants for public assistance programs. Indeed, during the past year a number of proposals for curtailing immigrant eligibility have been made. While some measures would affect all legal immigrants, others are more specifically aimed at individuals coming into the country for family reunification purposes. The proposals range from making all legal immigrants ineligible for all federal assistance programs until such time as they naturalize, to extending for some federal programs the time period during which a sponsor's income is counted or "deemed" available to determine need. Also under consideration are measures to

strengthen the basis upon which immigrants can be excluded or deported because of the public charge provision of the INA.

The impetus for proposals to change immigrant eligibility standards for public assistance stems from a number of different concerns. Immigration during the past few decades is the first to occur after the creation of the modern welfare state. Steady increases in the number of legal immigrants admitted into the U.S.—and the prevailing tendency of these immigrants to settle in only a handful of states—has raised general concerns about the ability of states and communities to absorb new migrants. Further, some observers argue that recent immigrants have less education and lower skills than earlier immigrants, resulting in a higher utilization rate of public assistance benefits than previous generations of immigrants. Also, in an era of federal and state budget pressures that require funding for new programs to come from cuts in existing ones, restricting the eligibility of immigrants for benefits is seen as a source of revenue. In addition, several well-publicized incidents of fraud in the use of public benefits by immigrants has animated public concern about possible misuse of federally-funded programs. Finally, there is perception that the long-standing provision of immigration law that immigrants should not become public charges has not been effectively enforced.

Some argue that public aid impedes the social and economic adjustment of immigrants, particularly in the refugee resettlement program where AFDC and its refugee cash assistance counterpart are the principal means of providing transitional financial aid to refugees. Continued high levels of welfare utilization by refugees in some states, especially California, have raised questions about the effect of public assistance on the attainment of economic self-sufficiency.

The Commission rejects proposals to categorically deny eligibility for public benefits on the basis of alienage. We support efforts to close some loopholes that have led to abuses within our immigration and benefits programs. The United States admits legal immigrants with the expectation that they will reside permanently in the United States and become productive citizens. Therefore the Commission believes that the following principles should guide policy on the benefit eligibility of immigrants.

- The safety net provided by needs-tested programs should be available to those whom we have affirmatively accepted as legal immigrants into our communities. The U.S. admits immigrants on the basis that they will not be a public charge [see below]. However, circumstances may arise after an immigrant's entry that create a pressing need for public help—unexpected illness, injuries sustained due to a serious accident, loss of employment, a death in the family. Under such circumstances, legal immigrants should be eligible for public benefits if they meet other eligibility criteria. We are not prepared to remove the safety net from under individuals who, we hope, will become full members of our polity.

A policy to categorically deny legal immigrants access to such safety nets based solely on alienage would lead to gross inequities between very similar individuals and undermine our immigration goals to reunite families and quickly integrate immigrants into American society. For example, while two children in the same family may be equally poor, one may be a legal immigrant and, under proposals to deny benefits to legal immigrants, would be ineligible for assistance, while the other may be a citizen—by virtue of being born after the family arrives in the U.S.—and eligible for assistance. In the case of *unlawful* immigration, the policy goal of controlling illegal entry overrides potential inequities derived from limiting eligibility on the basis of alienage.

There is no such public policy objective achieved, however, by denying public benefits to eligible legal permanent residents.

The inequities for the legal immigrant child grow if eligibility is linked to citizenship, rather than a specified time, since the child may not naturalize, by law, until he or she is eighteen years of age. The only route to citizenship prior to that age is through the naturalization of his or her parent. If there were a categorical denial of eligibility to all legal immigrants and the parent is unable or unwilling to naturalize, the child would suffer the consequences of a parental action that he or she cannot remedy.

- Sponsors should be held financially responsible for the immigrants that they bring to this country. In particular, the Commission recommends making affidavits of support signed by sponsors legally binding for a specific period of time and the development of mechanisms to enforce sponsors' pledges of financial responsibility.

Affidavits of support are one means to assure the Consular Officer that the alien will be supported in the United States and will not become a public charge. In accordance with BIA rulings, the signatory sponsor's ability to provide the promised support must be given due consideration in determining whether to exclude a person as likely to become a public charge. Some courts, however, have held that such affidavits of support impose only a moral—and not a legal—obligation on the signatory sponsor.

Thus, as affidavits are not legally enforceable, assurance that the alien will not become a public charge has relied primarily on the "deeming rules" applied by the statutory requirements that apply to sponsored immigrants in three federal means-tested entitlement programs—AFDC, SSI, and Food Stamps. Under these

statutes—enacted in the late 1970s to respond to concerns about possible abuses of federal programs by sponsored immigrants and to enforce the public charge provisions found in immigration law—a portion of the income and resources of an alien's sponsor are "deemed" to be available to the alien when determining the alien's level of financial need. The deeming rules apply only to sponsored immigrants and are not used if a sponsored immigrant becomes blind or disabled after entry into the U.S., if an immigrant's sponsor has died, or if a sponsor's income and resources are depleted unexpectedly after the immigrant's entry. Also, refugees are statutorily exempt from deeming rules since their entry is based on humanitarian considerations rather than on family unity.

Although Medicaid eligibility is generally conferred with AFDC or SSI eligibility, such eligibility can be established separately. Since there are no sponsor deeming rules in the Medicaid program, such separate determinations of a sponsored immigrant's eligibility for that program does not take into account a sponsor's income and resources (although actual receipt of support and maintenance is taken into account in determining any individual's eligibility for Medicaid).

For the AFDC and Food Stamp programs, the deeming provisions apply during the first three years following the alien's admission to the U.S. Until recently, the deeming period was also three years under the SSI program. However, in 1993, the sponsor deeming period under SSI was temporarily extended to five years after admission. This change, authorized for a period of two fiscal years, resulted in savings that financed an extension of the Emergency Unemployment Compensation program. This use of immigrant eligibility revisions for budgetary advantage is a precedent that has opened the door to further consideration of

revisions to immigrant eligibility in the current debate on welfare reform.

This extension of the deeming period for SSI resulted in part from the increased attention to the public charge issue and in part to data showing a rapid increase in SSI utilization by immigrants, many of whom are elderly and sponsored by their families. For example, in 1993, immigrants represented about 12 percent of the total SSI caseload and about 28 percent of the aged caseload, compared to 3 percent and 6 percent—respectively—in 1982. About 25 percent of all immigrants receiving SSI are legal immigrants who are not likely to have sponsors—primarily refugees, but also asylees, parolees, and others. The remaining 75 percent are legal permanent residents who are likely to have sponsors, and one-third of these began to receive SSI in the year immediately following the end of the sponsor deeming period.

These data can be interpreted in various ways. Some believe that these elderly immigrants, sponsored by their families, have always intended to apply for SSI benefits as soon as the deeming restrictions are removed. They argue that, at the time of entry, these elderly individuals have no intention of being self-supporting and that their sponsoring relatives have no intention of honoring their sponsorship role beyond the deeming period, creating precisely the situation the public charge provision is supposed to prevent.

On the other hand, no laws have been broken and the data do not imply that there is any specific fraudulent activity occurring. Sponsors and their elderly immigrant relatives are merely following the rules of program eligibility as they have evolved over the years.

The one conclusion that can be unequivocally drawn from the data is that the deeming policies have generally been effective in preventing sponsored immigrants from receiving federal welfare benefits during the deeming period.⁹ However, under federal welfare benefit programs, the deeming rules apply even if sponsors are not actually providing financial support to the immigrant they have sponsored. As the affidavit of support has been judicially interpreted as a document that is not legally binding, there is currently no legal procedure to compel sponsors to actually provide such financial support. It is possible that a sponsor may refuse to provide financial support to the immigrant, but due to the sponsor's income and resources, the immigrant may also be ineligible for federal welfare benefits as a result of the deeming rules. The immigrant may, however, be eligible for state and local assistance programs as these programs do not generally take into account sponsors' income in determining eligibility for benefits.

There are no data to indicate the prevalence of such sponsor abandonment of immigrants. Some experts argue that such cases are relatively rare, particularly in situations where the sponsor is a close relative of the immigrant (e.g., the son or daughter of an elderly immigrant). Some states and localities complain, however, that sponsored immigrants utilize their programs while awaiting the end of the deeming period for federal programs. Making the affidavit of support a legally binding document is necessary to close this loophole in the current sponsor deeming policies.

A legally-enforceable affidavit of support is a necessary complement to deeming policies. Deeming is used not only for immigrants, but for others as well, to ensure that the income and resources of legally liable individuals are taken into account when determining an applicant's eligibility for benefits. For example,

under the SSI program there are both spouse-to-spouse and parent-to-child deeming policies, in addition to the sponsor-to-alien deeming policy. In these other cases, the fact that there is an established, legally liable relationship between individuals (e.g., husband and wife) does not obviate the need to have deeming policies in place in order to adequately take into account the income and resources of the legally liable individual (e.g., the husband) when determining the financial need of the applicant (e.g., the wife). Making the affidavit legally binding would establish the legal, financial relationship between sponsors and immigrants; deeming policies would continue to allow benefit programs to take this relationship into account when determining a sponsored immigrant's level of financial need as part of the eligibility determination process. In defining the sponsor's responsibility, special consideration should be given to the issue of medical care, particularly in the context of health care reform initiatives.

It is likely that making the affidavit of support legally binding will serve primarily as an effective deterrent to sponsors. There is reason to assume that most citizens and legal permanent residents will voluntarily comply with such a legally binding affidavit. But to be fully credible, mechanisms must be developed to enforce such a new legal requirement.

Consideration should be given to the particular enforcement mechanisms developed to actually enforce the affidavit, so as to avoid unnecessarily complex and costly new regulations or bureaucracies. Federal, state, and local governments should be allowed to consider the sponsor/immigrant relationship on the same legal basis as current parent/child and spouse/spouse relationships and to hold sponsors to the same standards of financial responsibility with regard to the immigrant as are currently applied to spouses and parents of children. If an immi-

grant claims that a sponsor is not honoring his or her financial obligation, courts could render judgements of support on behalf of the immigrant and initiate procedures to ensure that support. Also, the INS and the Department of State should review their policies to determine if immigration-related sanctions should be applied against sponsors who do not abide by their responsibilities. →?

Finally, making the affidavit of support legally binding should also provide states the authority to ensure that sponsors do not shift their financial responsibility to state and local public assistance programs. As some courts have determined that states cannot implement the same type of deeming policies for their public assistance programs as the federal government now does for its programs, this is an important protection. ✓

- A serious effort to enhance and enforce the public charge provisions in immigration law to ensure that legal immigrants do not require public assistance and to provide clear procedures for deporting individuals who become public charges within five years of entry for reasons that existed prior to entry. In particular, the Commission recommends that deportation apply to sustained use of public benefits. ←

Specific provisions within U.S. immigration law are designed to ensure that those persons seeking admission to this country will contribute to it, not merely take advantage of its resources and the generosity of its people. For example, U.S. immigration law currently bars the entry of those who are likely to be a public charge and contains provisions for the deportation of individuals who become public charges within five years—unless they require aid for reasons that developed after entry. Effective enforcement of these provisions helps minimize the number ✓

of legal immigrants who come to need or depend on public assistance.

At the admissions stage, the determination as to whether an individual meets the public charge test is generally made by a consular officer prior to the issuance of a visa. A public charge is a person who "by reason of poverty, insanity, disease or disability would become a charge upon the public." The test applied for the public charge determination is "a prediction based on the totality of the circumstances as presented in the individual case," according to a 1988 ruling from the Board of Immigration Appeals [BIA]. BIA has found that "a healthy person in the prime of their life cannot ordinarily be considered likely to become a public charge, especially where he or she has friends or relatives who have indicated their ability and willingness to come to assist in case of emergency."¹³ Friends or relatives who sign an affidavit of support on behalf of the immigrant are known as sponsors.

Immigrant visa applicants must demonstrate their financial responsibility by presenting evidence of *bona fide* offers of employment, evidence of sufficient personal assets and income, or affidavits of support from a relative or friend assuring the U.S. government that the alien will be supported in this country and not become a public charge. Aliens unable to demonstrate their financial responsibility through such evidence are said to be excludable under section 273 of the Immigration and Nationality Act.

The Foreign Affairs Manual section on public charge provides guidance on what to review as evidence and indicates that all of

¹³Legal cases addressing public charge issues include *Gegiow v. Uhi*, 239 U.S. 3 (1950), *Matter of Vindman*, 1&N Dec. 131 (Reg. Comm. 1977), *Matter of Harutinian*, 14 I&N Dec. 583 (Reg. Comm. February 28, 1974), *Matter of A-*, 19 I&N Dec. 867, 869 (BIA 1988), and *Matter of Martinez-Lopez*, 10 I&N Dec. 409 at 421-22.

the evidence should be compared to the official government poverty guidelines as published annually by the Department of Health and Human Services [HHS]. While an applicant's income and resources are compared to the guideline, determinations on whether an applicant has met the public charge provision are applied in a flexible, individualized manner. For example, in determining whether an applicant has sufficient resources, a medical condition that would affect the applicant's ability to maintain employment successfully would be a factor in determining eligibility for the visa. The final determination that an alien is likely to be a public charge remains, then, a matter of discretion. The Consular officers make a judgment regarding future patterns of behavior. For those aliens who apply to adjust to lawful permanent resident status within the U.S., the INS makes the determination whether or not the alien passes the public charge requirements.

To emphasize the discretionary aspect of these decisions is not to say that enforcement of public charge exclusionary grounds are not performed vigorously. In FY 1992, 8,811 individuals were initially refused immigrant visas on public charge grounds. During that year, 4,285 individuals were able to overcome the grounds of refusal.

Immigrant and nonimmigrant visitors may become eligible for a waiver of the public charge exclusion by giving a bond or surety against the alien becoming a public charge. This public charge bond affirms that the obligor will pay to the United States, or to any state, town, or municipality any expenses resulting from the alien's becoming a public charge after entry.

The U.S. is authorized to enforce the bond on behalf of the states or localities that have incurred expenses if the alien becomes a public charge. The bond remains in full force and effect unless

or until it is cancelled by the District Director, the alien naturalizes, or the alien dies or departs permanently from the U.S. This provision is rarely used to satisfy public charge requirements.

Aliens who become public charges within five years of entry for reasons not shown to have arisen since entry are deportable under current law. The statute applies only to occurrences of destitution after entry that are tied to a cause existing at the time of entry, such as a preexisting mental or physical disability. An alien is not subject to deportation for acceptance of public assistance as a result of unemployment or other conditions or physical ailments that develop after entry. To deport the alien, the government must have affirmative knowledge that the condition existed prior to the alien's immigration to the United States. For example, the BIA held that development of psychosis was not conclusive in and of itself that the condition existed at time of entry¹⁴. In the last thirty years, very few immigrants have been deported based on public charge provisions.

Under the current statutes governing benefit programs there are no references to the public charge provisions in immigration law. Therefore, an immigrant may be determined eligible for benefits without regard to the public charge provisions found in the INA. Moreover, the relevant statutes have been interpreted to mean that, before an immigrant receiving benefits can be judged deportable, the federal, state or local government providing the benefit must seek repayment under its program rules for services rendered. The government must also demonstrate that the alien failed to repay the costs of the assistance provided. Thus, there are three elements necessary to support this ground of deportability: a liability for payment; a demand for payment; and a refusal or omission to pay. Unless all three

¹⁴In *Matter of S*, 5 I&N Dec. 682 (BIA 19540).

elements are met, the immigrant receiving public aid will not become deportable.

The Commission believes this is not a reasonable interpretation of the public charge concept. A more sensible criteria is needed for deporting an immigrant who becomes a public charge, such as a tolerance threshold represented by a period of time of continued receipt of certain benefits. Tightening the deportation provision could help ensure that individuals with preexisting conditions that might require public aid within a short time of entry understand the seriousness of their (or their sponsors') commitments that they will not become a public charge. Thus, immigrants who may require publicly-financed services for a sustained period of time for conditions that existed prior to entry would know at the time of application for assistance that they could be deported as a public charge.

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TIME LIMIT

This provision would not unduly limit an immigrant's access to safety net programs where the use is of brief duration or for reasons arising after entry. Thus, if the condition that precipitates the need for long-term care occurred after entry, the immigrant would not be deportable as a public charge. Similarly, if the immigrant requires publicly-financed medical services for a limited duration of time (e.g., hospitalization for a specific procedure), there would be no public charge determination.

The Commission recommends that comprehensive categories of aliens in the U.S. be defined in the Immigration and Nationality Act to simplify determination of eligibility for public benefits.

The Commission recommends that comprehensive categories of aliens in the U.S. be defined in the Immigration and Nationality Act to simplify determination of eligibility for public benefits.

Under current laws, procedures for making benefit eligibility determinations for legal immigrants are complicated by the myriad legal statuses now afforded to individuals within this country. While the rights of lawful permanent residents, refugees, and asylees have been

spelled out in the Immigration and Nationality Act and/or benefit laws, it is also true that the Congress, the Executive Branch, and the courts have created various other statuses that may or may not denote benefit eligibility.

Determining which class of immigrants is eligible for what type of benefits is complicated by the number of immigration status grey areas that exist among lawful permanent residents, those who have entered with explicit permission and possess a status that indicates our intent that they reside here on a permanent or temporary basis and those who are here without consent. There are some statuses for which our immigration intent is not clear or, if the intent is to deport, not immediately achievable, resulting in both courts and benefit programs conferring eligibility on individuals who are residing without formal consent of the government.

The term "Permanently Residing in the United States under Color of the Law"—or PRUCOL—is used in statutes governing four federal benefit programs (AFDC, SSI, Medicaid, and unemployment insurance) to indicate a number of categories of aliens who are not permanent residents but are nonetheless eligible for benefits. PRUCOL was first introduced in 1972 by amendment to the statute governing the SSI program; then for AFDC, by regulation in 1973 and by statute in 1981; for Medicaid, by regulation in 1982 and by statute in 1986; and for unemployment insurance in 1978. It is neither a term defined nor an immigration category provided for in the INA. PRUCOL includes refugees and asylees who are first provided conditional status but are able to adjust to permanent resident status after one year. PRUCOL also includes aliens whose right to remain permanently is less clearly defined in law—such as parolees, Cuban/Haitian entrants, aliens whose deportation is withheld or have been granted a stay of deportation, aliens under orders of supervision, aliens granted voluntary departure, and a variety of other aliens who are "living in the United States with the knowl-

edge and permission of the INS and whose departure the INS does not contemplate enforcing." [This last category was the result of litigation, *Berger v. Heckler*, 771 F.2d 1556 (1985).]

As a result of its evolution, the multipurpose term "color of law" has been variously interpreted by the benefit programs and the courts. Since a single, uniform PRUCOL standard has not been defined statutorily, some aliens qualify under some benefit programs but not under others. For example, the courts generally have held that asylum applicants are not PRUCOL for the purpose of AFDC eligibility, but the Florida Supreme Court has ruled otherwise. However, asylum applicants may be eligible for SSI and Medicaid if the INS makes a determination that they do not "contemplate enforcing their departure." Similarly, Congress has expressly denied PRUCOL status to aliens granted temporary protected status [TPS], a time-limited resident status generally granted on a country-specific basis to aliens who do not want to return home because of armed conflict, natural disaster, or other extraordinary and temporary conditions. However, when Salvadorans were granted Deferred Enforced Departure status, rather than extending their TPS status, there was no indication as to their benefit eligibility status. ←

In general, SSI and Medicaid interpret the PRUCOL standard broadly, while AFDC regulations define PRUCOL more narrowly. Legislation governing the Food Stamp program was amended in 1977, in part because of the vagueness of "permanently residing under color of law," replacing PRUCOL language with a listing of the specific categories of legal aliens eligible for benefits. As a result, alien eligibility is more narrowly drawn for food stamps than for AFDC, SSI, and Medicaid.

Inconsistencies inherent in the term PRUCOL call for INA provisions that clearly define categories of aliens to help clarify decisions about

immigrant eligibility for public assistance benefits. Therefore, the Commission recommends:

- Establishment of statutory categories of aliens according to their eligibility for work and benefits. Such INA definitions would help provide more specific guidance to various benefit programs as to the intent underlying a given immigration status and would lead to more consistency among different programs in determining benefit eligibility. Further, consistent and easily identifiable categories are attractive from a compliance and fiscal reimbursement perspective.

Table 3 illustrates how such broad immigration categories could be developed and indicates the framework to develop benefit eligibility and work authorization policies related to such categories. These categories reflect whether individuals: (1) have been admitted affirmatively into the U.S. for permanent residence; (2) have been admitted affirmatively into the U.S. for temporary residence; (3) are remaining here pending a final decision on deportability; or (4) are here unlawfully or have already been determined deportable and are awaiting removal. The Commission intends to continue to refine these broad categories and their implications for benefit eligibility and work authorization. Determinations of work authorization and benefit eligibility, we believe, should be consistent with the immigration principles underlying the broad categorization. They should strengthen an overall policy that supports legal immigration and deters unlawful immigration by extending public assistance to those persons residing in the U.S. lawfully and at our invitation, while not rewarding with public benefits those persons not affirmatively admitted.

As many of these same issues apply to nonimmigrants, a similar categorization should be done for the various nonimmigrant

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[See Table 3. In attachments]

statuses. However, there are also critical differences between immigrants and nonimmigrants, in terms of both their potential eligibility for benefits and work authorization.¹⁵ Therefore, the Commission suggests that these issues be dealt with in a separate context.

- Placement of every alien who is permitted to remain in the country on a temporary or permanent basis (whether by legislation, court order, or administrative order) in one of the designated categories. All current and future immigration statuses—whether the result of statute, court order, or administrative order—should be assigned to one of these broad categories. In turn, these categories would have implications for the work authorization and benefit eligibility of immigrants in those categories.

Impact on States and Localities

Until better enforcement measures are in place and as long as certain requirements are met, the Commission supports in principle a short-term authorization of impact aid to offset at least a portion of the fiscal burdens of unlawful immigration.

Difficulties in enforcing U.S. immigration laws have created fiscal impacts that would not have occurred had enforcement strategies been more effective. The ineffective enforcement has been due, in some measure, to a lack of political will on the part of decision-makers, including state officials and others representing areas now heavily affected by illegal immigration. Nevertheless, the federal government bears a responsibility for alleviating some of these impacts, particularly through renewed efforts to reduce unlawful immigration.

Until better enforcement measures are in place and as long as certain requirements are met, the Commission supports in principle a short-term authorization of impact aid to offset at least a portion of the fiscal burdens of unlawful immigration.

¹⁵For example, many temporary workers are authorized to work for only particular employers, within particular industries or sectors, for a limited time.

We believe that the federal government's responsibility to provide impact aid applies where specific costs are unavoidable and there is clearly an immediate budget impact. These areas are the major "unfunded mandate" areas: emergency medical care, because it is required under the Medicaid laws and has an effect on service delivery for lawful residents; education, because the Supreme Court has held that states may not limit the right of children to education on the basis of immigration status; and the costs of incarcerating illegal aliens who commit crimes because it is required by public safety. In no other areas are arguments for impact aid as compelling.

The restoration of a credible immigration policy—that is, a policy that works and is recognized to work—is the primary goal of this report. The Commission believes that the recommendations offered herein will reduce unlawful immigration, thereby alleviating its fiscal impact. The responsibility of the federal government for immigration impact should be met primarily through implementation of the comprehensive set of recommendations contained in this report. The extent to which impact assistance is part of this process depends on how effectively and how quickly the recommendations take effect. It also depends upon the credibility of the claims of impact presented by affected governments.

Our federal system provides for a sharing of responsibility among governments—federal, state and local—in providing services to the people of this country. Recently, state and local officials have expressed concern that the traditional sharing arrangement has gotten out of balance due to the presence of large numbers of undocumented immigrants in their jurisdictions and the costs that are incurred in meeting the states' usual obligation to provide services. In 1994 Arizona, California, Florida, and Texas initiated state claims for reimbursement by filing suit against the federal government for \$121 million, \$377 million, \$1.5 billion, and \$1.34 billion respectively. They claimed that the impact of undocumented aliens on their jurisdic-

tions results from irresponsibility on the part of the federal government in failing to carry out immigration policy effectively. Other major immigration states have joined in a series of complaints about the serious budgetary impacts of immigration on their public and human service programs.

The argument made by states and localities is based on the notion that immigration policy in general and control of illegal entry specifically is a federal responsibility. Therefore, if federal immigration policy is inadequate, or if the implementation of that policy is ineffective, the federal government should assume additional responsibility in the service partnership.

Various proposals have been made for impact aid funding to cover costs of undocumented aliens in the areas of health care, criminal justice, and education. In FY 1993, the Administration looked closely at the possibility of providing to states, on a formula basis, additional grant funds to supplement their federal Medicaid share and to counter high emergency care costs incurred in serving both legal and illegal aliens. In response to the pressure by states for reimbursement for costs incurred in incarcerating illegal aliens, the President asked for \$350 million in funds under the crime bill to pay for the costs of housing illegal criminal aliens. Section 20301 under Subtitle C of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, addresses incarceration of undocumented aliens. The law provides that if a chief executive officer of a state submits a written request for reimbursement for the incarceration of an undocumented criminal alien, the Attorney General shall enter into a contractual arrangement which provides for compensation or take the undocumented criminal alien into custody. Funds authorized between FY 1995-FY 2000 total \$1.8 billion.

Any authorization of impact aid should be made contingent on the following conditions:

- **Better data and methods to measure the net fiscal impact of illegal immigration.** The Commission finds that weak data make it difficult to determine the extent of these burdens. The authorization of impact aid should follow a concerted effort to develop better data on such impacts, and impact assistance should be provided only to the extent that actual impact costs are identified.

Much of the controversy in the debate about illegal alien use of public benefits is fueled by the lack of specific data. Some state and federal programs do not collect information on immigration status generally because alienage is not in those cases relevant to eligibility or to the need for the program's services. This is especially true for programs involving public health and education where it is in the public's interest to encourage participation regardless of legal status. For example, the Family Educational Rights and Privacy Act prohibits education agencies from disclosing records or personally identifiable information from records without prior consent. Similarly, under section 1867 of the Social Security Act, hospitals must provide emergency medical services to any individual who comes to a hospital with an emergency medical condition; and under section 1137(f) of the Social Security Act an alien is not required to provide alienage status for determining whether such emergency services are reimbursable under the Medicaid program.

Given limited information, estimates of benefit use are based on assumptions regarding the size of the illegal alien population and the program utilization rates of these aliens as compared to legal immigrants and native-born residents. Although progress has been made in recent years in estimating the number of illegal aliens, differences in assumptions and data sources have inevitably led to conflicting results in many recent studies. As the number of illegal aliens residing in the country—the starting

point for estimating total costs—are not known with much precision, many of the cost estimates presented by states and experts are imprecise as well.

Even more troubling for estimating costs is the lack of information about the demographic traits, income, and other relevant characteristics of illegal aliens. The foreign-born population is often used as a proxy for estimating the gender, age, and income levels of the illegal alien population. The foreign-born population, however, includes several groups of aliens: legal immigrants, refugees, illegal residents, aliens in the United States on temporary visas, and other aliens permanently residing in the United States under color of law [PRUCOL]. As not all of these groups have the same characteristics, basing estimates of age and gender composition of illegal aliens on these figures can be misleading.

- **Provision of any impact aid authorized in a manner commensurate with the interim period of regaining control over unauthorized immigration.** Any impact aid mechanisms should be temporary and designed to ensure that governments do not become dependent on impact aid as a continuing source of funding. The Commission is concerned that the availability of such assistance not create an expectation of ongoing immigration-related federal aid. The comprehensive package of recommendations to make immigration law enforcement strategies more effective is a response to impact concerns. Any impact aid authorized should take into account the expectation that the number of illegal aliens needing state and locally funded services will decrease and be made available on an explicitly temporary basis. Additionally, such assistance should be provided retrospectively to avoid budgetary and political speculation as to anticipated impact costs. Impact aid should not cover new programs but only reimburse costs associated with existing ones.

Nor should impact aid be framed in a way that gives illegal aliens new eligibility for any existing programs. In prior experience with immigration-related impact assistance, both the duration of such assistance and the ability of state or local government to create new programs have affected the overall federal funding level. Ground rules about impact definitions and reimbursement policies should be clear about the nature of the commitment at the time of authorization.

- Appropriate cooperation of state and local governments receiving impact aid with federal authorities to enforce the immigration laws of the United States. State and local governments should be required to comply appropriately with reasonable requests for cooperation from federal agencies responsible for immigration enforcement. The type of cooperation will vary depending on the assistance programs covered by impact aid and should be consistent with the laws and regulations that apply to the program in question. The requested cooperation should be for activities in the actual control of the state and local authorities. For example, departments of corrections should be asked to provide information to identify and transfer certified conviction records of illegal aliens serving prison sentences, whereas school officials would not be required to violate the provisions of the Family Educational Rights and Privacy Act which bar the transfer of personal information obtained from pupils.

There are currently insufficient mechanisms for cooperation between state and local officials and immigration officials. The Commission does not intend that this criterion compel state or local officials to violate legal restrictions. Nonetheless, it does intend that obstructionist policies and explicit noncooperation policies not mandated by federal law should be taken into account in considering a government's eligibility for aid. In the

1980s, some state and local governments implemented sanctuary laws that prohibited their agencies from requesting or divulging information about the immigration status of program clients. In some cases, these provisions were in response to legal actions. Many of these sanctuary policies benefitted illegal immigrants beyond those specifically involved in the litigation. Such provisions should be reviewed in the context of potential impact aid agreements. Specific agreements as to what appropriate cooperation entails should be negotiated between federal, state, and local authorities as part of any assistance application process.

The Commission advocates tailored agreements that allow for cooperation between levels of government without violating individual rights and without unduly changing the role of state agencies for enforcement purposes. The terms and conditions of these provisions would best be negotiated by federal and state officials themselves. An early form of cooperation that the Commission would welcome is participation in the pilot programs to test work and benefit eligibility.

The Commission supports an immediate authorization of impact aid aimed specifically at criminal justice costs.

The Commission believes impact assistance for criminal justice and law enforcement is justified where there is a high incidence of illegal aliens in the criminal justice system. Specific costs attributable to the incarceration of illegal aliens can be ascertained if state correctional departments cooperate with INS in identifying deportable illegal aliens in prisons. The federal government should assume responsibility for the costs of incarcerating illegal aliens through reimbursement, by assuming responsibility for their incarceration, and/or by negotiating with foreign governments to accept and incarcerate their nationals who are criminal illegal aliens.

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The Commission recommends further investigation of the costs of education and emergency medical assistance.

State prison administrators and other law enforcement officials have argued strongly and persuasively that the presence of criminal undocumented aliens in their facilities is a problem they do not need and can no longer afford. Estimates of the percentage of incarcerated individuals who are deportable (these aliens may be legal or illegal) range from percents of a few to the low teens. Transport of deportable inmates to federal facilities and subsequent deportation of these inmates to prisons in their country of origin through agreements with foreign governments appears to be a remedy with merit and some support. However, reimbursement for costs already incurred and imminent may be necessary as not all illegal aliens in prisons can be deported to serve out their sentences and the costs of incarcerating them in federal prisons may be higher than the cost of reimbursing the states.

The Commission recommends further investigation of the costs of education and emergency medical assistance.

The data currently available do not provide reliable estimates of the number of illegal alien children and the proportion of emergency medical assistance specifically associated with illegal aliens. While the Commission accepts in principle the need for enhanced federal funding to assist localities with the costs of providing elementary and secondary education to illegal alien children and of emergency medical care under Medicaid to illegal aliens, the Commission does not recommend that such a program be instituted until there is a workable method for accurately establishing actual costs.

Most funds earmarked for education are state and local in origin. State officials generally agree that serving children is, from both a humanitarian and pragmatic viewpoint, useful and even essential, regardless of their immigration status. However, many of these officials also believe that the presence of foreign-born, undocumented

children in their jurisdictions derives from a failed national responsibility to prevent the entry and continued residence of undocumented alien parents. They argue that the fiscal impact of this failure should be offset by an increase in federal financial participation in affected school districts. Although the Commission agrees with their perspective, we are not satisfied with the current estimates as to the number of illegal alien children actually in school. Until these estimates are improved, it will be impossible to determine the actual costs to be reimbursed. We also do not wish to provide a financial incentive to school districts to attract additional illegal alien children to their districts.

Since the enactment of authorization for the Medicaid program in the 1965 amendments to the Social Security Act, emergency care has been part of state plans under that program, and costs of providing such care were shared by the federal and state governments. Because Medicaid services are not available to undocumented aliens generally but health providers may not turn away patients in need of emergency medical care, the responsibility of serving individuals in need of emergency treatment who were not Medicaid eligible defaulted to units of government closest at hand. Many states and localities complained that public hospitals, in particular, were providing uncompensated care because of Medicaid restrictions. In 1986, under the Omnibus Budget and Reconciliation Act, emergency medical care was extended under Medicaid to anyone in need, regardless of alien status. This extension was a response to requests by states. The amendment both required that emergency services be provided to all in need and guaranteed federal financial participation. As a result, states both gained resources for services they had already been providing outside of Medicaid and were required to provide those services. The requirement and the federal contribution necessitate a state contribution as well. Of late, some states have indicated that the burden of this requirement has become too heavy and, using the argument generally brought forth regarding

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Commission Says Families, Not Welfare System, Should Support

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~~Families~~
Immigrants

WASHINGTON (AP) A federal commission will propose that Congress change immigration laws to make families who bring relatives to the United States legally responsible for supporting them. The plan follows an explosion in the number of immigrants receiving welfare benefits.

Authorized by Congress in 1990 to examine immigration policies and their impact on society and the environment, the U.S. Commission on Immigration Reform will issue its first report to lawmakers on Friday.

According to the commission's executive director, Susan Martin, the nine-member advisory panel headed by former Rep. Barbara Jordan wrestled for days with the complex and politically explosive issues surrounding welfare and immigrants.

In a series of unanimous decisions, the commission will recommend to Congress that illegal immigrants be barred from most public aid, aside from immunizations, emergency medical care, school lunches and child nutrition programs.

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The commission also believes there should be no broad ban on welfare benefits to legal immigrants, as some lawmakers have proposed, but that the families who bring their relatives to the United States must be held responsible for supporting them.

"We can't lift the safety net for legal, permanent residents," Martin said in an interview. "But at the same time, families have to take more responsibility."

Most legal immigrants are the spouses, children, parents or siblings of U.S. citizens and long-term, permanent residents.

If immigrants cannot show they have financial resources or a job in the United States, their sponsors must be able to support them and are required to sign a non-binding affidavit of support.

Martin said commissioners believe these affidavits must be made legally binding on the sponsors, with exceptions in cases of unexpected illness, injuries, a death in the family or the loss of a job.

"The decision to bring someone into country shouldn't be made lightly," Martin said. "It must also be clear to people what the expectations are."

The commission also will ask Congress to strengthen immigration laws to keep people out of the country when it is clear they will apply for welfare within first five years of their arrival. Congress should also make it easier to deport immigrants with long spells on welfare.

"We should not admit people likely to become a public charge," Martin said. "It should be the extraordinary event, not the routine one."

Many of the concerns about immigrants on the dole involve Supplemental Security Income, a welfare program for the elderly and disabled. The number of immigrants on SSI has exploded over the past decade from 100,000 to 700,000. Immigrants now represent 10 percent of all SSI recipients.

Records obtained by the Associated Press last year showed that thousands of immigrants apply for aid shortly after arriving in the United States, despite their relatives' promises to support them.

APNP-09-26-94 1528EDT

3/13

NOTE TO RAHM EMMANUEL, BRUCE REED, STEVE WARNATH --

Wanted to be sure you saw the attached. SSA has declined an interview request from CBS. I understand that a Cassie Booth in INS public affairs has, however, set up an interview with somebody over there.

Melissa

WR Immigration

MAR-13-85 13:40 FROM: SSA PRESS OFFICE

ID: 4109668873

PAGE 1

To: Melissa Skelfield
HHS Public AffairsFrom: Phil Gambino
SSA Press Officer

PM-TX--Computer Glitch-Immigrants,Bjt,0566
 Computer Glitch Allows Immigrants To Find Work Illegally. Post Reports
 Eds: Moved 1st for AMS.

HOUSTON OUT

rlgg2

HOUSTON (AP) A federal computer glitch has allowed some 2 million immigrants to illegally find employment in the United States, The Houston Post reports.

According to an internal memo obtained by The Post, computers at the Social Security Administration and the Immigration and Naturalization Service can't talk to each other, enabling immigrants to find jobs illegally.

The immigrants have managed to use "non-work" Social Security numbers, which are issued by the agency and allow foreigners living here to open bank accounts, but not work here.

However, the 2 million people in question have found work using the restricted cards and paid their Social Security taxes, The Post said in a copyright story on Sunday.

About 6 million cards carrying non-work numbers have been issued since 1974, Social Security Commissioner Shirley Chater testified during a recent congressional hearing.

But the memo from the Department of Health and Human Services, obtained by the Post under the Freedom of Information Act, indicates while the SSA "has provided earnings data annually to INS since 1982 for aliens with non-work (Social Security numbers), INS has never been able to access the information."

Sent to Associate Social Security Commissioner Sandy Crank last June 16, the internal staff memo says the Social Security Administration would no longer provide the magnetic data tapes to the INS. Because of incompatible computer systems, the INS had never used the data in an 11-year period.

INS spokeswoman Cassie Boothe could not say why the agency did not let SSA know it was unable to use the magnetic tapes, which contain non-work numbers to which earnings have been reported by employers on behalf of immigrants.

Boothe said INS staffers told her the information exchange between the agencies was flawed from the beginning.

"They (INS staff) explained that the data was sort of dumped on us," Boothe said. "Our data base has very few Social Security numbers in it. We work on alien registration numbers."

But the ability the two agencies to merge their databases is considered the crucial first step in building the national employment verification registry that many immigration reform proponents advocate.

As for Social Security taxes paid by employees using non-work cards, SSA officials say it is deposited into the Social Security Trust Fund and kept there until the employee where legal or illegal claims retirement benefits.

One of the main reasons non-work Social Security numbers were created two decades ago was to prevent immigrants from using them for illegal employment.

"As you recall, SSA obtained tacit agreement from the Congress in March 1973 to assign non-work SSNs because we said we would notify INS when earnings were reported for a non-work number," the memo reads.

Ms. Chater said when fraud is discovered, information is passed along to SSA's own inspector general.

A spokeswoman for that office could find no record of any investigations into immigrants or employers who participate in the illegal use of Social Security numbers stamped non-valid for work.

"Even though it is a violation, a lot of those were not being pursued by the U.S. attorneys because it is a small dollar loss," said Judy Holts, spokeswoman for the SSA Inspector General.

16. QUESTION:

There have recently been Congressional hearings and media coverage on the SSI program. What is the Administration doing to combat fraud and abuse in this program, and what changes will you make to SSI under welfare reform?

ANSWER:

The Supplemental Security Income (SSI) program provides a floor of economic protection to six million of our nation's neediest elderly and disabled residents. However, payments made to a small fraction -- certain substance abusers, children with learning disorders, and to some legal immigrants -- have raised questions about the integrity of this important program. Although the incidents of actual fraud are limited, this Administration will not tolerate any abuse of the public trust -- and the public's pocketbook. We have supported measures in the past to curb fraud and abuse, and we remain committed to working with Congress to clarify the issues surrounding eligibility for SSI benefits and to assure hardworking Americans that their tax money is being used to support only those who truly need help.

If asked a follow-up:**On Immigrants:**

Under welfare reform, the Clinton Administration supports tightening sponsorship requirements to target legal immigrants who are not needy and enforce sponsors' responsibility. SSI was designed to help society's most destitute, not to free sponsors from their commitment to support immigrant family members. We support a deeming period for SSI designed to increase sponsors' responsibility for relatives who legally enter the United States. And, under our proposal, illegal immigrants would continue to be ineligible for both SSI and AFDC.

On Substance Abusers:

We believe the public has a right to expect that drug addicts and alcoholics will do all they can to cooperate in curing themselves of their addiction and become self-supporting. That's why we strongly supported measures last year that put a three-year limit on payments to substance abusers, encouraging them to take personal responsibility for their treatment and rehabilitation.

On Children:

Although our own investigation has not found any widespread fraud or abuse in the children's disability program, we acknowledge that there is some concern about the intent of the SSI program with respect to children. We have appointed a commission, headed by former Representative Jim Slattery, to examine the basic definition of disability among children and to explore other issues such as the feasibility of providing benefits through non-cash means.

NON-PERMANENT RESIDENTS RECEIVING SSI BENEFITS**QUESTION:**

There is evidence that both illegal aliens and legal aliens who have been here only a short period of time are receiving SSI benefits. Do you think that this is appropriate and, if not, what would you suggest?

ANSWER:

- ▶ The law prohibits illegal aliens from receiving SSI. In order to be eligible for SSI, aliens must be either lawfully admitted for permanent residence (immigrants) or permanently residing in the United States under color of law (PRUCOL). Although some aliens who are PRUCOL could have entered illegally, they are now in the country with the knowledge and permission of the Immigration and Naturalization Service, which gives them color-of-law status. "Illegal aliens" are those who are evading detection by immigration authorities.
- ▶ PRUCOL aliens -- who generally do not have immigration sponsors--may be eligible for SSI after they have been in the United States for 30 days. Data show that 57 percent of the 186,600 PRUCOL aliens on the rolls in December 1994 came onto the SSI rolls within 12 months after they arrived in the country. Eighty percent of PRUCOL aliens are refugees, asylees, or parolees.
- ▶ Aliens who are lawfully admitted for permanent residence generally have sponsors who have signed affidavits of support. SSI law requires that in determining SSI eligibility and benefit amounts for immigrants, a portion of their sponsors' income and resources be considered to be the immigrants' for 5 years after their admission into the United States. (Under current law, the 5-year deeming period is temporary and will become 3 years effective October 1, 1996.)
- ▶ Although immigrants also may be eligible for SSI 30 days after they enter the country, sponsor-to-alien deeming is instrumental in delaying SSI eligibility, as shown by the fact that only 15 percent of the 551,530 immigrants on the rolls in December 1994 came onto the rolls before the end of the sponsor-to-alien deeming period. These are aliens whose sponsors' incomes and resources were low enough to permit SSI eligibility based on deeming or whose sponsors had died.
- ▶ The President's welfare reform legislation introduced in the 103rd Congress including provisions to eliminate eligibility of several PRUCOL categories, to make permanent the 5-year deeming period, and to prohibit SSI eligibility to immigrants after the deeming period if their sponsors' incomes exceeded the national median income. I anticipate that similar proposals for tightening alien eligibility and extending sponsorship obligations will continue to be part of the Administration's legislative initiative in 1995.

ADDITIONAL INFORMATION

- ▶ California's Proposition 187 should have no effect on Federal SSI benefits or SSI State supplements. First, the Proposition, as a State provision, cannot affect Federal SSI benefits. Second, to be eligible for SSI or federally administered State supplements, aliens must be lawfully admitted for permanent residence or permanently residing in the United States under color of law, which includes all aliens known to the Immigration and Naturalization Services (INS) and whom the INS is allowing to remain in the country. Proposition 187 is aimed at "illegal" --i.e., undocumented--aliens, meaning aliens who are in the country without permission and are evading detection by immigration authorities.