New Laws Fundamentally Revise Immigrant Access to Government Programs: A Review of the Changes

New Laws Fundamentally
Government Programs:

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1. INTRODUCTION

The welfare bill, enacted on August 22, 1996, imposed dramatic changes in public benefits law and family-based immigration.[1] The new welfare legislation ended a 61-year federal commitment to provide assistance to the nation's most vulnerable and needy, and gave states new authority to follow suit. It also ended a tradition, dating back to the earliest immigration laws, that treated citizens and lawful permanent immigrants on nearly equal footing with respect to eligibility for the programs their tax dollars fund. Six weeks after the welfare bill passed, Congress enacted the immigration bill, which made additional changes in the treatment of immigrants' access to government assistance and family-based immigration.[2]

The practical impact of the changes wrought by the combined impact of both bills will be to place noncitizens in a far more vulnerable position when need for government help arises than in the past. The immigrant changes shift responsibility for assistance of needy immigrants away from the federal government to state and local governments and the private sector. The estimated federal cost savings over the next six years from reducing coverage for legal aliens is $23.7 billion, or over 44 percent of the total $53.4 billion savings package in the welfare bill.[3]

States and local communities are only now beginning to assess the new costs they will bear as a result of the loss of federal dollars. For example, California has estimated that the state will lose over $9 billion over the next six years as a result of the new alien restrictions.[4] Immigrant advocates and the most affected communities argue that the shift away from federal responsibility is unreasonable because immigrants and the communities in which they live already contribute a disproportionate share of federal taxes and receive fewer benefits than other Americans.[5]

Although they have been singled out for almost half of the federal budget cuts imposed by the welfare bill, only about 5 percent of working age immigrants (other than refugees) receive welfare -- a figure that is equivalent to usage by U.S.-born citizens.[6] Immigrants have a higher work participation rate than native born Americans, and poor immigrants are far less likely to receive welfare than are other poor Americans.[7] The significance of these facts is even more pronounced when one considers that recent immigrants often work in the lowest wage sectors, enter this country without long standing family ties and connections, and usually experience more language difficulties, discrimination, and other barriers to the job market than U.S. citizens.

In any case, the changes have now become law and must be reckoned with. To a remarkable degree, however, the new legislation leaves major decisions regarding the final shape and contour of the new rules to regulators and to state legislative actions. Only in the coming months and years as these decisions are made will we know the true impact of the changes that have been enacted.

2. OVERVIEW OF CHANGES

Bars to SSI and Food Stamps

The new welfare legislation bars almost all non-citizens from receiving food stamps and Supplemental Security Income (SSI). Only three categories of non-citizens are exempt from the SSI and Food stamp bars, and will continue to be eligible for these programs.[8]

Program Descriptions

Food Stamps

The Food Stamp program provides coupons to low-income persons to buy food at participating stores. It is the major food assistance program for the poor. About half of all food stamps recipients are children. In addition to financial eligibility criteria, adult participants may also have to register for work and accept suitable employment.[9] The welfare law made extensive changes in the Food Stamp program beyond the new alien eligibility restrictions. For example, employable childless adults between the ages of 18 and 50 are now limited to only three months of assistance during any 3-year period.[10]

SSI

SSI is a needs-based program available to low-income persons who are either 65 years or older, blind, or disabled. A finding of disability is conditioned on establishing a physical or mental impairment that has prevented or will prevent the person from substantial gainful employment for 12 continuous months. SSI payments consist of a monthly check; the amount varies depending upon the basis for SSI eligibility and whether the state supplements the basic federal grant.[11]

Eligibility under the new laws

Only three groups of noncitizens remain eligible for food stamps and SSI:

- *Refugee 5-year exemption:* Refugees and aliens granted asylum or withholding of deportation,[12] but only for the first five years after entry as a refugee or after the grant of asylum or withholding;

- *Veterans exemption:* "Qualified" aliens who are active duty service members or veterans with an honorable discharge, as well as their spouses and unmarried dependent children under 21; and

- *40-quarters exemption:* Lawful permanent residents (LPRs) who have worked at least 40 "qualifying quarters" for social security purposes or who can be credited with the quarters earned by their spouse or parents.[13]

Refugee 5-Year Exemption

The refugee 5-year exemption is straightforward: refugees, asylees, and persons granted withholding of deportation will be allowed eligibility or continued eligibility upon establishing that they obtained their qualifying status within the last five years.

Veterans Exemption

The veteran's exemption requires a little more interpretation. "Qualified aliens" are those who fit within certain legal immigration categories enumerated in the bill.[14] This term will be discussed below. It has not yet been determined whether "veteran" will include persons who were not officially enrolled in the United States armed services but who fought for the United States under U.S. command, such as the Filipino veterans of World War II. It should be noted that the exemption does *not* protect the surviving spouses or children of veterans or active duty servicemembers who are no longer living, including those who died in active duty.

40-Quarters Exemption

The 40-quarters exemption will be the most difficult to interpret and implement. The statute provides that those LPRs who have worked 40 qualifying quarters, as that term is defined for purposes of eligibility for social security retirement, disability, and Medicare Part B, will continue to be eligible for SSI and food stamps.[15] In addition, LPRs may receive credit for the work of their spouse during the marriage, and of their parents while the LPR was under 18 years old. A quarter earned after January 1, 1997, will not count unless the alien (or spouse or parent) does not receive any federal means-tested benefits during that quarter.

40-Quarters Exemption Issues

Meaning of "qualifying quarter"

In general, qualifying quarters are quarters of coverage as defined under title II of the Social Security Act. The calculation of "qualifying quarters" under Title II is determined by the amount of wages in covered employment or self-employment income earned during a calendar year.[16] The amount of earnings needed to qualify as a quarter of coverage has steadily increased over time, to where a worker needs $640 in earnings in 1996 to qualify for one quarter. The worker can earn a maximum of four quarters per year, but these quarters do not have to be earned in a corresponding three-month calendar period. For example, if a worker earns $2,560 in 1996, he or she will be credited with the maximum four quarters of coverage for that year, no matter when during the year the money is earned.

For 1978 through 1996, the amount of earnings needed for each credit is:	
1978.....$250	1988.....$470
1979.....$260	1989.....$500
1980.....$290	1990.....$520
1981.....$310	1991.....$540
1982.....$340	1992.....$570
1983.....$370	1993.....$590
1984.....$390	1994.....$620
1985.....$410	1995.....$630
1986.....$440	1996.....$640
1987.....$460	

Persons who have valid social security numbers but who have not been properly credited with past earnings or FICA deductions can amend their social security records to gain credit for them.[17] This is true even if the worker did not have a valid social security card number at the time of the employment and the earnings were posted to either a fictitious account or another person's account. One can anticipate that many LPRs will take advantage of this procedure to qualify either for SSI or food stamps and eventually for Title II social security programs.

It should be noted, though, that one need not necessarily make such corrections in the SSA records to qualify for the 40 quarters exemption and receive Food Stamps or SSI. This is important because the Social Security Administration (SSA) does not currently have the capacity to act quickly enough to satisfy the application standards of the two programs, and because the requirements for proving eligibility for Social Security are slightly different than establishing quarters of credit for SSI and Food Stamps. For the time being, until SSA is able to revise its procedures, a noncitizen who has actually worked sufficient quarters will be granted conditional eligibility for food stamps while working with SSA to correct the records.[18] As of this writing, procedures for SSI applicants were still being developed.

Credit for Quarters Worked by Spouse or Parent

The welfare statute also establishes a new system whereby LPRs can be credited with the qualifying quarters of their parents and spouses. The LPR can be credited with quarters earned by either parent while the alien was under age 18; he or she need not be under 18 at the time of applying for SSI or food stamps. The LPR can also be credited with quarters earned by a spouse during their marriage, but only if the marriage did not end in divorce. For a quarter to be credited that is earned beginning in 1997, the working spouse or parent must not receive a federal means-tested benefit during that calendar quarter.[19] The meaning of "federal means-tested benefit" is discussed below in the 5-year prospective ban on access to such programs.

More than four qualifying quarters can be credited to an LPR during a given calendar year, since the alien may be credited with quarters he or she earned, in addition to those earned by his or her spouse and parents. Quarters credited from

the spouse or parent go only toward establishing eligibility for SSI and food stamps, not eligibility for Title II social security benefits.

Again, it should be noted that SSA currently does not have the ability to generate the necessary information to determine the number of creditable quarters worked by a spouse or parent. Determining the proper number of quarters to credit from a spouse or parent may raise thorny privacy issues where the spouse or parent is uncooperative or unavailable. Immigrants may be forced to prove creditable quarters without resource to SSA records.

Effective Dates of the Bar

The bar on immigrant access to SSI and Food Stamps did not become effective immediately for all noncitizens. Applicability to a particular immigrant differs slightly for each program, and depends on whether the immigrant was receiving assistance on the date the welfare bill became law, August 22, 1996.

New Applicants

The alien bar to SSI and food stamps was effective upon enactment of the welfare law for new applicants who were not receiving benefits on August 22, 1996. Both federal agencies are requiring applicants for these benefit programs to submit documentary proof of alien eligibility under the new criteria.

Current Food Stamps Recipients

For food stamp recipients who were receiving benefits on August 22, 1996, the subsequent immigration law clarified that the cut-off will not begin until April 1, 1997. Thereafter, food stamp recipients will begin being dropped from the program at the time they are re-certified. Recertification will begin on April 1, 1997 and continue until August 22, 1997, by which time all ineligible aliens will have been terminated from the program.[20] The Congressional Budget Office (CBO) estimates that nearly a million people will lose Food Stamps eligibility by the end or next year.[21]

Current SSI Recipients

Similarly, recipients of SSI as of August 22, 1996 will continue to receive benefits until at least mid-1997. The federal agency will start notifying recipients in February, 1997 of the new alien eligibility requirements, and it must complete all such notification by the end of March 1997. Those notified will have up to 90 days to respond. Persons who are wrongfully terminated may appeal and will be given continued assistance while the appeal is pending until there is an administrative hearing.[22] If the appeal is not ultimately sustained, the alien may be liable for any resulting overpayments. Redeterminations of eligibility for SSI recipients will take place between May of 1997 and August 22, 1997, by which date the agency must have completed its determinations and terminated ineligible aliens.[23] CBO estimates that about 500,000 noncitizens will lose SSI eligibility by the end of next year.

State Option to Determine Eligibility for Medicaid, AFDC, and Title XX Block Grants

Should they so elect, states may also bar legal aliens from three federal programs administered at the state level: non-emergency Medicaid, Title XX social services block grants, and the new Temporary Assistance for Needy Families (TANF) program, which replaced Aid to Families with Dependent Children (AFDC).[24]

Program Descriptions

Medicaid

Medicaid provides reimbursement for doctors' services, hospital care, and prescription drugs to participating providers who care for low-income persons. The federal government matches state expenditures under Medicaid according to a statutory formula. In addition to satisfying financial eligibility requirements, recipients must be "categorically" eligible for Medicaid, which sometimes means that they must be eligible for either AFDC (now TANF) or SSI.[25]

Social Services Block Grants (Title XX)

Title XX of the Social Security Act provides block grants to the states that they use for a wide variety of purposes, including child care, in-home care for disabled persons, programs to combat domestic violence, programs for abused and neglected children, and many more programs.[26] States often contract with nonprofit organizations to deliver Title XX services.

Temporary Assistance for Needy Families (TANF)

The TANF (formerly (AFDC) program provides money to states for cash payments, vouchers, social services, or other assistance to low-income families with children. Each state will design its own mix of services, but all states must continue to spend at least 75 percent of what it spent on AFDC in 1994. The TANF program requires states to impose durational time limits and mandatory work requirements on recipients.[27]

Limitations on State Options to Deny these Three Programs

States' options regarding Medicaid, TANF, and Title XX are limited in a number of respects.

Persons States May Not Bar

States may not bar persons who fit within the same three categories of aliens that remain eligible for SSI and food stamps from Medicaid, Title XX block grants, or TANF. In addition, states must continue to serve persons who were receiving assistance on August 22, 1996 until at least January 1, 1997.

Assistance States May Not Provide

As discussed below, states may not provide any assistance to certain noncitizens who entered the United States on or after August 22, 1996 during their first five

years after entry, to the extent such assistance is deemed a "federal means-tested public benefit." Also, states are no longer permitted to provide any "federal public benefit" to aliens who previously qualified for AFDC and Medicaid as "permanently residing under color of law" (PRUCOL). The effect of eliminating the PRUCOL category is discussed in greater detail below under the heading "Federal Public Benefits."

Comparability and Discrimination Among Classes of Eligible Immigrants

A final limitation on a state's ability to determine eligibility for Medicaid, TANF, and Title XX Social Services Block Grants is provided by the statutory rules of each program, and by constitutional restrictions on the state's ability to discriminate among groups of lawfully present noncitizens. For example, the welfare bill does not repeal Medicaid rules requiring states to provide the same "amount, duration, or scope" of medical services to all who qualify for assistance based on each state's rules.[28] Moreover, states are constrained by the U.S. Constitutional limits on their ability to discriminate against legal immigrants in the provision of public assistance.[29]

At least in the Medicaid context, these considerations, plus a careful reading of the new statutes, should prevent states from discriminating among subclasses of qualified immigrants, and from providing a lower level of services to eligible qualified immigrants than to citizens. In other words, states should have a single choice regarding Medicaid: whether to serve qualified immigrants as a group. They should not be able to pick and chose among subclasses of qualified immigrants, other than those specifically mentioned in the welfare bill (i.e., they may not provide assistance to Russian refugees but not to Chinese refugees), and they should not be able to set a different level of services for qualified noncitizens than for citizens. Federal regulators have not yet addressed this issue, however.

Impact on Medicaid Eligibility of Loss of SSI

As mentioned above, some people currently receive Medicaid solely because they are "linked" to SSI. As of this writing, is not yet clear what will happen to the Medicaid benefits of these people when they lose SSI because of the changes in SSI alien eligibility. One thing that *is* clear is that they will not *automatically* lose Medicaid. Federal regulators, and possibly the courts, may adopt one of three possible policies towards such people:

- *Mandatory eligibility*: They may determine that all such people *must* remain eligible for Medicaid unless the state they live in opts to deny Medicaid to all other qualified immigrants;

- *State Option*: They may decide to treat eligibility for such people as a *state option*, available to any state that continues to provide Medicaid to other qualified immigrants; or, finally

- *No State Option*; They may determine that states *may not* grant any special status to persons who are ineligible for SSI solely because of their immigration status.

Even in the latter case, many persons who lose SSI will not lose Medicaid because they qualify under an alternative eligibility criteria already recognized by the state. For example, some states provide assistance for low-income nursing home residents, regardless of whether they are eligible for SSI.

Regardless of which policy is eventually adopted, certain procedural rights protect current SSI recipients' continued access to Medicaid until their individual cases have been reviewed. Immigrants who lose SSI because of their immigration status "continue to be eligible for Medicaid until the State conducts a Medicaid eligibility redetermination (which requires consideration of other bases for Medicaid eligibility for which the individual may qualify) and has found that the individual does not qualify for Medicaid by any other means."[30] Such a redetermination would generally require notice to the affected person and an opportunity to prove alternative bases of eligibility.

Ban on "Federal Public Benefits" for Aliens Who Are Not "Qualified"

Qualified and Not Qualified Aliens

All other "federal public benefits" remain accessible to all noncitizens who entered the U.S. before August 22, 1966, but only if they are "qualified" aliens.[31]

Definition of "Qualified" Alien

"Qualified" aliens are limited to just a few classes of immigrants enumerated in the welfare bill. The nomenclature, "qualified" aliens, has caused some confusion. As must be clear by now, many aliens who are designated as "qualified" are nevertheless susceptible to numerous restrictions on eligibility such as those already discussed. And, as will become clear, unqualified aliens retain eligibility for certain kinds of assistance, though far fewer than qualified aliens. All classes of noncitizens not listed below are "not qualified," and therefore subject to the restrictions discussed in this section.

"Qualified" aliens are:

- Lawful permanent residents (LPRs);
- Refugees;
- Persons granted asylum, withholding of deportation, or conditional entrant status;
- Persons paroled into the U.S. for at least a year; and
- Certain battered spouses and children.[32]

Battered Spouses and Children

The new immigration act added to the list of qualified aliens spouses and children who have applied for or been granted protection under the Violence Against Women Act (VAWA) due to their having been subjected to battery or extreme cruelty,[33] but only if there is a "substantial connection between the battery or cruelty and the need for benefits."[34] The spouse or child seeking qualified alien status must no longer be residing in the same household as the individual responsible for the battery or extreme cruelty.[35]

Elimination of PRUCOL and Employment Authorization as Eligibility Categories

Aliens who are "not qualified" are now barred from receiving any "federal public benefit." The not qualified category includes some aliens who are residing in the U.S. legally or with INS permission, such as nonimmigrants, applicants for asylum, registry, cancellation of removal, or adjustment of status, and aliens granted deferred action, Family Unity, temporary protected status (TPS), or an order of supervision.

Some of these categories of aliens were previously eligible for major federal programs as "permanently residing under color of Law" (PRUCOL). The PRUCOL category has essentially been eliminated by the new legislation. Prior law also allowed aliens who had employment authorization from the Immigration and Naturalization Service (INS) and a valid social security account number to qualify for Unemployment Insurance, and other employment-related programs.[36] They will no longer be eligible for such assistance to the extent that it falls within the definition of "federal public benefit," as discussed below.

The "not qualified" category would also include, of course, undocumented aliens, who either entered illegally or overstayed a nonimmigrant visa and who have no basis for obtaining lawful status.

Federal Public Benefits Defined

The term "federal public benefit" is defined to include the following:

> (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United states or by appropriated funds of the United States; and
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.[37]

Exceptions to this definition are made for employment authorized nonimmigrants, who are not considered to be receiving federal public benefits if they obtain a "contract, professional license, or commercial license" that is related to their authorized employment, or if they receive any assistance authorized under a reciprocal treaty with the alien's home country.[38]

Assistance That Does Not Fit This Definition

The definition of "federal public benefits" requires some regulatory interpretation. Although concededly broad, it does include some important limiting features.

Appropriated funds of the United States: The words "appropriated funds of the United States" should not be interpreted to include any benefit, assistance, license,

or payment where some of the funds originated in the federal treasury. Such an interpretation would lead to absurd results, requiring an immigration check prior to nearly all transactions, private or public. Rather, it should be limited to direct federal expenditures, or non-discretionary expenditures of federal funds by nonfederal entities.

Similar benefits: The words "any other similar benefit" should be interpreted to include only programs that are similar to those identified earlier in that sentence (e.g., similar to retirement, similar to welfare, similar to health, etc.). Programs that are dissimilar include child care, child protection, primary and secondary education, law enforcement, and legal services.

Individual, household, or family: Another limitation on the definition is the requirement that payments or assistance be made to an individual, household, or family. This should exclude payments provided to other entities, such as disproportionate share (DSH) payments to reimburse hospitals for treatment of uninsured payments.

Assistance, not programs: Finally, the term is defined to apply to particular transactions, payments or assistance, and not to programs per se. Therefore, it should be possible for some programs that generally provide federal public benefits to have some transactions or assistance that falls outside the definition. For example, most Medicaid assistance will generally be considered a federal public benefit, but block Medicaid payments made to reimburse schools for on-site clinics expenses should be excluded from the definition.

Assistance That Does Fit This Definition

Despite these limitations, the definition would likely include most kinds of federal assistance, including most assistance provided by all of the major federal programs, such as non-emergency Medicaid, TANF, unemployment insurance compensation (UI), social security, subsidized housing programs, post-secondary education loans and grants, and Title XX social services block grants. However, social security and housing have slightly different alien eligibility requirements, and are discussed separately below. The term would also include SSI and Food Stamps, but as described earlier, the alien bars to those programs are even more restrictive. Undocumented aliens generally were ineligible for these programs before the new legislation.

Exempted Programs and Assistance

Certain types of assistance that are "federal public benefits" are nevertheless explicitly made available without regard to immigration status. These are:

- Emergency Medicaid;
- Short-term, non-cash, in-kind emergency disaster relief;
- Immunizations and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease; and
- Certain community level programs or assistance designated by the Attorney General.[39]

Note that the communicable disease exemption applies to any program *except Medicaid.*

Emergency Medicaid Exception

The term "emergency Medicaid" is defined to include only treatment for medical conditions with acute symptoms that could place the patient's health in serious jeopardy, result in serious impairment to bodily functions, or cause dysfunction of any bodily organ or part.[40] The new legislation did not amend this definition. The House and Senate conferees stated their intention to restrict it to include only "medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit,"[41] but closely read this conference report language is not inconsistent with, and does not require a change in current practice.

Attorney General's List of Exempted Programs

The Attorney General is required to designate programs, services or assistance that, in her sole and unreviewable discretion, may be exempted from any and all immigrant restrictions. The designated programs must meet the following requirements:

- Provides in-kind assistance;
- Delivered at the community level;
- Eligibility for assistance not based on the individual applicant's income and resources; and
- Assistance necessary for the protection of life or safety.[42]

On August 23, 1996, the Attorney General made a "provisional specification" of these programs.[43] The list was quite extensive, and included such programs as:

- Short-term shelter and housing
- Assistance for the homeless,
- Violence prevention programs,
- Soup kitchens, community food banks and other nutrition programs,
- Medical and public health services, and
- "Any other programs, services, and assistance necessary for the protection of life or safety."[44]

Restrictions on Social Security And Medicare

The new rules or alien eligibility for programs under Title II of the Social Security Act, which includes Medicare, are different from those of other federal public benefits, in that the

restrictions only apply to new applicants, and eligibility is limited to lawful aliens instead of "qualified" aliens.

Program Descriptions

Social Security Benefits

Title II of the Social Security Act provides a federal insurance program that grants benefits to qualified workers, and in some cases their dependents, who are elderly, blind, or disabled. Eligible persons over 62 can begin receiving partial retirement benefits, and those over 65, full benefits. The definition of disabled is similar to that used to measure eligibility for SSI. A worker's surviving spouse and children can also receive "auxiliary" benefits.[45]

Medicare

The other major Title II social security program is Medicare, which is a two-part health insurance program for the elderly and disabled. To receive Medicare, the person must be either 65 or older or disabled. If under 65, the person must have been receiving social security benefits for at least two years.

Part A Hospital Insurance, which is not included in Title II, helps pay for inpatient hospital care, skilled nursing care, home health care, and hospice care.

Part B Medical Insurance helps pay for doctor care, outpatient hospital services, medical equipment, and other services.[46]

Eligibility for all these Title II benefits is dependent on the worker's being "fully insured" under the social security program. This requires accumulated work in covered employment for a certain minimum number of quarters, during which time the employer withheld FICA taxes from the worker's paycheck and paid it into the worker's social security account. For the last two decades, only LPRs and aliens with INS-issued employment authorization have qualified for a social security card.[47] In most cases, the person must have earned 40 quarters of coverage (a minimum of 10 years of work) to be fully insured and eligible for benefits.

Effect of New Alien Restrictions

Current Recipients Unaffected

Aliens receiving Title II social security benefits, including Medicare, on the date of enactment of the welfare law are unaffected by the new restrictions, as are alien applicants residing abroad.[48] Some aliens residing in the United States who have their social security benefits suspended because they are determined not to be lawfully present can have them reinstated once they leave the U.S. Whether benefits can be paid to an alien who remains outside the United States indefinitely depends on factors such as the alien's country of origin, international treaties and agreements, and the existence of reciprocal social security or pension systems in that foreign country. Fifty-seven countries have been determined to have reciprocal social security or pension systems.[49]

Lawfully Present Unaffected

Applicants for Title II benefits who are residing in the United States and apply for benefits after December 1, 1996 will not be denied based on alienage if they can establish that they are "lawfully present."[50] The INS has already issued an interim rule that defines that term to include all qualified aliens, as well as those whose presence "has been sanctioned by a policy determination that a particular class of aliens should be allowed to remain in the United States."

In addition to qualified aliens, the following aliens meet the definition of "lawfully present" according to the interim rule:

- Lawful temporary residents,
- Aliens paroled into the U.S. for up to a year (other than those paroled for an exclusion hearing or prosecution),
- Nonimmigrants who have remained in lawful status,
- Cuban-Haitian entrants,
- Adjustment of status applicants who are the spouse or child of a citizen, and
- Aliens granted TPS, Family Unity, Deferred Enforced Departure, or deferred action status.

Applicants for asylum or withholding are also considered "lawfully present," if they have been granted employment authorization.[51]

Restrictions on Federal Housing Programs

The new welfare law exempted current residents of assisted housing from the new restrictions on access to federal public benefits. But the new immigration bill was not so lenient. Instead, it imposed added restrictions on alien access to housing assistance and continued receipt of most federal housing programs.[52] To interpret these new restrictions, it is necessary to understand the prior restrictions, which had only recently been implemented.

Program Description

Federal housing programs provide tenants and home buyers with a variety of subsidized benefits, including public housing, vouchers and rental payments to landlords, and rural housing for farmworkers. Eligibility is based on financial status, and priority is given to certain persons, such as those who are homeless or displaced by a disaster, who currently live in substandard housing, or who pay more than 50 percent of their income in rent.[53]

Prior Alien Restrictions

A 1980 statute limited participation in programs financed by the Department of Housing and Urban Development (HUD) to a short list of enumerated categories. The list was identical to the list of qualified aliens under the welfare bill, except that lawful temporary residents (who got amnesty under the Immigration and Control Act of 1986 (IRCA)) were eligible, and all parolees were eligible, not just those who have been paroled for more than a year. In addition, protracted litigation and regulatory wrangling resulted in special treatment for "mixed families" composed of a mixture of eligible and ineligible members.

Treatment of Mixed Families

A 1986 lawsuit, which based its challenge on the constitutional right of families to live together, successfully enjoined implementation of the original housing restrictions.[54] A 1987 statute that tried to address this issue clarified that some "mixed families" can remain in their current subsidized housing provided that either the head of the household or the spouse was eligible.[55]

It took until June, 1995 for HUD to fully implement the 1980 and 1987 statutory changes. The final regulations provided landlords and housing authorities with detailed instructions for how to implement the new alien restrictions, verify immigration status, use the list of acceptable documents, and safeguard the rights of mixed families.[56]

One of the key provisions in the regulations allowed ineligible aliens who were residing in subsidized housing on June 19, 1995 to continue receiving the benefit if they were part of a mixed household. Families in that situation were either granted a full subsidy, assuming the head of the household or spouse was a citizen or eligible alien, or allowed to pay a prorated share of the value of the housing subsidy, assuming other close family members were eligible. If no family members were eligible, the household could still apply for "deferred termination," which would allow them to remain in the housing for up to three years. Mixed families applying for subsidized housing programs could also take advantage of the prorating system.[57]

New Alien Restrictions

The new law further restricts assistance in a number of ways.

Prorated Benefits for Mixed Families - Elimination of Full Subsidies

The immigration legislation eliminated the full subsidy for mixed families residing in federal housing where the head of the household or spouse is a citizen or eligible alien; the law now requires them to pay a prorated share, just as mixed families applying for housing benefits would have to pay.[58] At the same time, Congress appears to have ratified the proration concept by referring to it in several provisions of the new legislation. Previously, proration was principally the creation of efforts by regulators and courts to interpret difficult and often contradictory provisions in a manner consistent with constitutional liberties.[59]

Unfortunately, the new law wins poor marks for clarity. For example, it provides that new applicants for assistance may obtain prorated assistance based on the eligibility of some family members while the status of others in the family is being determined. It does not say what happens once the status of everyone in the family has become known.[60] Some have interpreted this omission as a back-door way to end assistance, even prorated assistance, to the entire family once it becomes clear that anyone in the family lacks eligible alien status. Such an interpretation would be unfortunate. The 104th Congress was very aware of the alien housing regulations permitting prorated assistance for mixed families, and could easily have directly and clearly overruled the applicable rules. The fact that

it did not do so is strong evidence that Congress intended to allow HUD to continue such assistance.

Shortened Transition Period

Families who are only eligible for deferred termination, which used to allow them to continue residing in the housing for up to three years, are now limited to staying no more than 18 months.[61]

Special Transition Rule for Refugees and Asylum Applicants

The new law actually broadened relief for refugees and asylum applicants seeking deferred termination by removing any durational time limits.[62]

Opt-out Provision for Public Housing Agencies

The new law for the first time permits Public Housing Agencies (PHAs) to "elect not to comply" with the immigrant restrictions contained in Section 214.[63] On its face, this provision appears to permit PHAs to provide assistance to tennants and applicants regardless of their immigration status.

24-Month Punishment for Knowingly Sharing Housing with Ineligible Person

Finally, the new law creates a brand new restriction requiring HUD to terminate housing assistance for at least two years to persons who have "knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted unit."[64] However, this provision does not apply to members of a mixed family where the status of an ineligible member was made known at the time of applying for prorated assistance.

Effective Date

HUD is required to issue new regulations implementing these changes within 60 days of enactment of the immigration legislation, meaning that they could go into effect as early as December 1, 1996. Ironically, should the agency fail to promulgate these regulations by that date, the regulations it issued last year finally implementing the 1980 alien restrictions shall become void.[65]

Ban on Eligibility for the Earned Income Tax Credit

The welfare law also prohibits aliens who do not qualify for a social security card number from claiming the earned income tax credit (EITC).[66]

Description of Program

The EITC is a federal tax credit for working families who have moderately low incomes.

For example, for the 1995 tax year, a family of four qualified for the EITC if their income was less than $26.673.

To qualify for the tax credit, the family unit must contain at least one child, who must have resided in the taxpayer's home for at least half the year. The amount of the tax credit depends on the family's size and income. Taxpayers last year who did not have a child residing in the household could also qualify for a very small tax credit, assuming their income was less than $9,230 and they satisfied other requirements.

Previous Practice

Under earlier IRS guidelines and procedures, aliens who did not have a social security number were able to file a tax return and claim the EITC by writing in the words "applied for" or "section 503(c)" in lieu of providing a social security number. Beginning with the 1994 tax year, the IRS required each taxpayer, spouse, dependent, and EITC-qualifying child to provide a valid number, or be subject to delays and penalties. The practice varied, however, depending upon the particular IRS office processing the claim.

Only aliens who have INS-issued employment authorization may obtain a social security number that allows them to post earnings and qualifying quarters to their social security account. Aliens who are residing lawfully in the U.S., such as nonimmigrants, but who do not have employment authorization may obtain a non-work social security number for certain limited purposes. But this non-work card will not be acceptable proof of employment eligibility for purposes of satisfying the I-9 employment verification requirements, posting earnings to a social security account, or claiming the EITC.

Changes in the Welfare Legislation

This new law removes any doubt about whether persons who lack a social security number can claim the earned income tax credit. It provides that only persons who include their taxpayer identification number (defined as the social security number) and that of their spouse may claim the EITC.[67] This provision applies to tax returns due at least 30 days after the effective date of this new legislation, which means that the bar on aliens' claiming the EITC if they lack a social security number will become effective for returns filed beginning next year for the 1996 tax year.

Restrictions that Only Affect Future Qualified Immigrants: 5 Year Prospective Bar

For qualified aliens who enter after the date of enactment of the legislation, Congress took the extra step of barring them for a five-year period from "any federal means-tested program."[68] The five-year period will begin on the alien's "entry" to the U.S. as an LPR, refugee, Asylee, parolee, or after a grant of withholding of deportation. Regulations will likely define the term "entry" to include the granting of adjustment of status or asylum to persons in the U.S.

Exempted Aliens

Certain classes of qualified aliens are exempt from the prospective five-year bar. These include the same categories of refugees, asylees, persons granted withholding, veterans, active duty service members, and their family members who are exempted from the ban on SSI and food stamps described earlier.[69] The only additional category of immigrants exempted from

the 5-year ban are Cuban and Haitian entrants, as defined in section 501(e)(2) of the Refugee Education Assistance Act of 1980, who are paroled into the U.S. for at least a year.[70]

Programs Affected: Federal Means-Tested Programs

The term "federal means-tested program" is not defined in the final version of the legislation. It was deleted because of a procedural rule that effectively prevents a budget bill from legislating on programs that do not involve "direct spending."[71] Elimination of the definition makes the already difficult regulatory process of determining which programs will be affected even more complicated. It may result in only a handful of programs being included within the definition, compared with the dozens of programs that would have been affected had the original language not been eliminated.

The term, however, will likely include Medicaid and TANF services that are means-tested. Other federal means-tested programs are either barred to legal aliens under a separate provision, such as Food Stamps and SSI; are specifically exempted, such as higher education loans and grants, child nutrition programs, and foster care and adoption assistance; or affect only veterans, who are exempted from the five-year ban.

Exempted Programs

The welfare legislation specifies that the term "federal means-tested programs" does not include the following, the first four of which are also exempted from the restrictions on "not qualified" aliens:

- Emergency Medicaid
- Short-term, non-cash, in-kind emergency disaster relief
- Immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease;
- Those same community-based programs, services, or assistance designated by the Attorney General that are described earlier;
- School lunch, school breakfast, and other child nutrition programs;
- Benefits under the Job Training Partnership Act (JTPA);
- Head Start;
- Title IV Foster Care and Adoption Assistance (but only if the foster or adoptive parent is a qualified alien)
- Most federal school loans and grants for higher education
- Means-tested programs under the Elementary and Secondary Education Act of 1965.[72]

Restrictions that Only Affect Future LPRs: Sponsor-to-Alien Deeming of Income

After the five-year ban, LPRs will be subject to new sponsor-to-alien deeming rules that will continue to make most of them ineligible for "means-tested federal benefits" until they naturalize. This is because their sponsor's (and sponsor's spouse's) income and resources will be counted as belonging to them in determining their financial eligibility for the benefit program.[73] A sponsor is the person who executes an affidavit of support on the alien's behalf; these affidavits will soon become binding contracts, as described below.

Prior Law

Under prior law, the sponsor's income was deemed in only three programs: AFDC, Food Stamps, and SSI.[74] In addition, deeming was only imposed for a three- or five-year period, which began on the alien's entry to the U.S. as an LPR or on adjustment to that status while in the U.S.

Changes for "Federal Means-Tested Programs"

A provision of the welfare law, which will be implemented after development and execution of the new affidavit of support, extends sponsor deeming to all "federal means-tested programs" for aliens who entered using the new affidavits.[75]

Exempted Programs

The same programs that are exempt from the five-year bar are also exempt from the new sponsor-to-alien deeming requirements.[76] The law is ambiguous about whether states can opt out of the deeming requirement in the three federal programs over which they have some discretion to determine alien eligibility: non-emergency Medicaid, Title XX social services block grants, and TANF.

Exempted Aliens

The following categories of noncitizens will be exempted from the new deeming provisions:

- Those who qualify for the 40-quarters exemption to the Food Stamp and SSI ban;[77]
- Certain battered women and children;[78]
- Certain persons who need assistance to avoid hunger or homelessness;[79]

In addition, because refugees and asylees do not need to overcome the public charge ground of exclusion or submit affidavits of support when they adjust to permanent residence, they will be exempt from the new deeming provisions.[80]

Note that veterans and their families are not exempt from deeming and that they are the only class of immigrants that is subject to deeming but not to the 5-year prospective bar. Therefore, veterans are the only group of immigrants in America who will face the new deeming in federal programs before the year 2001 (when the immigrants who enter the U.S. this year will graduate from their 5-year bar).

Battered Spouses and Children

The new immigration law allows a one-year exemption from the deeming provisions for LPR spouses and children who have been battered or subjected to extreme cruelty in the U.S. by their spouses or parents, or by another family member residing in the household who was allowed to commit such acts. The battery or extreme cruelty must have a "substantial connection to the need for the public benefits applied for."[81] In addition, the spouse or child subjected to the

battery or extreme cruelty must not be residing with the person who committed the acts.[82]

For the deeming exemption to extend beyond the initial one-year period, either the INS, a judge, or an administrative law judge must formally recognize that the battery or extreme cruelty occurred and the agency providing the benefits must determine that it continues to have a connection with the spouse's or child's need for benefits.[83]

Necessary to Avoid Homelessness and Hunger

The immigration act also added an important "indigence" exemption for LPRs who are abandoned by their sponsor or the sponsor's contribution is so inadequate that the alien would otherwise go without food and shelter. This exemption lasts for one year after the agency providing benefits makes such an indigency determination.[84]

Deeming for State Programs

Under prior law states were not permitted to impose sponsor deeming in their own programs.[85] The new welfare law changes that for most kinds of assistance, however it does not appear to permit states to impose deeming retroactively on immigrants who came into the country using the old affidavits of support.[86] The only programs in which states are explicitly prohibited from using deeming are the following:

- Emergency medical assistance
- Short-term, non-cash, in-kind emergency disaster relief
- Immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease;
- Those same community-based programs, services, or assistance designated by the Attorney General that are described earlier;
- School lunch and breakfast programs, and child nutrition programs.[87]

It is notable that states are *not* prohibited from deeming state-funded higher education loans and grants, elementary and secondary education means-tested programs, Head Start-type programs, or job training programs, all types of assistance that are exempt from deeming at the federal level.[88]

States' efforts to implement sponsor-to-alien deeming for state-funded programs will surely be challenged on constitutional grounds. At least three state courts have determined that such discriminatory treatment against LPRs violates the Fourteenth Amendment's equal protection clause.[89]

Eligibility for State and Local Programs

Treatment of Not Qualified Aliens

For the first time, the federal government has mandated that states and localities be prohibited from providing programs funded at the state or local level to aliens unless the aliens fit within

certain categories.[90] States and localities may provide their benefits only to qualified aliens (including aliens paroled for shorter than one year), nonimmigrants, and parolees. The only exception is the opt-in provision explained below. The welfare law, however, contains no enforcement mechanism against states that violate this federal prohibition and continue providing state-funded assistance to unqualified immigrants. Nevertheless, at least one state, California, has announced its intention to rely on the new law to deny prenatal care to undocumented women and nursing home care to undocumented elderly residents. Advocates recently went to court to prevent California from taking this action.

Opt-in Provision

For states and localities to provide their own benefits to aliens other than those designated above, the state must take the affirmative step of enacting laws specifically providing for such eligibility. Such state laws must be enacted after the effective date of this federal welfare legislation.[91] Laws passed before August 22, 1996 are invalidated, as are regulations, court decisions, or local ordinances not based on legislation passed and signed by a state's governor after August 22, 1996. However, such micro-management of state affairs by the federal government is potentially unconstitutional based on the Tenth Amendment.

Definition of State and Local Benefit

The definition of the term "state and local benefit" is nearly identical to that of "federal public benefit." The terms, however, are mutually exclusive.[92] State and local benefits do not include any "contract, professional license, or commercial license" provided to nonimmigrants that is related to their authorized employment.

State Option to Deny Qualified Aliens, Nonimmigrants, and Parolees

The welfare law attempts to delegate to the states the same power the federal government holds in precluding access to aliens lawfully residing in the U.S. It allows the states to disqualify even qualified aliens from state-funded public benefits.[93] However, any action by the states to ban lawful aliens access to their programs will surely be challenged on Fourteenth Amendment equal protection grounds.[94]

Exempted Programs

Assistance states must continue to provide to all persons regardless of immigration status includes:

- Emergency medical assistance
- Short-term, non-cash, in-kind emergency disaster relief
- Immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease;
- Those same community-based programs, services, or assistance designated by the Attorney General that are described earlier;[95]

In addition, work-authorized nonimmigrants and permanent residents may also continue to receive any benefit, if denying it would violate a reciprocal treaty agreement with another country.[96]

Exempted Aliens

The same three categories of aliens that remain eligible for SSI, food stamps, non-emergency Medicaid, Title XX block grants, and TANF, including veterans and their families and persons who qualify for the 40-quarters exemption, must also remain eligible for state-funded public benefits.[97]

Verification, Notification and Reporting Requirements

The new legislation makes several changes that affect the privacy and confidentiality of information gathered by government agencies. These changes have evoked as much confusion and anxiety as nearly any other provisions of the new legislation. Four separate provisions cause the most concern.

- All federal and state agencies that administer federal public benefits are required to implement verification procedures over the next several years, to verify citizenship and ensure that only eligible aliens receive assistance;[98]
- Certain agencies are required to make quarterly reports to the INS of persons the agency "knows is unlawfully in the United States;"[99]
- State and local government entities or officials are prohibited from restricting communication with the INS regarding immigration status;[100] and
- Hospitals are required to verify the immigration status of unlawfully present aliens as a condition of receiving special federal reimbursement for care of such aliens.[101]

In contrast, a new provision added by the immigration bill provides that, subject to the procedures for verification developed by the Attorney General, nonprofit charitable organizations are exempt from determining, verifying, or otherwise requiring proof of eligible alien status under any of the welfare bill's provisions.

Verification System for Federal Public Benefits

The INS, in consultation with the Department of Health and Human Services, is required to promulgate regulations implementing a uniform system to verify applicants' immigration status. Such a verification system already exists–called SAVE–and is currently being used by many federal agencies, as well as some state agencies, to verify alien eligibility for the major programs.[102] The new system is required to be as similar as is feasible to the SAVE program, which incorporates privacy and civil rights protections.[103]

The new law requires expansion of the verification program within a year and a half to cover all federally administered "federal public benefits," as defined earlier, except for those limited number of programs still accessible to unqualified aliens.

[104] Thus emergency Medicaid, immunizations, testing and treatment of the symptoms of communicable diseases, emergency disaster relief, and housing programs (for current recipients only) will not be subject to the new verification requirements. The immigration law also included an additional expansion to include verification of citizenship, not just alien status.[105]

Once the federal regulations are in place, states will have an additional two years to implement a verification system for federal public benefits administered at the state level.[106]

Quarterly Reporting to the INS by Certain Agencies

Agencies administering federal housing, SSI, and TANF programs must furnish the INS with the name, address, and other identifying information on any alien whom the state "knows is unlawfully in the United States."[107] This reporting must be done at least four times a year, or more frequently if the INS requests it.

The term "knows is unlawfully in the United States" will have to be defined by regulation. At the present time, only the Food Stamp program requires reporting of household members whom the agency knows are "present in the United States in violation of the Immigration and Nationality Act."[108] Following federal guidelines, most states have interpreted this reporting requirement narrowly, and do not require their agency staff to verify the immigration status of family members who are not applying for food stamps.[109] One federal court has confirmed that this reporting requirement applies only to the alien members of the household unit who are applying for benefits.[110]

The term "knows is unlawfully in the United States" has previously been interpreted by Congress and federal regulators to require an agency to know that the alien is under final order of deportation.[111]

Prohibition against Confidentiality Restrictions

In an effort to trump sanctuary ordinances that limit state or local agencies from cooperating with the INS in their enforcement of immigration laws, the new legislation prohibits any federal state, or local entities or officials from restricting government entities' or officials' ability to exchange information with the INS regarding an alien's immigration status.[112] Furthermore, no person or agency may restrict a federal, state, or local government entity from maintaining records or exchanging information about immigration status with any other federal, state, or local governmental entity.[113]

It should be noted that this provision does not require any agency to turn information over to the INS, but it prevents such agencies from honestly assuring their patients, clients, participants, potential witnesses, or others, that information will be kept confidential. The City of New York has already filed a lawsuit challenging this provision, claiming that it prevents the City from keeping sensitive records confidential, and therefore interferes with the New York's ability to protect its residents' health and safety.

Hospital Reporting Requirement

The immigration bill provides for 100 percent reimbursement to public and certain nonprofit hospitals that provide emergency care to unlawfully present immigrants and are not otherwise reimbursed by the federal government for such care.[114] To receive reimbursement, the hospital is required to verify the immigration status of the unlawfully present person receiving care through procedures established by the Secretary of Health and Human Services and the Attorney General. Any reimbursement is subject to annual appropriations, however. Therefore, as a practical matter, the hospital reporting requirement will not have any impact until such time, if ever, as an appropriation is made under the authority of this section. No such appropriation was made for the current fiscal year.

Public Charge Ground of Exclusion, Affidavits of Support, and Sponsorship Requirements

Prior Law

Since the earliest immigration laws, applicants for an immigrant visa have had to overcome the potential public charge ground of exclusion.[115] Refugees and asylees applying for adjustment of status are exempt from this requirement.[116]

The test applied by either INS or consular officials is a prospective one that considers a number of factors in determining whether the visa applicant is likely to become a public charge in the future. Such factors usually include the alien's income, employment history, job skills, training, education, health, age, and past or current receipt of public benefits. Of these factors, the most important is current income and resources. Using the federal poverty income guidelines as the general benchmark, INS and consular officials will often require more assurances and evidence from visa applicants whose income falls below the poverty line.[117]

Under prior law or practice, anyone could be a sponsor and sign an affidavit of support to help the immigrant to overcome the public charge ground of exclusion. Nothing required that the sponsor be a U.S. citizen or LPR. Nor did the statute require the sponsor to earn any specified amount of money, although regulations and practice prevented the affidavit from carrying much weight unless the sponsor's income was at least above the poverty line.

By signing an affidavit of support form, the sponsor agreed to "receive, maintain and support" the alien to ensure that he or she would not become a public charge.[118] The sponsor agreed to provide such support for a three-year period.

However, at least three courts interpreting the sponsorship agreements have held them to be legally unenforceable against the sponsor in actions brought by the alien or by government agencies trying to recover benefits paid to the alien.[119] For that reason, the INS or State Department usually give weight only to affidavits submitted by family members or others who have an underlying moral obligation to support the alien.

Changes

The major changes in the public charge ground of exclusion are as follows:

- Affidavits of support are now mandatory for nearly all family-based immigrants, and some employment-based immigrants;
- A minimum income and other requirements were added to screen sponsors who sign affidavits of support;
- The amount of support and the required period of support have been extended;
- New affidavits of support will be drafted that must be legally enforceable.[120]

New Mandatory Affidavit of Support Requirement

Under the new law, most immigrant visa applicants will have to submit an affidavit of support. The new affidavit of support requirement applies to nearly all family-based visa applicants and those employment-based applications involving accompanying family members or where the relative has a significant ownership interest in the entity filing the petition.

The only family-based exceptions are:

- Widows and widowers applying for immigrant status based on prior marriage to a U.S. citizen;[121] and
- Battered spouses and children filing self-petitions based on a relationship to a U.S. citizen or LPR spouse or parent who was responsible for the battery or extreme cruelty.[122]

Who Must Sign an Affidavit of Support

In all cases the person petitioning for the family member must also be a sponsor. However, if the petitioner does not have sufficient income to support the alien, as described below, then the petitioner must also recruit another person who satisfies the new income requirements and who will agree to be jointly liable with the petitioner under the terms of the new enforceable affidavits of support.

Minimum Requirements for Sponsors

125 percent rule: To qualify as a sponsor, a person must demonstrate the means to support both the immigrant's and the sponsor's families at an annual income equal to at least 125 percent of the poverty income line. Income must be proven by three years of income tax returns (reducible to one year in the discretion of the INS or Department of State). In some cases, "significant assets" may be used in lieu of income to demonstrate ability to meet the 125 percent requirement.

The poverty income line is established by the Office of Management and Budget and is updated each year by the Department of Health and Human Services. The amount of income necessary to be above the poverty income line is dependent on whether one lives in the 48 contiguous states, Alaska, or Hawaii, and the size of the family. The poverty income guidelines for 1996, and the corresponding levels for 125 percent of the poverty line, is included as Attachment 1.

Veteran petitioner's exception: There is an exception to the 125 percent rule for petitioners who are active duty members of the Armed Forces and who are petitioning for their spouse or child. In that case, the petitioner must demonstrate the ability to support both the petitioner's and immigrant's families at an annual income equal to at least 100 percent of poverty.

Other Requirements and obligations: The new legislation adds the following additional requirements and limitations on sponsors. Sponsors must be:

- U.S. citizens, nationals, or permanent resident aliens,
- At least 18 years of age and
- Domiciled in the U.S.[123]

They also have an obligation to inform the INS and the state where they are domiciled within 30 days of any change of address, or else be subject to stiff civil fines.[124]

The Sponsor's Promise Extended

The sponsor must agree to provide sufficient support to maintain the alien at an annual income of at least 125 percent of the poverty income line. This promise extends until the immigrant becomes a U.S. citizen, or until the immigrant obtains 40-quarters of work credit, whichever comes first.

Enforceability of New Affidavits of Support

Under the new law, the affidavit may not be accepted unless legally enforceable against the sponsor by

- The sponsored alien; and
- Any federal, state, or local government that provides a means-tested benefit to the alien.

The term "means-tested public benefit," though not defined, presumably applies to the same programs and assistance subject to the 5-year prospective bar discussed above. The same programs that are exempt from the 5-year prospective bar are also exempt from the sponsor reimbursement requirement.[125]

Should the sponsored alien ever receive any means-tested public benefit, the appropriate federal, state, or local agency or other entity could request reimbursement from the sponsor for the full cost of the assistance provided. If the sponsor fails to respond within 45 days to the demand for reimbursement, or fails to indicate a willingness to make reimbursement, the agency, or person acting in its behalf, may initiate an action to enforce the affidavit of support. If the sponsor elects to enter into a repayment plan but later defaults on payments, the agency can bring an enforcement action within 60 days of the default.[126]

The agency has 10 years after the benefit was provided to commence an enforcement action under the sponsorship agreement. If an action is brought successfully, the agency will be entitled to reimbursement plus attorney's fees, court costs, and costs associated with collecting the judgment.[127]

Effective Dates

The INS has 90 days after enactment of the immigration legislation to formulate a new legally-binding affidavit of support form.[128] The new mandatory affidavit requirement of the public charge ground of exclusion will then go into effect for immigrant visa applications filed no sooner than 30 days (and no later than 60 days) after that date.[129] Therefore, assuming the INS takes the full 90 days to promulgate the new affidavit of support form, the mandatory affidavit of support requirement will apply to visa applications filed on or after January 31, 1997.

The statute clarifies that the new requirement does not apply to pending applications where an adjustment interview was already conducted before the new mandatory affidavit of supportr requirement went into effect.[130] But it does apply to people whose relatives filed petitions many years ago but who have not yet had their adjustment interview.

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1 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "Welfare Act"), Pub. L. No. 104-193 (August 22, 1996).

2 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter "1996 Immigration Reform Act"), Pub. L. No. 104-208 (October 1, 1996).

3 Correspondence from Congressional Budget Office to Senator Pete Domenici, Chairman of the Senate Budget Committee, August 1, 1996.

4 Memo from the California State Association of Counties to the California Congressional Delegation (July 15, 1996).

5 *Immigration and Immigrants: Setting the Record Straight*, Michael Fix, et. al., Urban Institute Press (1994); *Immigration: Demographic and Economic Facts*, Julian Simon, Cato Institute (1995).

6 Fix and Zimmerman, "When Should Immigrants Receive Public Benefits," Welfare Reform Briefs, No. 3, Urban Institute (1995).

7 *Id.*

8 Welfare Act § 402(a)(1), (3).

9 7 USC §§ 2011, *et seq.*; 7 CFR §§ 271, *et seq.*

10 Welfare Act § 824(a)

11 42 USC §§ 1381, *et seq.*; 20 CFR §§ 416.101, *et seq.*

12 Withholding of deportation is very similar to asylum. It provides safe-haven in the United States for refugees who are likely to face persecution if returned to their homelands.

13 Welfare Act § 402(b)(2).

14 Welfare Act § 431. Section 402 also provides that to be eligible for assistance, veterans and their families must also be "lawfully residing" in the United States, but all qualified aliens are also lawfully residing here, so the additional requirement of lawful presence is not meaningful. The INS recently published an interim rule defining "lawful presence" for the purposes of receiving Social Security. The INS interim rule is published in 61 Fed. Reg. 47039 (Sept. 6, 1996).

15 Welfare Act § 402(a)(2(B)(ii).

16 20 CFR §§ 404.140-146.

17 42 USC § 405(c)(5); 20 CFR § 404.820-822.

18 October 19, 1996 Letter from Yvette S. Jackson, Deputy Administrator of the Food Stamp Program to All Regional Administrators.

19 Welfare Act § 435.

20 1996 Immigration Reform Act § 510.

21 *See* Correspondence from Congressional Budget Office to Jacob Lew, Acting Director of the Office of Management and Budget, August 9, 1996.

22 Statement by Judy Chesser, Deputy Commissioner for Legislative and Congresional Affairs, Social Security Administration at a September 13, 1996 Meeting between SSA staff and community advocates in Washington DC.

23 Welfare Act § 402(a)(2)(D)((i). See also Social Security Administration Memo No. EM-96-136, "Revised Instructions--SSI Alien Legislative Changes" (September 9, 1996).

24 Welfare Act § 402(b)(1).

25 42 USC §§ 1396, *et seq.*; 42 CFR Part 430, *et seq.*

26 Social Security Act, Title XX, 42 USC §§ 303, *et seq.*

27 Welfare Act § 103(a)(1), 42 USC §§ 408(a)(7) (5-year time limit), 407 (mandatory work requirement), 409(a)(7) (maintenance of effort requirement).

28 42 USC § 1396a(a)(10)(B).

29 *See, Graham v. Richardson*, 403 U.S. 365 (1970) (state discrimination against legal immigrants in provision of government assistance reviewed under strict scrutiny)

30 *October 4, 1996 Letter from Department of Health and Human Services Health Care Financing Administration to State Medicaid Directors.*

31 Welfare Act § 401(a).

32 Welfare Act § 431(b), as amended by 1996 Immigration Reform Act § 501..

33 The Violence Against Women Act (VAWA), Pub. L. No. 103-322, 108 Stat. 1796 (1994), § 40701, adding INA §§ 204(a)(1)(A)(iii) and (iv), 204(a)(1)(B)(ii) and (iii); 8 USC §§ 1154(a)(1)(A)(iii) and (iv), 1154(a)(1)(B)(ii) and (iii).

34 Welfare Act § 431(c), as amended by 1996 Immigration Reform Act § 501.

35 *Id.*

36 42 USC § 405(c)(2)(B)(I)(i); 20 CFR § 422.104 (eligibility for social security card); 26 USC § 3304(a)(14)(A) (unemployment insurance compensation); 29 USC § 1577(a)(5) (JTPA).

37 Welfare Act § 401(a), (c).

38 Welfare Act § 401(c)(2)(A).

39 Welfare Act § 401(b)(1).

40 42 USC § 1396b(v)(3).

41 Conference Report on H.R. 3734, Joint Explanatory Statement of the Committee of Conference, at 379-80.

42 Welfare Act § 401(b)(1)(D).

43 Department of Justice, "Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation," A.G. Order No. 2049-96, published in 61 Fed. Reg. 45985-86 (Aug. 30, 1996).

44 *Id.*

45 42 USC §§ 401, *et seq.*; 20 CFR §§ 404, *et seq.*

46 42 USC §§ 1395, *et seq.*; 42 CFR Part 405, *et seq.*

47 42 USC § 405(c)(2)(B)(I); 20 CFR § 422.104.

48 Welfare Act § 401(b)(2).

49 20 CFR § 404.463.

50 Welfare Act § 401(b)(2); 1996 Immigration Reform Act §503, adding 42 USC § 402(y).

51 *Id* at 47041.

52 1996 Immigration Reform Act §§ 572-577.

53 42 USC §§ 1401, *et seq.*; 12 USC §§ 1701, *et seq.*; 24 CFR §§ 1, 8, 100-125, 200-265, 800-999; 7 CFR §§ 1800-2099.

54 *Yolano-Donnelly Tenant Association v. Cisneros*, No. S-86-846 MLS (E.D. Cal. 1986).

55 Pub. L. No. 100-242, 101 Stat. 1815 (1987).

56 60 Fed. Reg. 14816 (Mar. 20, 1995), amended and replaced by 61 Fed. Reg. 13614 (March 27, 1996).

57 *Id.*

58 1996 Immigration Reform Act § 573(2), amending 42 USC §1436a(c)(1)(A).

59 *See* Settlement Agreement, *Yolano-Donnelly Tenant Association v. Cisneros*, No. S-86-846 MLS (E.D. Cal. 1986).

60 1996 Immigration Reform Act § 572, adding 42 USC §1436a(b)(2).

61 1996 Immigration Reform Act § 573(3), amending 42 USC §1436a(c)(1)(B).

62 1996 Immigration Reform Act § 573(3), adding 42 USC §1436a(c)(1)(B)(ii) and (iii).

63 1996 Immigration Reform Act § 576, adding 42 USC § 1436a(h)(2).

64 1996 Immigration Reform Act § 574(6), amending 42 USC §1436a(d)(6).

65 1996 Immigration Reform Act § 577.

66 Welfare Act § 451.

67 Welfare Act § 451(a), adding section 32(c)(1)(F) to the Internal Revenue Code of 1986.

68 Welfare Act § 403(a).

69 Welfare Act § 403(b)(2).

70 Welfare Act § 403(d).

71 *See* Balanced Budget and Emergency Deficit Control Act of 1988, Pub. L. No. 101-508, 104 Stat. 1388-573 (1990), § 250(c)(8).

72 Welfare Act § 403(c)(2).

73 Welfare Act § 421(a), (b).

74 *See* 45 CFR § 233.51 (AFDC); 20 CFR § 416.1160 (SSI); 7 CFR § 273.11(j) (Food Stamps).

75 Welfare Act § 421(a).

76 Welfare Act §§ 421(a), 403.

77 Welfare Act § 421(b).

78 1996 Immigration Reform Act § 552, adding § 421(f) of the Welfare Act, which adds INA § __,8 USC § 1631(f).

79 1996 Immigration Reform Act § 552, adding § 421(e) of the Welfare Act, which adds INA § __,8 USC § 1631(e).

80 INA § 209(c), 8 USC § 1159(c).

81 1996 Immigration Reform Act § 552, adding § 421(f)(1)(A) of the Welfare Act, which adds INA § ,8 USC § 1631(f)(1)(A).

82 1996 Immigration Reform Act § 552, adding § 421(f)(2) of the Welfare Act, which adds INA § __,8 USC § 1631(f)(2).

83 1996 Immigration Reform Act § 552, adding § 421(f)(1)(B) of the Welfare Act, which adds INA § , 8 USC § 1631(f)(1)(B).

84 1996 Immigration Reform Act § 552, adding § 421(e) of the Welfare Act, which adds INA § __,8 USC § 1631(e).

85 *Barannikova v. Town of Greenwich, et al.*, 229 Conn. 664 (1994); *Minino v. Perales*, 589 N.E.2d 385, 79 N.Y.2d 883 (1992); *El Souri v. Dept. of Social Services*, 414 N.W.2d 679, 429 Mich. 203 (1987).

86 *See* Welfare Act § 422(a)(1) (permitting states to count the income and resources of sponsors of immigrants who enter using the new affidavits of support; no similar authority is granted for counting the income and resources of sponsors who used the old affidavits)

87 Welfare Act § 422(b).

88 Welfare Act § 422.

89 *Barannikova v. Town of Greenwich, et al.*, 229 Conn. 664 (1994); *Minino v. Perales*, 589 N.E.2d 385, 79 N.Y.2d 883 (1992); *El Souri v. Dept. of Social Services*, 414 N.W.2d 679, 429 Mich. 203 (1987).

90 Welfare Act § 411(a).

91 Welfare Act § 411(d).

92 Welfare Act § 411(c).

93 Welfare Act § 412(a).

94 See *Graham v. Richardson*, 403 U.S. 365 (1970)..

95 Welfare Act § 411(b).

96 Welfare Act § 411(c)(2).

97 Welfare Act § 412(b).

98 Welfare Act § 432(a), 8 USC 1642 as amended by the 1996 Immigration Reform Act § 504.

99 Welfare Act § 404

100 1996 Immigration Reform Act § 642

101 1996 Immigration Reform Act § 562

102 The following federal programs currently use SAVE: AFDC, Medicaid, Food Stamps, Unemployment Insurance, Title IV education loans and grants, housing programs, and some social security offices administering Title II social security benefits.

103 Welfare Act § 432(a). See 42 USC § 1320b-7(d).

104 Welfare Act § 423(a).

105 1996 Immigration Reform Act § 504.

106 Welfare Act § 432(b).

107 Welfare Act § 404(b).

108 7 USC § 2020(e)(17).

109 See 7 CFR § 273.4(e)(2).

110 *Doe v. Miller*, 573 F.Supp. 461 (N.D. Ill 1983)

111 *See* December 5, 1979 Memo from the Office of General Counsel of the Legal Services Corporation to Legal Services Corporation Project Directors (interpreting nearly identical language); *see also* 97 Congressional Record H3100 (June 18, 1981) (arguing that change from nearly identical language used to determine Legal Services eligibility was necessary because that language only prevented persons who were under final order of deportation from receiving such services)

112 1996 Immigration Reform Act § 642(a)

113 1996 Immigration Reform Act § 642(b)

114 1996 Immigration Reform Act § 562

115 INA § 212(a)(4), 8 USC § 1182(a)(4).

116 INA § 209(c), 8 USC § 1159(c).

117 See 22 CFR § 40.41; U.S. Dept. of State, *Foreign Affairs Manual*, Vol. 9, Notes to 22 CFR § 40.41.

118 INS Form I-134, Affidavit of Support (rev. Dec. 1, 1984).

119 *County of San Diego v. Viloria*, 276 Cal. App. 2d 350, 80 Cal. Rptr. 869 (1969); *Dept. of Mental Hygiene v. Renel*, 173 N.Y.S.2d 231 (1958); *State v. Binder*, 96 N.W.2d 140 (1959). *See also United States ex. rel. Smith v. Curran*, 12 F.2d 636, 638 (2nd Cir. 1926).

120 Welfare Act § 423; 1996 Immigration Reform Act § 551.

121 1996 Immigration Reform Act § 531(a), adding INA §212(a)(4)(C)(i)(I), 8 USC § 1182(a)(4)(C)(i)(I). The provision setting forth the requirements for widow petitions is in found in INA § 204(a)(1)(A), 8 USC § .

122 1996 Immigration Reform Act § 531(a), adding INA §212(a)(4)(C)(i)(I) and (II), 8 USC § 1182(a)(4)(C)(i)(I) and (II). The provision setting forth the requirements for self-petitions under VAWA are located in INA §§ 204(a)(1)(A)(iii) and (iv), 204(a)(1)(B)(ii) and (iii), 8 USC §§ .

123 Welfare Act § 423(f).

124 Welfare Act § 423(d). Fines will range between $250 and $2,000, unless the sponsor knows that the alien received a means-tested program, in which case the fines will range between $2,000 and $5,000.

125 Welfare Act § 423(d).

126 Welfare Act § 423(e).

127 1966 Immigration Reform Act § 551, adding INA § 213A(c), 8 USC § 1183a(c).

128 1996 Immigration Reform Act § 551(c)(2).

129 1996 Immigration Reform Act § 531(b).

130 *Id.*