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

Wednesday, June 23, 1999

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: *Janet R. Forsgren*
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SUBJECT: **HEALTH & HUMAN SERVICES Report on Study of Feasibility of
Implementing Immigration Provisions to Strengthen Enforcement of Family
Maintenance Obligations**

DEADLINE: 10 A.M. Tuesday, June 29, 1999

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: This HHS report was prepared pursuant to a reporting requirement included in P.L. 105-200, the Child Support Performance and Incentive Act of 1998.

THIS DEADLINE IS FIRM.

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**REPORT TO THE COMMITTEES ON WAYS AND MEANS
AND ON THE JUDICIARY OF THE HOUSE OF
REPRESENTATIVES AND THE COMMITTEES ON
FINANCE AND ON THE JUDICIARY OF THE SENATE
AS REQUIRED BY SECTION 409 OF P.L. 105-200**

**Study of Feasibility of Implementing
Immigration Provisions to Strengthen
Enforcement of Family Maintenance
Obligations**

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children and Families
Office of Child Support Enforcement
June 1999**

**Study of Feasibility of Implementing Immigration Provisions to
Strengthen Enforcement of Family Maintenance Obligations**

TABLE OF CONTENTS

I. INTRODUCTION

II. FEASIBILITY OF TITLE V PROVISIONS

A. SECTION 501

B. SECTION 502

C. SECTION 503

D. SECTION 504

III. APPENDICES

A. SECTION 409, P.L. 105-200

**B. TITLE V of H.R. 3130, as passed by the House of
Representatives on March 5, 1998.**

I. INTRODUCTION

Last year, Congress passed and President Clinton signed H.R. 3130, The Child Support Performance and Incentive Act of 1998 (P.L. 105-200), which builds upon the comprehensive child support reforms enacted in the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA). In addition, the new law requires the Department of Health and Human Services (HHS) in consultation with the Immigration and Naturalization Service (INS), to conduct a feasibility study of a provision included in the House passed bill that was not included in the final version signed into law by the President.

Since taking office, the Clinton Administration has made child support enforcement a high priority, resulting in a record \$14.4 billion in estimated collections for fiscal year 1998, an 80 percent increase from 1992. Paternity establishment rose to nearly 1.3 million in 1997, ~~an increase of over 250 percent since 1992~~. The child support enforcement measures included in PRWORA, the New Hire Directory and Federal Case Registry, for example, are projected to increase collections significantly over the next 10 years.

1.5
1998, three times the 1992 figure of \$16,000.

[new data released 6/21]

One new enforcement mechanism that has proven helpful in collecting past due support is the passport restriction provision under which an individual owing child support arrearages in excess of \$5,000 can be denied a passport. Unfortunately, those individuals who are not U.S. citizens but travel freely between the U.S. and other countries are not subject to this provision. Furthermore, many non-residents are difficult to reach by most of the other effective child support enforcement mechanisms. To address this problem, the House of Representatives included a provision in its version of H.R. 3130 that would have restricted entry into the U.S. for any non-citizen owing over \$5,000 in child support arrearages. The purpose of this provision was to provide an enforcement tool for non-citizens that is similar to denying passports to U.S. citizens.

Because the Senate bill did not contain a similar provision, the compromise reached in conference requires the Secretary of HHS to report to the House Ways and Means and Judiciary Committees, as well as the Senate Finance and Judiciary Committees, on the feasibility of implementing the provisions contained in the House-passed bill if such provisions were to become law.

The text of the final provision (section 409 of P.L. 105-200) is attached as Appendix A. The text of title V of H.R. 3130 as passed by the House of Representatives (Title V) is attached as Appendix B.

II. FEASIBILITY OF TITLE V PROVISIONS

As section 409 requires, HHS consulted with the INS on the feasibility of implementing Title V of the House passed bill. In addition, HHS also consulted with the Department of State since that Department would be the first point of contact for many aliens seeking to enter as either immigrants or nonimmigrants. Based on that consultation, HHS' assessment of the feasibility of implementing each section of Title V is presented below. Where appropriate, HHS also notes modifications of those provisions that might be desirable either facilitating their implementation or increasing the likelihood of collecting child support.

A. Section 501 of H.R. 3130 as passed by the House of Representatives

Section 501 would amend section 212(a)(10) of the Immigration and Nationality Act by adding a new section F comprising three subsections.

Subsection F(i) would make "inadmissible" any alien who has been certified to be over \$5,000 in arrears on a child support obligation, until child support payments are satisfied or the alien is in compliance with an approved payment plan.

Subsection F(ii) would apply this inadmissibility provision to aliens who already are lawful permanent residents of the U.S. If an alien already admitted for lawful permanent residence were to leave the country for even a brief period of time, that alien would, under this legislation, be considered to be newly applying for admission when he or she attempted to re-enter the U.S. This "new application" would, under the proposed legislation, be subject to new subsection F(i). If that alien were in arrears in child support by more than \$5,000, that alien would not be admissible and could be precluded from entering the U.S.

Subsection F(iii) would authorize the Attorney General to waive the application of subsection F(i) if she receives a request from the child support tribunal having jurisdiction over the case and determines that the likelihood of payment would increase if she waives subsection F(i).

HHS agrees with the principle that a non-resident alien who is significantly in arrears on child support payments and is beyond the reach of the normal child support enforcement system should not receive the benefit of entry into the United States. Section 501 would make an important additional tool available to child support agencies seeking enforcement against aliens who otherwise would be hard to reach. After consultation with the INS and the Department of State, HHS has concluded that it would be feasible to implement this provision with certain modifications.

For a delinquent alien without permanent residence status, withholding permission to enter the U.S. as a nonimmigrant would be a powerful incentive for such non-resident alien to pay child support. Inadmissibility would be one of the limited mechanisms which are available to encourage compliance with child support orders by non-resident aliens, especially those living in countries with whom neither the U.S. nor individual states have reciprocal arrangements whereby U.S. child support agencies can avail themselves of the services of other countries' child support enforcement mechanisms.

However, with regard to immigrants, it may be more effective to treat them like U.S. citizens and not deny them entry into the U.S. Aliens admitted for permanent residence, like U.S. citizens, are subject to the vast array of domestic enforcement tools that already exist, i.e. wage withholding, license revocation, and tax offset. Excluding an alien who is in immigrant status and who has strong ties with the U.S. would put that alien largely beyond the reach of child support enforcement tools. It is the Department's view that more child support collections will occur if immigrants are allowed to enter the U.S. and that child support collections will suffer were all immigrants to be excluded.

HHS recommends the following changes to the proposed subsection 8 U.S.C. 1182(a)(10)(F) so that the provision does not apply to immigrant aliens, who would otherwise be subject to the IV-D domestic enforcement system:

1. At the beginning of subsection F(i), "IN GENERAL" should be deleted and "nonimmigrant" should be added after "Any."
2. As a consequence of such amendment, subsection F(ii) as originally proposed, should be deleted entirely and not replaced. This would allow the general rule concerning the grounds of inadmissibility for aliens admitted for permanent residence to continue if this new ground of

inadmissibility for nonimmigrants is established under the Immigration and Nationality Act.¹

3. **Subsection F(iii) appears to be unnecessary. Subsection F(i) provides for removal of admission restriction with an approved payment agreement. In other instances, the Attorney General would retain significant flexibility under current law to defer inspection or exercise her parole authority.**

B. Section 502 of H.R. 3130 as passed by the House of Representatives

Section 502 would amend 8 U.S.C. 1101(f) to prohibit an individual from being regarded as a person of good moral character for purposes of naturalization if the individual has child support arrearages, unless the arrearages are satisfied or the alien is in compliance with an approved payment agreement.

HHS believes that this provision is unnecessary, noting that child support currently is a factor in determining "good moral character" as a precondition to eligibility for naturalization. INS regulations already provide that naturalization can be withheld if an alien "Willfully failed or refused to support dependents" absent "extenuating circumstances." [8 C.F.R. 316.10(b)(3)(i)].

The intent of this provision already can be accomplished under current law. The authority for HHS to share information with INS to be used in such determinations would be provided by section 504 and would assist INS in effectively implementing their existing authority.

C. Section 503 of H.R. 3130 as passed by the House of Representatives

Section 503 would authorize immigration officers to serve legal process with regards to any action to enforce or establish a child support obligation upon any alien who is an applicant for admission to the U.S. This authority could assist

¹ Section 101(a)(13)(C) of the Immigration and Nationality Act provides that an alien lawfully admitted for permanent residence is not considered an applicant for admission (and therefore the grounds of inadmissibility do not apply) unless the alien: (i) has abandoned or relinquished that status, (ii) has been absent from the United States for a continuous period in excess of 180 days, (iii) has engaged in illegal activity after having departed the United States, (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings, (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

efforts to establish paternity and child support orders and to enforce collections in certain difficult cases.

Under this authority, a State or local child support agency could work with the appropriate INS office to effect service of process on an alien entering the country. The details of that effort would, given the unique nature of service of process rules in various court jurisdictions, have to be worked out between local child support offices and the INS on a case-by-case basis to ensure that proper legal service is effected. This provision would work best when a State or local child support agency, or the INS, has advance knowledge of when and where an alien will enter the U.S. Under this circumstance, it would be feasible for the child support agency to ensure that the appropriate papers are available to INS agents at the relevant port of entry and that INS agents are versed in the service requirements imposed by the issuing jurisdiction. Authorizing INS agents to serve process in these situations would be of assistance to the child support program in dealing with delinquent alien obligors.

In addition, where there is less advance information available, INS may be able to add certain delinquent obligor aliens to its "lookout" list. When an alien on the "lookout" list attempted to enter the U.S., INS would either advise a child support agency that an identified alien has entered the U.S. or, in selected cases, detain the alien for a limited period of time until he or she can be turned over to the appropriate authorities.

Under current law, INS adds aliens against whom certain State and Federal criminal charges have been filed, including cases for non-payment of child support, to their "lookout" list. If such an alien attempts to enter the U.S., he or she is detained and turned over to the appropriate authorities.

D. Section 504 of H.R. 3130 as passed by the House of Representatives

Section 504 would enable HHS, upon request, to provide child support information which HHS determines may aid in making determinations on child support delinquency to the Attorney General and the Secretary of State. This provision is necessary because specific statutory authority is required before HHS can share certain information, even with other Federal agencies. HHS has concluded that it is feasible to implement this provision and, if enacted, HHS would work with the INS and the Department of State to ensure that appropriate safeguards are in place to ensure the confidentiality of sensitive personal information.

III. APPENDICES

APPENDIX A

The text of section 409 of P.L. 105-200:

SEC. 409. STUDY OF FEASIBILITY OF IMPLEMENTING IMMIGRATION PROVISIONS OF H.R. 3130, AS PASSED BY THE HOUSE OF REPRESENTATIVES ON MARCH 5, 1998.

(a) **STUDY-** The Secretary of Health and Human Services, in consultation with the Immigration and Naturalization Service, shall conduct a study to determine the feasibility of the provisions were such provisions to become law, especially whether it would be feasible for the Immigration and Naturalization Service to implement effectively the requirements of such provisions.

(b) **REPORT TO THE CONGRESS-** Within 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Ways and Means and on the Judiciary of the House of Representatives and the Committees on Finance and on the Judiciary of the Senate a report on the results of the study required by subsection (a).

APPENDIX B

Title V of H.R. 3130, as passed by the House of Representatives on March 5, 1998:

TITLE V--IMMIGRATION PROVISIONS

SEC. 501. ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION FOR NONPAYMENT OF CHILD SUPPORT.

(a) **IN GENERAL-** Section 212(a)(10) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)) is amended by adding at the end the following:

(F) NONPAYMENT OF CHILD SUPPORT-

(i) **IN GENERAL-** Any alien is inadmissible who is legally obligated under a judgment, decree, or order to pay child support (as defined in section 459(i) of the Social Security Act), and whose failure to pay such child support has resulted in an arrearage exceeding \$5,000, until child support payments under the judgment, decree, or order are satisfied or the alien is in compliance with an approved payment agreement.

(ii) **APPLICATION TO PERMANENT RESIDENTS-** Notwithstanding section 101(a)(13)(C), an alien lawfully admitted for permanent residence in the United States who has

been absent from the United States for any period of time shall be regarded as seeking an admission into the United States for purposes of this subparagraph.

(iii) **WAIVER AUTHORIZED-** The Attorney General may waive the application of clause (i) in the case of an alien, if the Attorney General--

(I) has received a request for the waiver from the court or administrative agency having jurisdiction over the judgment, decree, or order obligating the alien to pay child support that is referred to in such clause; and

(II) determines that the likelihood of the arrearage being eliminated, and all subsequent child support payments timely being made by the alien, would increase substantially if the waiver were granted.

(b) **EFFECTIVE DATE-** The amendment made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 502. EFFECT OF NONPAYMENT OF CHILD SUPPORT ON ESTABLISHMENT OF GOOD MORAL CHARACTER.

(a) **IN GENERAL-** Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended--

(1) in paragraph (8), by striking the period at the end and inserting '; or'; and

(2) by inserting after paragraph (8) the following:

(9) one who is legally obligated under a judgment, decree, or order to pay child support (as defined in section 459(i) of the Social Security Act), and whose failure to pay such child support has resulted in any arrearage, unless child support payments under the judgment, decree, or order are satisfied or the alien is in compliance with an approved payment agreement.

(b) **EFFECTIVE DATE-** The amendment made by this section shall apply to aliens applying for a benefit under the Immigration and Nationality Act on or after 180 days after the date of the enactment of this Act.

SEC. 503. AUTHORIZATION TO SERVE LEGAL PROCESS IN CHILD SUPPORT CASES ON CERTAIN ARRIVING ALIENS.

(a) **IN GENERAL-** Section 235(d) of the Immigration and Nationality Act (8 U.S.C. 1225(d)) is amended by adding at the end the following:

(5) **AUTHORITY TO SERVE PROCESS IN CHILD SUPPORT CASES-**

(A) **IN GENERAL-** To the extent consistent with State law, immigration officers are authorized to serve on any alien who is an applicant for admission to the United States legal

process with respect to any action to enforce or establish a legal obligation of an individual to pay child support (as defined in section 459(i) of the Social Security Act).

(B) DEFINITION- For purposes of subparagraph (A), the term 'legal process' means any writ, order, summons or other similar process, which is issued by--

(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States; or

(ii) an authorized official pursuant to an order of such a court or agency or pursuant to State or local law.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to aliens applying for admission to the United States on or after 180 days after the date of the enactment of this Act.

SEC. 504. AUTHORIZATION TO OBTAIN INFORMATION ON CHILD SUPPORT PAYMENTS BY ALIENS.

Section 453(h) of the Social Security Act (42 U.S.C. 653(h)) is amended by adding at the end the following:

(4) PROVISION TO ATTORNEY GENERAL AND SECRETARY OF STATE OF INFORMATION ON PERSONS DELINQUENT IN CHILD SUPPORT PAYMENTS- On request by the Attorney General or the Secretary of State, the Secretary of Health and Human Services shall provide the requester with such information as the Secretary of Health and Human Services determines may aid them in determining whether an alien is delinquent in the payment of child support.'



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

The Honorable Bill Archer
Chairman of the Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to transmit to you the Report to Congress, as required by section 409 of P.L. 105-200, on the feasibility of implementation of the provisions of title V of H.R. 3130, as passed by the House of Representatives on March 5, 1998, if such provisions were to become law.

Sincerely,

Donna E. Shalala

Enclosure



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

The Honorable Henry J. Hyde
Chairman of the Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to transmit to you the Report to Congress, as required by section 409 of P.L. 105-200, on the feasibility of implementation of the provisions of title V of H.R. 3130, as passed by the House of Representatives on March 5, 1998, if such provisions were to become law.

Sincerely,

Donna E. Shalala

Enclosure



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

The Honorable William V. Roth, Jr.
Chairman of the Committee on Finance
Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to transmit to you the Report to Congress, as required by section 409 of P.L. 105-200, on the feasibility of implementation of the provisions of title V of H.R. 3130, as passed by the House of Representatives on March 5, 1998, if such provisions were to become law.

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Donna E. Shalala

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

The Honorable Orrin G. Hatch
Chairman of the Committee on the Judiciary
Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to transmit to you the Report to Congress, as required by section 409 of P.L. 105-200, on the feasibility of implementation of the provisions of title V of H.R. 3130, as passed by the House of Representatives on March 5, 1998, if such provisions were to become law.

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