AMERICA'S NEWCOMERS

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"America's Newcomers: Mending the Welfare Safety Net for Immigrants"

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The National Conference of State Legislatures serves the legislators and staffs of the nation's 50 states, its commonwealths, and territories. NCSL is a bipartisan organization with three objectives:

- To improve the quality and effectiveness of state legislatures,
- To foster interstate communication and cooperation,
- To ensure states a strong cohesive voice in the federal system.

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PREFACE AND ACKNOWLEDGMENTS

This report was produced by the Immigrant Policy Project of the State and Local Coalition on Immigration, a collaboration of six national organizations representing state and local governments:

American Public Welfare Association
National Association of Counties
National Conference of State Legislatures
National Governors' Association
National League of Cities
United States Conference of Mayors

Since the early 1980s, these organizations have worked individually and jointly to advance the state and local perspective on immigration before Congress and the administration through correspondence, issue briefings and testimony. In 1992, the coalition was awarded a grant from the Andrew W. Mellon Foundation to examine the role of state and local government in the development of "immigrant policy." Although the federal government has exclusive jurisdiction over *immigration policy* (the terms and conditions for entry into the United States), states and localities have become responsible for *immigrant policy* (the policies that help newcomers assimilate into the country's economic, social and civic life.)

The goals of the State and Local Coalition on Immigration are to improve intergovernmental coordination and communication among the key state and local officials and other relevant actors in the immigration community, and to enhance the capacity of state and local officials to manage immigrant policy.

The Immigrant Policy Project provides research and analysis to the constituents of the State and Local Coalition on Immigration. Its newsletters and publications share information between and among federal, state and local government, as well as researchers and community organizations. The project seeks to document immigration trends, innovative policies and programs, and priorities for state and local government.

The research and analysis in this report benefited from the technical expertise of many federal, state, and local officials and immigration specialists. We would first like to thank Michael Fix of The Urban Institute; Rob Paral of the Latino Institute; Ed Silverman of the Illinois Department of Public Aid; and Josh Bernstein of the National Immigration Law Center for their advice and insight.

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EXECUTIVE SUMMARY

This report is a compilation of work produced by the Immigrant Policy Project of the State and Local Coalition on Immigration. It reviews the federal welfare reform debates, summarizes the changes in the new law, and details the significant change in immigrants' access to federal, state and local entitlements. It also outlines states' choices, and their legislative responses in 1997 to the new federal law. Finally, the report examines federal and state constitutional questions raised by the law. Each chapter and appendix is designed to serve as an independent, stand-alone resource, but this compilation will provide a useful handbook on the nexus of welfare reform and immigrant policy.

Federal Overview

In 1996, the federal welfare law transformed the federal entitlement (Aid to Families with Dependent Children) into a capped block grant to states, ending the individual entitlement to assistance. It required recipients to work within two years of receiving benefits, meet work participation requirements of at least 20 hours per week, and limited them to five years of aid. The compromise legislation included increased child care funding, a contingency fund, preservation of child welfare entitlements, and preservation of state legislative authority to appropriate the new block grants.

The law also cut $24 billion in benefits to legal immigrants and refugees. In general, the welfare law:

- Distinguishes between "*qualified*" and "*not qualified*" immigrants;
- Distinguishes between those who entered *before* and *after* enactment (August 22, 1996);
- Emphasizes work (10 years of work qualifies an immigrant for benefits);
- Requires reliance on sponsors before reliance on public assistance (and makes the affidavit of support legally enforceable); and
- Establishes options for states to provide or limit public benefits to immigrants.

In 1997, nearly $12 billion in benefits was restored by permitting many immigrants to retain their old age and disability benefits (Supplemental Security Income). However, states are still faced with many difficult choices about whether and how to provide cash, medical or nutritional benefits for vulnerable immigrant populations who are now denied access to federal benefits.

States must also consider how immigrant and refugee families will be served under the new time limits and work requirements of welfare reform. The work participation rates have caused most states to generally move from an education strategy to a work first approach in welfare reform. This approach may not meet refugees' needs for mental health treatment and English

language training. States that have immigrant and refugee populations must consider the long-term needs of these families, because their ability to attain self-sufficiency through work will directly affect a state's ability to meet federal work participation rates. States may create separate state programs to provide special services for unique populations. They can also use funds from the federal welfare-to-work grant, created to assist welfare recipients who will have the most difficulty making the transition into employment.

State Options and State Decisions

States faced a number of decisions on immigrant eligibility: whether to provide Temporary Assistance for Needy Families (TANF) and Medicaid to immigrants residing in the state before the welfare law's enactment; whether to provide TANF and Medicaid assistance, with state funds, to immigrants who arrived after the law's enactment or to those no longer qualified for assistance; and whether and how they could afford to provide replacement funds for lost federal Supplemental Security Income (SSI) and food stamps to needy immigrants. The federal law also sought to provide states with new authority regarding the provision of state- and local-funded benefits to immigrants, and state and local policymakers had to decide whether and how to exercise this new authority. A checklist is provided of the decisions state policymakers face under the federal welfare law.

SSI and Food Stamps

The first bars to become effective were the SSI and food stamp bars. Before the federal restoration of SSI, states considered and often put in place one of three options to provide an SSI-replacement cash benefit for immigrants: access to or expansion of the state's general assistance program, access to or expansion of the state's SSI-supplement or disability benefit program, or creation of a new program. In regard to food stamps, 13 states have chosen to provide state-funded food assistance to some or all legal immigrants who will lose federal food stamp eligibility due to the welfare reform law, either by purchasing federal food stamps or developing state food benefits. (These states are: California, Colorado, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Texas, and Washington.) Many states also appropriated additional funds for emergency food assistance.

TANF and Medicaid

Of the TANF plans submitted to the U.S. Department of Health and Human Services (HHS), only Alabama has chosen to deny TANF to all immigrants. Earlier state plans from Kentucky, West Virginia, Louisiana and Wyoming indicated that TANF benefits would be denied, but all four states have since changed or clarified their plans to provide TANF to qualified immigrants. Although post-enactment immigrants may not receive federal TANF money for five years, some states decided to provide state-funded TANF benefits. Several states also established residency requirements in their TANF programs. The Health Care Financing Administration (HCFA) of HHS informed states that if they intend to deny Medicaid to qualified aliens residing in the United States prior to August 22, 1996, they must file a state plan amendment. According to HCFA, two states–Louisiana and Wyoming–have filed such amendments. West Virginia initially filed an amendment, but later decided to provide medical assistance to qualified aliens.

Legal Issues

The 1996 federal welfare law raised several federal and state constitutional issues related to the denial of public benefits on the basis of lawful alienage. The new law creates extensive cuts to and restrictions on immigrants' access to *federal* benefits, and seeks to grant new authority to states to restrict access to *state* public benefits. Although constitutional precedent had allowed the federal government to discriminate on the basis of lawful alienage, it also had clearly prohibited the states from doing so.

In *Graham vs. Richardson* (1971), a unanimous Supreme Court struck down state laws in Pennsylvania and Arizona that denied legal immigrants' access to state welfare programs because they violated the 14th Amendment of the U.S. Constitution (the equal protection clause) and because they infringed on the federal government's plenary power over immigration policy. Under the court's analysis of equal protection, states may not classify people for government benefits based on a "suspect" classification (such as alienage, race or ethnicity). The state faces the burden of proving that its legislation on a suspect classification is justified by a compelling governmental interest. In *Graham*, the Court held that a state's interest in reducing welfare spending was not sufficient to justify the classification.

In *Mathews vs. Diaz* (1976), the suit challenged the constitutionality of a federal statute that limited eligibility for Medicare benefits (the buy-in to Medicare Part B) to citizens and resident aliens with five years of residence in the United States. The Court ruled that federal power over immigration law is broad enough to permit the federal government to make distinctions between citizens and aliens and among various groups of aliens. However, the Court said that states do *not* have a legitimate basis for treating citizens and legal immigrants differently.

Lawsuits either have been or are expected to be filed challenging the immigrant provisions of the federal welfare law, mainly in six areas of the U.S. Constitution: equal protection, due process, plenary power of Congress over immigration policy, federalism issues under the 10th Amendment and the Guarantee Clause, and the right to interstate travel. Constitutional challenges are also likely to be brought at the state level. As many as 22 state constitutions provide some obligation to assist poor *residents*–not citizens–of the state. A review is provided of the main federal constitutional issues, some state constitutional issues and decisions, and recent lawsuits challenging the immigrant provisions of the 1996 welfare law.

1. INTRODUCTION

The 1996 federal welfare law not only ended the 60-year federal guarantee to poor families, but also cut $24 billion in benefits to legal immigrants and refugees and complicated an already complex eligibility system for public benefits. The new bars, restrictions and options created a number of challenges for states and localities: the anticipation of cost shifts from federal programs to state and local safety net programs, concerns about secondary consequences such as the potential loss of Medicaid benefits for elderly immigrants made ineligible for SSI, and the need to develop new verification systems for a host of newly-affected benefit programs. The new law also raised a number of federal and state constitutional issues in regard to denying benefits on the basis of lawful alienage. Finally, it compelled state lawmakers to recognize the presence of legal immigrants and refugees in their communities and to debate whether and how to serve their needs. Although the 1997 balanced budget law restored nearly $12 billion in SSI and Medicaid benefits, states are still faced with many difficult choices about whether and how to provide cash, medical or nutritional assistance for vulnerable immigrant populations who are now denied access to federal benefits.

This report reviews the federal welfare reform debates and the blurring of lines between legal and illegal immigrants in that debate. Chapter 2 summarizes provisions of the 1996 welfare reform law related to immigrants' access to benefits and how the TANF and welfare-to-work reforms affect immigrants. Chapter 3 examines state options under welfare reform and the decisions made by states in 1997 on immigrants' eligibility for TANF, Medicaid, and nutritional assistance, as well as the creation of state-funded naturalization programs. It also provides a checklist for states of decisions required by the federal welfare law. Chapter 4 reviews federal and state constitutional questions raised by the law, such as equal protection and due process, previous Supreme Court decisions regarding discrimination on the basis of lawful alienage, and recently filed lawsuits on these issues.

The appendices are a compilation of the project's series on welfare reform and immigrants (TANF, medical assistance, nutritional assistance, and SSI), as well as other publications produced as welfare reform was developed and implemented (the Welfare Reform and Immigrants "Q&A", a legislative side-by-side comparing immigrant benefits before and after the welfare and immigration laws of 1996, and a legislative summary of the immigration reform law). Finally, we revised and updated definitions of common terms and chronology of immigration legislation are included, as well as a summary of key federal regulations.

2. Overview of Federal Welfare Reform

The Era Before Welfare Reform

For states and localities, arguments over immigrants and benefits used to revolve mainly around the two federal programs created to share the costs of federal immigration policy decisions: the domestic refugee resettlement program and the State Legalization Impact Assistance Grant. Both programs demonstrate the reluctant and decreasing federal role in supporting immigrants' resettlement.

The refugee program, created in 1980, recognized states as partners in resettlement and promised 36 months of federal support to assist with refugees' transition to self-sufficiency in their adopted country. The program offered cash, medical assistance and support services such as English language training and employment services. By 1991, the 36 months had dwindled to eight, and the federal reimbursement for states' AFDC, Medicaid and supplemental SSI costs dwindled to nothing. Dollars available per refugee, adjusted for inflation, dropped from $7,300 in 1982 to $2,200 in 1992.[1]

The State Legalization Impact Assistance Grant (SLIAG) was created in 1986 to help states with the expected costs of undocumented immigrants who were granted amnesty and given legal status by the federal government, but who were denied access to federal benefits for five years to protect the federal budget. The $4 billion fund was created to reimburse states for public assistance, public health, and education services provided to the newly-legalized immigrants. Although eventually the funds were provided, the program was saddled with burdensome documentation requirements and continually raided in appropriations battles between 1990 and 1993.

These were not the only concerns of states and localities. Border and enforcement concerns, social integration, and costs of illegal immigrants were also frequently raised. In the context of the impending welfare debate, however, the experience of these two programs indicated a reduced federal responsibility and participation in the "partnership" of resettlement.

The Federal Debate on Welfare Reform

Welfare reform legislation was championed both in President Clinton's speeches and in the Republicans' Contract with America. Welfare was not liked by the public, by program administrators, nor by the clients it meant to serve, and Congress and the administration determined that reform must be accomplished. In an unexpected twist, however, Congress

sought $60 billion in savings from welfare to balance the federal budget instead of providing additional spending for employment services or child care. Cutting benefits to immigrants delivered $24 billion toward the goal of reducing the federal budget deficit (44 percent of the total savings in the final bill). Many members of Congress believed that immigrants were coming to the United States only for the benefits. A prominent congressional staff member told a National Conference of State Legislatures (NCSL) committee that legal immigrants would go home if benefits were cut off and, therefore, the loss of federal benefits would not result in a cost-shift to states.

In these early debates, Congress and the public seemed to be blurring the distinction between legal and illegal immigrants. Illegal immigrants had never been eligible for public benefits other than emergency assistance. Now, legal immigrants and refugees–historically treated under much the same eligibility criteria as citizens–would be denied benefits as well. Legislative proposals in 1994 from both Republicans and Democrats would have eliminated or reduced most immigrants' access to public health, food and nutrition, housing, and cash assistance until the immigrant attained citizenship. During 1995, while block grants to states were fervently debated, federal policymakers also debated which immigrants should be eligible for benefits, which programs should be restricted, and how much money would be saved. H.R. 4, based on the Contract with America, passed the House in March 1995 (saving approximately $17.5 billion over five years through benefit cuts to immigrants). Senate legislation passed in September 1995 (saving $15.8 billion over five years through benefit cuts to immigrants). Welfare reform then proceeded on two legislative tracks—included as part of budget reconciliation, and as a stand-alone bill. President Clinton vetoed both these bills, primarily because of the legislation's effect on poor children, although he mentioned his opposition to the legal immigrant provisions in both veto messages. After the vetoes, welfare reform was tied up in budget negotiations between Congress and the administration in a brief attempt to break the impasse on balancing the federal budget. When the negotiations fell apart in January 1996, momentum for welfare reform ebbed.

New life was breathed into welfare reform when the National Governors' Association unanimously approved a bipartisan proposal based on the H.R. 4 conference agreement. Although the governors did not address the immigrant provisions, the proposal recommended additional child care funding and preserved child welfare and SSI for disabled children to address President Clinton's concerns. By mid-1996, Congress was considering four different welfare reform bills, with varying levels of restrictions on immigrants' access to federal, state and local benefits. An NCSL study estimated that restricting immigrants' access to just 10 assistance programs would cost states $744 million in capital costs, staff training and ongoing implementation. During the ensuing debates, state and local organizations reminded members of Congress of their recent support of legislation to reduce cost-shifts and unfunded mandates on states and localities—The Unfunded Mandates Reform Act of 1995 (P.L. 104-4).

Throughout 1996, it was difficult to predict whether a compromise on welfare reform could be reached, and how an agreement (or lack of one) would play out in the fall elections. President Clinton had promised to "end welfare as we know it," but Republicans wanted credit as well, for dismantling a "big government" program. A combined welfare/Medicaid reform bill was introduced in May. Many Democrats were concerned about ending the entitlement programs and leaving no safety net for poor families. Once Medicaid reform was dropped from the welfare bill in July, however, enough votes were garnered to work toward a bipartisan compromise. On July 30, the president announced his intention to sign the compromise bill

and, within two hours, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) passed the House (328-101). The Senate followed suit the next day, passing the bill 78-21; the bill was enacted on August 22, 1996.

President Clinton had publicly committed to welfare reform, had negotiated for a final bill and, in the end, determined that he had to sign the resulting compromise legislation despite significant flaws. He singled out two specific changes that he wanted: one was additional funds for food stamps, and the other was reversal of the immigrant benefit cuts. In his endorsement, the president explicitly rejected the anti-immigrant provisions, asserting that they had "nothing to do with welfare reform, [but] simply ... budget-saving," and pledged to correct these provisions in future legislation.

In summary, the welfare reform law transformed AFDC into a capped block grant to states, ended the individual entitlement to cash assistance created in 1935, and cut $23 billion in the food stamp program. The new program, Temporary Assistance for Needy Families, requires recipients of cash assistance to work within two years of receiving benefits, meet work participation requirements of at least 20 hours per week, and limits them to five years of aid. The compromise legislation included increased child care funding, a contingency fund, preservation of child welfare entitlements, and preservation of state legislative authority to appropriate the new block grants (see figure 1).

The New Law and Immigrants

In general, the welfare law:

- Distinguishes between *"qualified"* and *"not qualified"* immigrants;
- Distinguishes between those who entered *before* and *after* enactment (August 22, 1996);
- Emphasizes work (10 years of work qualifies an immigrant for benefits);
- Requires reliance on sponsors before reliance on public assistance; and
- Establishes options for states to provide or limit public benefits to immigrants.

The new "qualified" immigrant category includes legal immigrants and refugees, but excludes a category of immigrants who had been considered to be legally residing in the United States and had been granted access to benefits by the courts (PRUCOL). This group is now considered "not qualified," along with illegal, or unauthorized, immigrants (see appendix J, *Common Terms*). The new "qualified" and "not qualified" categories do *not* indicate eligibility for benefits. Eligibility for public benefits also depends upon when the immigrant arrived, whether he or she meets an exempted category (e.g., veterans, refugees), has met the 40-quarter work requirement, and otherwise meets the program eligibility requirements (such as income and resource limits).

The second distinction is based on when the immigrant entered the United States. Those who were residing in the United States *before* the enactment of welfare law on August 22, 1996, generally retained benefits; those who arrive *after* enactment are generally denied benefits, first through a five-year bar, and then by ascribing the full income of the sponsor as the immigrant's in determining income eligibility (known as "deeming"). This represents a marked departure in U.S. treatment of legal immigrants. Under prior law, most immigrants were eligible for public benefits on much the same basis as citizens. A temporary bar existed for three programs—five years for the SSI program, and three years for the food stamp and AFDC

Figure 1.
Things to Know About Welfare Reform

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
Enacted August 22, 1996, and amended by the Balanced Budget Act of 1997, P.L. 105-33, August 4, 1997

TANF. A capped block grant to states, the Temporary Assistance for Needy Families (TANF) program replaces AFDC (the individual entitlement to cash assistance), emergency assistance, JOBS and administration costs. TANF funds must be spent on families with minor children. $82.8 billion in block grants is available over the next five years.

Time limits. Everyone, citizen or noncitizen, is limited to a maximum of 60 months of TANF. No federal funds may be used for parents or children after the 60 months is used up. (After a parent's five years is complete, minor children may receive five years of assistance as child-only cases.) States may implement shorter time limits, or may extend assistance with state-only funds. States may exempt up to 20% of their caseload from the five-year limit for hardships. Federal penalties of 5% of the TANF grant apply if the states fail to enforce a time limit.

Work. Adults in families that receive assistance under the TANF block grant must find work after 24 months. States define what counts as employment. Families who do not meet work requirements will have their assistance reduced or terminated.

Work participation requirements. In the current fiscal year, 25% of all families on assistance must have a parent working in a federally-defined work activity. By FY 2002, 50% of families on assistance must have a parent at work; 75% of all two-parent families must be working this year; and by the year 2002, 90% must be working. States that fail to meet the work requirements will be penalized 5% of their TANF block grant in FY 1997, up to 21% in later years and must pay any penalty amounts with state funds. Of those working, 30% can be in vocational education training. Teens who are required to be in school to receive assistance are exempt from this calculation in 1998 and 1999.

Welfare to Work. A $3 billion welfare-to-work block grant has been created to assist states in moving welfare recipients to work. States must meet TANF MOE requirements and provide a 33% match of federal funds.

Fair Labor Standards Act (FLSA). Workplace laws apply to welfare recipients in the private, public and nonprofit sectors, including workfare and community work experience programs.

Child care. The law ends the guarantee for subsidized child care for families on or leaving welfare. AFDC/JOBS, at-risk and transitional child care are consolidated into a capped block grant to states of $20 billion over six years. Legislators must target most of the money for child care for welfare recipients, people in work programs who are attempting to leave welfare, and people who are at risk of going on welfare.

SSBG. To meet deficit reduction targets, the law reduces by 15% the Social Services Block Grant (SSBG), another source of child care funds. States can directly transfer up to 10% of the state TANF block grant into SSBG.

Food stamps. The food stamp program remains an uncapped, individual entitlement. A new work requirement has been added. Able-bodied recipients between the ages of 18 and 50 may get food stamps for more than three months in a 36-month period only if they are engaged in work or a work program. States may establish a simplified food stamp program, combining food stamps with TANF. States may continue food stamp benefits past the current three-month limit for 15% of the state's able-bodied adults who would otherwise lose benefits.

State Maintenance of Effort (MOE). States must continue to spend at least 80% (reduced to 75% if a state meets federal work participation rates) of what they spent for AFDC in 1994 on assistance for welfare families with minor children.

Administrative costs. States are allowed 15% of their TANF money and 5% of their child care block grant money for administrative costs. Information systems do not qualify as administrative costs; legislatures may fund them from the rest of the block grants. The act does not provide money for interstate tracking of welfare recipients.

programs. Now, new immigrants could potentially face a permanent bar to benefits if they are unable to complete 10 years of work or become citizens. Some see the new law as devaluing U.S. citizenship by making it a gateway to benefits, and diluting the meaning and spirit of the naturalization process. Barbara Jordan, chair of the U.S. Commission on Immigration Reform, testified before Congress that, "We on the Commission believe strongly that it is in the national interest for immigrants to become citizens for the right reasons, not the wrong ones. We want immigrants to be motivated to naturalize in order to vote, to be fully participating members of our polity, to become Americans. We don't want to motivate lawabiding aliens to naturalize just so that they can get food stamps, health care, job training, or their homes tested for lead."

Figure 2.
Key Provisions Related to Immigrant Benefits

- **SSI:** Most noncitizens lost eligibility in 1996, but in 1997 benefits were restored to those who were receiving benefits on August 22, 1996, and those who are or become disabled.
- **Food stamps:** Most noncitizens are no longer eligible, although refugees and veterans are exempt.
- **Federal means-tested benefits:** New immigrants (those arriving after August 22, 1996) are barred from federal means-tested benefits for five years. ("Means-tested benefit" has been defined as TANF, food stamps, SSI and Medicaid.) Refugees and veterans are exempt.
- **Deeming:** After the five-year bar, deeming applies to federal means-tested programs until the sponsored immigrant becomes a citizen or has worked for 10 years. (Deeming means that the immigrant must count his or her sponsors' income and resources for purposes of eligibility determinations for benefits.)
- **TANF, Medicaid and SSBG:** States have the option to determine immigrants' eligibility for those resident as of August 22, 1996 (for new immigrants, after the five-year bar).
- **State funded programs:** States have the option to provide or bar state funded programs to current residents and newly-arriving immigrants. State- and local-funded programs may deem for new immigrants with the new enforceable affidavits of support (effective December 19, 1997).
- **Undocumented immigrants** are ineligible for federal, state and local public benefits.
- **Verification:** All state and local agencies must verify the immigration status of all applicants for "federal public benefits." To comply with the statute and avoid exposure to anti-discrimination legislation, state and local governments will be required to provide citizenship and status verification for every person served by programs outlined in the federal definition. Federal regulations must be issued by HHS defining "federal public benefit" and by INS on verification procedures.

Immigrants can also achieve parity with citizens after working 40 qualifying quarters in the United States Qualifying quarters may be credited to minor children and to spouses—unless the marriage ends in divorce. Work quarters are based on the total yearly amount of earnings. To earn a qualifying work quarter in 1996, for example, an immigrant must earn a minimum of $640 per quarter. Beginning in 1997, the immigrant also must not receive any federal means-tested public benefit during that quarter.

The law makes the affidavit of support legally enforceable, a change long sought by state and local organizations. Formerly, an immigrant would sponsor his or her relative to enter the United States and promise to provide financial assistance so the immigrant would not become a public charge, i.e., dependent on public assistance. State and local government agencies that attempted to enforce sponsor responsibility were told by the courts that the affidavits were "moral" contracts, not legal documents.

Finally, the law offers states the option of whether to provide, deny or deem certain public benefits—including TANF, Medicaid, and state-funded benefits—to legal immigrants. These provisions raise federal and state constitutional questions, in particular, about whether the federal government can grant to states the authority to discriminate on the basis of lawful alienage—in other words, to violate the equal protection clause (see chapter 4).

The State Response

For the most part, states were not prepared for the results of the welfare law. For most of the year, welfare reform was not really expected to pass. After the 550-page law was enacted in August 1996, many state and local policymakers were surprised by the sweeping cuts in immigrants' benefits, particularly for refugees and long-term residents who have no other source of support. Although states sought greater flexibility in the management of the welfare system, they did not expect—nor did they want—the federal government to absolve itself from

responsibility for assistance to legal immigrants and refugees. A Connecticut legislator explained it as having the tools for welfare reform, but no foundation. "The law is flawed because the money I would have spent on welfare to work, I now have to spend to help immigrants, which is a federal responsibility."

NCSL was heavily involved in the welfare reform debate, and in the end, supported the conference agreement for its block grants and programmatic and administrative flexibility. At the same time, NCSL was convinced that the immigration provisions would produce cost shifts to state and local governments of unacceptable proportions, and urged Congress and the administration to review state experiences against the intent and objectives of the Unfunded Mandate Reform Act of 1995. Testifying before the Senate Budget Committee in March 1996, Virginia state Delegate Karen Darner said, "NCSL has three principal concerns regarding proposed welfare reform and its effect on immigrant policy in the states: they shift costs to states; they create constitutional problems; and they impose administrative burdens."

State and local officials took steps to understand the complex intersection between welfare programs and immigrant eligibility dictated in the new federal law. They began to assess the size and needs of their immigrant populations, which led, in turn, to reviews of their cash, medical and nutritional programs. State and local policymakers then sought to patch gaps in the safety net created by the federal government.

It was expected that legislators from the states with the largest immigrant populations would be most concerned. In the remaining states, however, legislators discovered more immigrants and refugees in their communities than they expected. Majority Republican legislatures began providing assistance and pressing federal leaders to restore benefits. For example, Colorado enacted legislation permitting legal immigrants, regardless of when they entered, to be eligible for the state's Old Age Pension, Aid to the Blind, and Aid to the Needy Disabled programs. Three-fourths of the Colorado legislators had a personal relationship with an immigrant or a refugee. In Kansas, where the meatpacking industry is supported by immigrant labor, the state found it needed to care for immigrant children with disabilities. Washington appropriated $65 million and agreed to purchase federal food stamps for legal immigrants who were made ineligible by the federal welfare law, and to provide benefits at the federal benefit level.

Generally, however, most states seem to be codifying the federal welfare law as it relates to qualified and not qualified immigrants: providing assistance to those here before enactment; denying benefits to new arrivals; and grappling with providing services for those populations that are considered the most vulnerable, particularly children, the elderly, and disabled (see chapter 3).

TANF and Welfare-to-Work

Another issue is how legal immigrants and refugees will be served under time limits and the work requirements of welfare reform. Although the 1996 federal law provided states greater flexibility to design programs that meet the needs of their unique populations, welfare recipients under the Temporary Assistance to Needy Families block grant—which replaced AFDC—are limited to five years of federal assistance and must participate in work after two years. States must meet increasingly difficult federal work participation rates or risk fiscal sanctions. This has caused most states to generally move from an education strategy to a work first approach in welfare reform. This approach may not meet refugees' needs for long-term mental health

treatment and English language training, for example. Strict federal work participation rates and time limits require that states examine the employment and training requirements of refugee and immigrant populations, particularly among two-parent refugee families that have long-term needs.

As federal work participation requirements increase and welfare caseloads decrease, the percentage of recipients that must be in work to meet federal requirements becomes even more critical and more difficult to attain, as those who remain on welfare typically have multiple barriers to employment. States with immigrant and refugee populations must consider the long-term needs of these families, because their ability to attain self-sufficiency through work will directly affect a state's ability to meet federal work participation rates. To qualify for the full amount of their TANF block grant under federal welfare reform, states must demonstrate that 25 percent of all welfare recipients worked 20 hours per week in FY 1997. These requirements increase incrementally until 50 percent of all welfare recipients are required to be in work in 2002, and to be working 30 hours per week by the year 2000. In addition to the participation rates for all families that receive TANF, PRWORA established significant work requirements for states' two-parent TANF caseloads. Rigid two-parent rates require that, in FY 1997, 75 percent of all two-parent families work 35 hours per week, increasing to 90 percent by 1999. States with refugee populations will be particularly affected by two-parent work rates, because many refugee families that receive assistance are part of a state's two-parent caseload. For example, in Cook County, Illinois, 50 percent of the two-parent families that receive assistance are refugees.

Figure 3.
Annual Work Participation Rate Requirements

States must meet the following annual work participation rates with respect to all families that include an adult or minor child head of household receiving assistance.

	ALL FAMILIES		TWO-PARENT FAMILIES	
Fiscal Year	Part. Rate	Hours of Work per Week to Count Toward Rate	Part. Rate	Hours of Work per Week to Count Toward Rate
1997	25%	20	75%	35
1998	30%	20	75%	35
1999	35%	25	90%	35
2000	40%	30	90%	35
2001	45%	30	90%	35
2002	50%	30	90%	35

freedom to choose the education and job training programs they provide to immigrants and refugees, there are new limitations on what is considered work for purposes of meeting federal work participation requirements. Before the 1996 federal welfare reform law was enacted, states were required to provide welfare recipients with education and training activities that included basic education and English as a Second Language (ESL) classes through the Jobs Opportunities and Basic Skills (JOBS) program. The 1996 federal welfare reform law eliminated the JOBS program and removed basic education, literacy and ESL classes as allowable activities under minimum hourly federal work participation requirements. These programs can be funded with TANF funds, but do not count toward federal work rates. Because the federal law does not define work, however, states could alternatively choose to classify these activities as job skills training related to employment, education directly related to employment or vocational education in order to count in the work rate under the minimum participation requirement. States can also choose to continue their current waivers that are inconsistent with TANF and may have a different definition of work under the waiver. Important to consider, however, are the further restrictions placed on the number of recipients in vocational education who can

count toward a state's work participation rate. The 1997 Balanced Budget Act tightened this number to 30 percent of those participating in work (in FY 2000, the 30 percent cap also includes teen parents who are required to be in school to receive assistance).

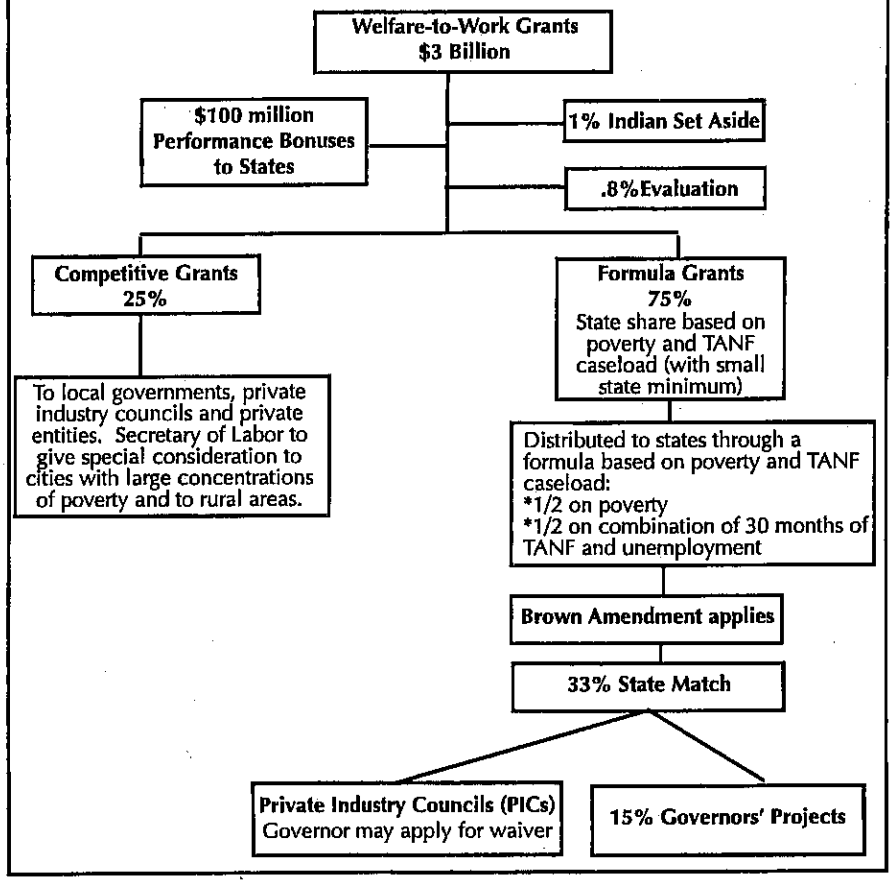
Under current law, states can create separate state programs to provide special services for their unique populations. Individuals served by segregated state dollars are not subject to federal work participation rates or time limits. Additionally, the TANF proposed rule[2] clarifies that expenditures in separate state programs that were previously authorized and allowable under prior law may count toward the state's maintenance of effort (MOE) requirement under TANF (80 percent of the state's historic welfare expenditures, reduced to 75 percent for states that meet federal work participation requirements). If the expenditures were not previously authorized and allowable under prior law, then only amounts expended in excess of FY 1995 expenditures for such programs count. However, it is important to note that HHS is very concerned that states will segregate funds solely to avert federal requirements, particularly work. In the same TANF proposed rule, HHS establishes reporting requirements for separate state programs and limits access to reasonable cause exceptions and penalty reductions if it detects a significant pattern of diversion in a state to avoid federal work requirements. The proposed TANF regulation does, however, give states the flexibility to provide cash assistance, child care assistance and education activities to increase self-sufficiency (such as job training) to qualified aliens with state dollars and to count these expenditures toward a state's MOE requirement under TANF.

To assist states in meeting the new work participation requirements outlined in the 1996 federal welfare law, Congress authorized $3 billion in the Balanced Budget Act of 1997 to create a federal welfare-to-work (WtW) grant program, administered by the U.S. Department of Labor, to help move eligible individuals into jobs. The WtW program targets those welfare recipients who will have the most difficulty making the transition to employment. Eligible individuals must be TANF recipients who have been on assistance for more than 30 months or who will become ineligible for assistance within 12 months because of a time limit and who have at least two of the following barriers to employment: 1) lack a high school diploma or GED and have low reading or math skills, 2) have a poor work history, or 3) require substance abuse treatment in order to obtain employment. Additionally, a noncustodial parent of a child whose custodial parent meets the above criteria is also eligible. Individuals who are no longer eligible for TANF assistance due to a time limit but who possess the specified barriers to employment also qualify for WtW under the 70 percent category. A smaller percentage of the grant funds (30 percent) can be used to serve TANF recipients, noncustodial parents, and individuals who would otherwise qualify for TANF assistance but who are ineligible due to a time limit, and who only have characteristics of long-term welfare dependence (as defined by the state). Eligible individuals under either category who have reached the 60-month TANF time limit, however, cannot receive cash assistance, either directly or through wage subsidies. In addition, WtW assistance, other than cash, will not count toward the 60-month federal lifetime limit for receipt of benefits. The time limit exemption is particularly critical to immigrants and refugees who will exceed new federal time limits but who will require additional services to become self-sufficient.

Of the $3 billion welfare-to-work funding that is now available, 75 percent will be distributed to states by a formula based on poverty and TANF caseloads. (See figure 4 for a flow chart of the new federal welfare-to-work funds, and table 1 for the estimated FY 1998 welfare-to-work formula grants to states.) To be eligible for state formula grants, a state must:

- Meet the TANF maintenance of effort requirement (80 percent, reduced to 75 percent if a state meets the work requirement); and
- Provide a 33 percent state match (for every $2 contributed by the federal government, the state must contribute $1).

Figure 4.
Federal Welfare-to Work Grants Flow Chart



State formula grant funds are subject to appropriation by the state legislature. The remaining 25 percent of the annual federal welfare-to-work allocation will be distributed on a competitive basis to Private Industry Councils (PICs; referred to in some states as Workforce Development Boards), political subdivisions or private entities (applying in conjunction with a PIC or political subdivision) that develop competitive grant proposals in consultation with the state's governor.

Of the state formula grant funds, 85 percent must be passed on to PICs or an alternate agency (designated by the governor through a waiver) to serve eligible individuals through:

- Job creation by public or private wage subsidies,
- On-the-job-training,
- Job readiness training (through public or private contracts),
- Job placement and post-employment services,
- Job vouchers,
- Community service or work experience, or
- Job retention and supportive services (that are not otherwise available).

A final interim rule issued by the U.S. Department of Labor on November 18, 1997, clarifies that post-employment services may include basic education, English as a second language, occupational skills training and mentoring. Additionally, the final interim rule specifies that job retention and support services could include transportation assistance, child care assistance and emergency or short-term housing assistance. Availability of these services is significant if refugees and immigrants are to obtain and retain employment. The remaining 15 percent of the state allocation may be distributed by the governor through a discretionary fund for projects to help move long-term recipients into work.

When designing employment and training programs to meet the needs of immigrants and refugees, states and localities can draw upon successful employment programs such as those demonstrated by refugee resettlement programs that provide comprehensive language and job training services and a range of supportive services such as child care and transportation

assistance. Federal domestic resettlement assistance for refugees is provided by the federal Office of Refugee Resettlement (ORR) through state-administered programs, Wilson/Fish alternative projects and matching grant programs. In FY 1995, $67.9 million was awarded to state-administered programs to provide refugees with employment services, English language training, vocational training and other supportive services that promote economic self-sufficiency and reduce refugee dependence on public programs.[3] A final rule published by ORR on June 28, 1995, however, limits ORR-funded refugee social services to refugees who have been in the United States for five years or less.

An alternative to the state-administered program is the Wilson/Fish amendment contained in the 1985 Continuing Resolution on Appropriations that amended the Immigration and Nationality Act. The Wilson/Fish alternative allows states to develop innovative approaches for refugee social services. These approaches typically emphasize avoiding welfare dependency and integrating refugee services in a one-stop shop. Wilson/Fish projects currently are operating in Alaska, Kentucky, Nevada, San Diego (privately administered), Massachusetts and Oregon (state-administered). States that operate Wilson/Fish alternative programs potentially benefit from a provision in the TANF proposed rule. Under this proposed regulation, states may qualify for a reasonable cause exemption from a penalty if their failure to meet federal work participation rates is attributable to the provision of assistance to refugees in federally-approved alternative projects.[4]

The Oregon model, the Refugee Early Employment Program (REEP), has operated since 1985. The program's emphasis is to keep employable refugees from becoming dependent on welfare by preparing refugees to enter the job market through early assessment and intervention, early service provision and early job placement. In FY 1995, 1,321 refugees of 1,729 participating in REEP employment services were placed in jobs.[5]

Refugees and immigrants who enter the United States represent a range of interests, skills and abilities. Important to the success of the employment and training programs that serve these populations is the ability to provide English language training and to work with participants at appropriate learning levels. English language ability is critical to assist refugees and immigrants reach self-sufficiency. Among this population, English skills are directly tied to earning the average wage and the ability to compete for more complex jobs. Competency-based English language programs that focus on workplace and survival-based vocabulary rather than on grammar-based curriculums hold promise under the work first approach of federal welfare reform. A new edition of one such competency-based program, the Mainstream English Language Training program (MELT), has just been reproduced under contract with the federal Office of Refugee Resettlement by the Spring Institute in Colorado. In addition to English language skills, some individuals may require specific skills training or basic education to achieve self-sufficiency. Programs such as the Center for Employment Training (CET), established in San Jose, California, have national reputations for successfully placing students in training programs at individual learning levels in intensive, short-term training. In addition to hands-on technical training, students learn language skills, life skills, and receive job placement assistance. CET operates training centers in California, Arizona, Maryland, Nevada, New York and Virginia.

Congress Reconsiders

As the new Congress convened in January 1997, a steady and eventually remarkable transformation occurred. Members of Congress were originally opposed to any "reopening" of the federal welfare law, but began hearing of concerns raised by a coalition of state and local policymakers and advocates for immigrants: the danger to vulnerable elderly immigrants,

Table 1.
Welfare-to-Work State FormulaGrants
(Estimates for FY 1998)

State	Amount of Grant
Alabama	$13,946,266
Alaska	2,860,290
Arizona	17,486,853
Arkansas	8,440,819
California	189,158,618
Colorado	9,925,558
Connecticut	11,741,584
Delaware	2,761,875
District of Columbia	4,573,557
Florida	51,399,886
Georgia	28,951,503
Hawaii	4,827,072
Idaho	2,821,590
Illinois	48,626,791
Indiana	14,740,941
Iowa	8,275,164
Kansas	6,753,540
Kentucky	17,573,480
Louisiana	23,809,809
Maine	5,149,450
Maryland	15,120,329
Massachusetts	20,592,636
Michigan	42,478,467
Minnesota	14,377,295
Mississippi	13,077,589
Missouri	19,925,594
Montana	3,191,313
Nebraska	3,979,500
Nevada	3,449,131
New Hampshire	2,761,875
New Jersey	23,239,053
New Mexico	9,770,091
New York	96,746,539
North Carolina	25,204,721
North Dakota	2,761,875
Ohio	43,859,618
Oklahoma	11,838,761
Oregon	8,789,018
Pennsylvania	44,527,566
Rhode Island	4,348,845
South Carolina	12,148,469
South Dakota	2,761,875
Tennessee	22,350,941
Texas	75,625,133
Utah	4,670,433
Vermont	2,761,875
Virginia	16,725,507
Washington	22,458,358
West Virginia	9,786,496
Wisconsin	13,284,419
Wyoming	2,761,875
Puerto Rico	34,403,919
Virgin Islands	550,548
Guam	595,690
Total	$1,104,750,000

the lack of justice to those who had "played by the rules" and enormous cost-shifts to states for their care. The first indication of a turnaround was the delay of the SSI bar from August 22, 1997 to September 30, 1997 (included in the disaster relief bill). The delay was intended to give budget negotiators additional time to find a long-term solution to the loss of SSI for elderly and disabled immigrants. Congress also approved a little-noticed provision within the disaster relief law that permitted states to purchase federal food stamps with state funds. States pay the federal government the value of the benefits plus any federal costs such as printing and shipping. States may choose the benefit level and the populations they wish to serve.

In August 1997, Congress moved significantly toward restoration of benefits, rolling back $11.4 billion of the $24 billion in cuts to legal immigrants and refugees. The Balanced Budget Act restored SSI to those who were receiving benefits as of August 22, 1996, and to immigrants who were lawfully present as of August 22, 1996, who become disabled. It also specifically restored Medicaid for SSI recipients. By the end of the five-year balanced budget timeframe, an additional 350,000 individuals will retain their SSI as a result of the law. However, no changes were made to the federal bar on food stamp benefits: Nearly 1 million immigrants lost food stamp benefits in September 1997.

What Next?

States face many additional benefit and implementation decisions regarding immigrants. The most costly decision revolves around the loss of federal food stamps, should Congress decline to revisit the issue. The president's budget for FY 1998 included $2.7 billion over five years to provide food stamps for elderly and disabled immigrants who were in the United States before August 23, 1996, and to families with children regardless of their entry date. Other options include funding emergency assistance programs and reliance on private charities.

States that established contingency funds in 1997 for elderly and disabled immigrants at risk of losing SSI must now determine how to allocate those funds now that SSI has largely been restored. States will also continue to review ways to support citizenship programs, particularly for long-term residents who have poor English skills or other barriers to naturalization.

In regard to medical assistance, the federal Medicaid bar means that newly arriving immigrant children may have no access to preventive health care, and newly arriving adults who become disabled may also turn to state programs. The law also specifically barred Medicaid funds for immunizations, testing and treatment of communicable disease for both newly arriving "qualified" immigrants and for "not qualified" immigrants.

In the meantime, states and localities continue to question the federal shift of responsibility for legal immigrants and refugees. No state is able to completely replace the lost federal safety net. Indeed, a recent report by the National Research Council confirms that although immigrants provide a net national benefit, the federal government reaps the income while states and localities provide the lion's share of benefits that new immigrants need.[6]

3. State Options and State Decisions

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ended immigrants' access to a broad range of public welfare benefits. The new bars, restrictions and options in the reform law created a number of challenges for states and localities, including, most importantly, the anticipation of significant cost-shifts from federal programs to state and local safety net programs.

In brief, the law created new categorical distinctions for immigrants: "qualified" immigrants who are generally eligible for benefits, primarily legal immigrants and refugees, and "not qualified" immigrants, such as unauthorized immigrants and "PRUCOL" (e.g., those residing here under statutory authority or administrative discretion but without legal status), who are generally denied all but emergency assistance. The new law also forces a second distinction based on the date the immigrant entered the United States. Those who were residing in the United States *before* the enactment of the welfare law generally retained benefits while those who arrive *after* enactment are generally barred from means-tested benefits for five years and are then subject to deeming until they attain citizenship or 40 quarters of work. Finally, the law offers states options on whether to provide or deny certain public benefits to legal immigrants.

In making the policy decisions required in the federal welfare reform law, most states seem to be codifying the federal welfare law as it relates to qualified and not qualified aliens: providing assistance to those here before enactment; denying benefits to new arrivals; and grappling with providing services for populations considered the most vulnerable, such as children, the elderly, and the disabled. This chapter seeks to outline the range of welfare options before state policymakers and to present some examples of the decisions made and policies implemented by the states.

The 550-page federal welfare law required states to make a number of choices in a short time in order to draw down federal funds for the TANF block grant. State plans were due to the U.S. Department of Health and Human Services (HHS) by July 1, 1997, although funds were available to states as soon as plans were submitted. Governors could submit and implement draft plans following a 45-day comment period unless legislative action was required for changes in law. Some states submitted very brief outlines of their intentions, while others prepared more lengthy explanations of their plans and legislative agendas for submission to HHS. State TANF plans took effect upon enactment.

As states developed their initial plans, they had to provide the following to the U.S. Department of Health and Human Services for certification:

- An explanation of how a state plans to serve all its political subdivisions;
- An explanation of how a state plans to require a parent or caretaker to engage in work activities after receiving assistance under the program for 24 months and ensure that parents and caretakers who are receiving assistance engage in allowable work activities;
- An explanation of how a state plans to treat interstate immigrants, if families including such immigrants are to be treated differently than other families;
- An explanation of how a state plans to take necessary steps to assure appropriate confidentiality, set goals, and take action to reduce out-of-wedlock pregnancies;
- Certification that it will operate a child support enforcement program and a child protection program; and
- Certification of how the state will administer the program and that it will provide Indians with equitable access to assistance.[7]

A Few Definitions
Pre-enactment immigrants: Those immigrants who were legally residing in the United States before or at the time of enactment of the welfare reform law (August 22, 1996).
Post-enactment immigrants: Those immigrants who arrive in the United States after enactment of the welfare reform law.
Federal means-tested benefit: Temporary Assistance for Needy Families, Medicaid, Supplemental Security Income, Food Stamps.
Deeming: Counting the income and resources of the sponsor, and his or her spouse, as the income of the immigrant's in determining the immigrant's eligibility for public assistance.
Sponsor: the U.S. citizen, national, or lawful permanent resident who petitions for the entry of the immigrant, usually a family member. (Refugees are not "sponsored" immigrants and therefore not subject to deeming.)

Their plans also had to consider time limits, allowable work activities and requirements, use of maintenance of effort dollars, residency requirements, and how to redesign welfare agencies with a new focus on welfare-to-work efforts.

In addition to TANF, states faced a number of decisions on immigrant eligibility: whether to provide TANF and Medicaid to pre-enactment immigrants; whether to provide state-funded TANF and Medicaid to post-enactment or "not qualified" immigrants; and whether and how they could afford to provide replacement funds for lost federal SSI and food stamps to needy immigrants. The federal law also sought to provide states with new authority regarding the provision of state- and local-funded benefits to immigrants, and state and local policymakers had to decide whether and how to exercise this new authority. Figure 5 provides a checklist of decisions state policymakers faced under the federal welfare law.

Cash Assistance for Poor Families and Children

The 1996 federal welfare reform law replaced Aid to Families with Dependent Children (AFDC), the country's primary welfare program, with the Temporary Assistance for Needy Families (TANF) program. This new program devolves most policy decisions regarding eligibility and benefit levels to the states, which receive a federal block grant to support the program. States are required to maintain a certain level of state support, or "maintenance of effort" (MOE), for TANF based upon their historical contributions to the AFDC program. The federal law requires states to continue to spend at least 80 percent of their 1994 AFDC state match.

The law gives states the option to determine the TANF eligibility of immigrants who were in the United States on the date of the law's enactment, as well as the option to determine new immigrants' eligibility after the end of their five-year federal bar.[8] At present, the law requires states to deem when determining new immigrants' eligibility for TANF following their five-year bar, and it is not yet clear whether states can waive or opt out of this requirement. States can use federal TANF funds for services to legal immigrants in either of these conditions. States are required by federal law to provide TANF to those qualified aliens who enter the

Figure 5.
Checklist of State Decisions

Temporary Assistance for Needy Families/Immigrant Eligibility

The 1996 welfare law replaced Aid to Families with Dependent Children (AFDC) with a new program, Temporary Assistance for Needy Families (TANF). This new program devolves most policy decisions regarding eligibility and benefit levels to the states, with federal block grants awarded based upon historical AFDC use. The law gives states the option to determine the TANF eligibility of immigrants who were in the United States on the date of the law's enactment as well as the option to determine *new* immigrants' eligibility after the end of the five-year bar. The law requires states to deem when determining immigrants' eligibility until the immigrant attains citizenship or 10 years of work history, and it is unclear whether states may waive this provision.

- ❑ Should the state provide TANF benefits for pre-enactment immigrants?
- ❑ Should the state provide benefits for post-enactment immigrants during the five-year bar using state-only, TANF MOE funds?
- ❑ Should the state provide TANF to post-enactment immigrants following the five-year bar?
- ❑ Should the state impose sponsor deeming for TANF?
- ❑ Should the state impose residency requirements?
- ❑ Should the state utilize different residency requirements and benefit levels for immigrants than those applied to citizen applicants?
- ❑ What are the legal considerations of imposing restrictions on immigrant benefits?
- ❑ Will the state deem?

Supplemental Security Income

States anticipated that the Supplemental Security Income (SSI) bar would leave many aged, blind, or disabled immigrants and refugees without regular income. This bar was to take effect on August 22, 1997, and states were caught in the dilemma of how to serve this particularly vulnerable population. Several states enacted some safety net assistance for this population. After long negotiations in Congress, benefits were largely restored, but not until most states had completed their sessions. The law now permits immigrants receiving benefits as of August 22, 1996, to retain benefits, and immigrants who were resident as of that date to receive benefits if they become disabled in the future. Still excluded from benefits are those resident as of August 22, 1996, who become elderly (65 years of age) but not disabled; and those who arrive after welfare reform's enactment.

Questions for 1998:

- ❑ Should the state replace the federal SSI benefit with a state-funded benefit for those immigrants who reach 65 years of age without qualifying for SSI under disability regulations?
- ❑ Should the state provide an SSI replacement benefit for post-enactment elderly immigrants?
- ❑ How should the state replace SSI—with the General Assistance program, through expansion of the SSI state supplemental payment, or by creating a new benefit program?

Figure 5.
Checklist of State Decisions
(continued)

Nutritional Assistance

The welfare reform law bars most immigrants from receiving the federal Food Stamp program benefit, effective August 22, 1997. The FY 1997 supplemental appropriations law gave states the option to purchase U.S. Department of Agriculture (USDA) Food Stamp coupons with state funds for distribution to their immigrant populations.

- ❑ Should the state provide a nutritional assistance program for immigrants?
- ❑ Should that benefit be available to pre-enactment or post-enactment immigrants, or both?
- ❑ Should the state purchase Food Stamp coupons from USDA or establish a new, separate program?
- ❑ What segment of the immigrant population can the state afford to cover? All? Children? The elderly? The disabled?
- ❑ Can the state afford to fully replace the federal benefit level? What level of benefit can the state provide?
- ❑ Should the state provide additional funding to emergency food assistance programs?

Medicaid and Health Benefits

The restoration of SSI for most immigrant recipients relieved many immigrants, advocates and policymakers who were concerned about the effect of losing SSI on Medicaid eligibility. However, the SSI restoration does not cover all immigrants who would have been eligible for Medicaid but for the federal welfare law. Immigrants arriving after August 22, 1996, are barred from Medicaid just as they are barred from TANF, though humanitarian arrivals benefit from a seven-year exemption. States will have to verify an immigrant's status with INS as part of the Medicaid eligibility determination process. Policymakers also will wrestle with issues of public health, communicable diseases and immunizations. State and local programs may deem when determining new immigrants' eligibility.

- ❑ Should the state provide Medicaid to pre-enactment immigrants?
- ❑ Should the state provide state-funded medical assistance to some or all post-enactment immigrants?
- ❑ What is the state's position on medical assistance to PRUCOL immigrants who were formerly qualified for Medicaid but are now barred?
- ❑ The law bars nonemergency medical assistance to "not qualified" immigrants, preempting state laws on the provision of prenatal care to this group. Does the state wish to enact or reenact state law to do so?
- ❑ The law also bars Medicaid funds for immunizations and the treatment of communicable diseases. Should states provide these services that are no longer covered by Medicaid?
- ❑ How should the state implement new verification requirements? What are the implications of confidentiality? How will public health be affected?
- ❑ Will states and localities deem when deciding an immigrant's eligibility for services?

Figure 5.
Checklist of State Decisions
(continued)

State Public Assistance Programs

The welfare reform law gave states the option to bar state-funded programs to immigrants. It also gave states and localities the authority to deem state and local programs for new immigrants when the new affidavits of support become enforceable on December 19, 1997.

- ❑ Should the state restrict immigrant access to state and local public assistance programs?
- ❑ Should the state bar all or part of the immigrant population—based either on residency, age, or other qualifications—from these benefits?
- ❑ For which programs should the state consider restrictions?
- ❑ Should the state deem for these programs?

Naturalization

Immigrants and refugees began applying for naturalization in record numbers beginning in 1995. In 1997, naturalization assistance was being promoted as a way to retain critical benefits for long-term, needy residents. While former Congresswoman Barbara Jordan, among many others, argued against making citizenship the gateway to public benefits, one could not deny that naturalization would requalify many disabled and long-term legal residents, now dependent upon state and local assistance, for federal benefits. Many state and local policymakers considered their role in easing the application backlog at INS and the assistance they could provide immigrants seeking to naturalize.

- ❑ Is naturalization and citizenship and the return of immigrant beneficiaries to the federal welfare rolls a viable solution to the welfare law's cost-shift to state and local governments?
- ❑ Should applications to naturalize be conditions for receipt of state and local benefits?
- ❑ What types of naturalization assistance programs should the state support? English literacy? Civics education? Application and testing assistance?
- ❑ What should states do with those cases where immigrants cannot naturalize?
- ❑ Can states and localities assist INS in processing the naturalization backlog? How can such assistance be provided?

Unauthorized Immigrants

Unauthorized immigrants have been and continue to be barred from the receipt of all public benefits, with the exception of emergency assistance and public education. States may provide benefits to "not qualified" immigrants only by enacting a state law after August 22, 1996, that affirmatively makes them eligible. With consideration for public health and safety issues, which affect the documented, undocumented and citizens alike, policymakers had to consider the fiscal feasibility of providing services to unauthorized immigrants. Furthermore, the 1996 laws authorized state and local authorities to assist INS with the apprehension and detention of illegal immigrants, leaving policymakers with more questions about the best use of scarce resources in pursuit of the greater common good.

- ❑ Does the state wish to provide or continue certain services, such as services that support public health, to "not qualified" immigrants?
- ❑ For which programs should they be eligible?
- ❑ What restrictions should be placed on their eligibility?
- ❑ Should the state and localities assist INS in its border enforcement duties? How can they provide such assistance?

country after enactment and are exempted from the five-year ban on benefits. Refugees, Cuban and Haitian entrants,[9] and other humanitarian categories, as well as veterans and active-duty military, are exempt from the bar. When providing assistance to this group, states may use federal TANF dollars. States use solely their own funds, perhaps as TANF MOE, when providing assistance to qualified aliens barred from TANF for their first five years in the United States, or to immigrants now considered "unqualified," such as PRUCOL. States may provide or deny state-funded programs to current residents and newly arriving immigrants. Additionally, state- and local-funded programs may deem for new immigrants when the newly enforceable affidavits of support become effective on December 19, 1997.

TANF Eligibility: Not qualified aliens are ineligible for TANF. Qualified aliens are barred from TANF assistance during their first five years of U.S. residence with the following exemptions:

- Refugees, asylees, those granted withholding deportation, Cuban and Haitian entrants, and Amerasians.
- Active armed forces personnel, veterans, and their spouses and unmarried dependent children.

Qualified Aliens: Lawful permanent residents, refugees, asylees, those granted parole for more than one year, those whose deportation has been withheld, conditional entrants before 1980, Cuban-Haitian entrants, and certain victims of domestic violence.

Not Qualified Aliens: Illegal immigrants, family unity immigrants, temporary agricultural workers, asylum applicants, and PRUCOL aliens.

This dramatic change in federal policy has effectively shifted the national responsibility for needy immigrant families onto state budgets. Estimates from the Congressional Budget Office in 1996 suggest that 420,000 immigrants will lose AFDC benefits as a result of the federal welfare reform law. The value of lost benefits to these individuals is estimated at $1 billion over six years. In light of this need, many states have chosen to grant at least the minimum services to disadvantaged immigrant families. Most will provide assistance to the following groups: 1) qualified aliens who were in the United States at the time of the federal welfare reform law's enactment; 2) qualified aliens who enter the country after enactment, after their first five years in the United States; and 3) qualified aliens entering after enactment who are exempted from the five-year ban.

As of August 1, 1997, all 50 states, the District of Columbia, the U.S. territories of Guam and the Virgin Islands, the Commonwealth of Puerto Rico, and many Indian tribes had filed TANF plans with HHS. HHS is required to certify that all state plans are complete, but it does not have authority to alter or amend state TANF plans. Of those 65 plans, only Alabama has chosen to deny TANF to all immigrants. Earlier state plans from Kentucky, West Virginia, Louisiana and Wyoming indicated that TANF benefits would be denied, but all four states have since changed or clarified their plans to provide TANF to qualified immigrants. Although post-enactment immigrants may not receive federal TANF money for five years, some states decided to provide state-funded TANF benefits. Many states included residency requirements in their TANF programs.

For example, Utah and Washington both passed laws that gave qualified aliens and PRUCOLs the same benefits as citizens who receive TANF. In both cases, sponsor deeming applies. The Utah law limits eligibility to 36 months and the Washington law has a 12-month residency requirement. Maryland also implemented a residency requirement; pre-enactment immigrants are eligible for benefits if they move from a state providing them benefits or live in Maryland for at least 12 months. In New York, safety net assistance is available to new arrivals and PRUCOLs, but for the first 12 months of residency, these immigrants are only eligible for the higher of 50 percent of the New York benefit or the benefit available in the state of prior residence. For more examples of state activities related to cash assistance and TANF for immigrants, see appendix B.

Cash Assistance for Elderly, Blind, or Disabled

Supplemental Security Income (SSI) is a federal income support program administered by the Social Security Administration for low-income blind, elderly, and disabled individuals. When determining whether an individual is low-income, the incomes of the applicant, the spouse,

sponsors and parents are taken into consideration. In addition to being low-income, applicants must be at least one of the following: elderly (65 years or older), blind (20/200 with corrective lenses), or disabled (physically or mentally unable to obtain "substantial gainful employment" for 12 continuous months). Historically, immigrants have been required to follow the same guidelines as others when seeking SSI benefits. Several different categories of immigrants are eligible to receive the benefits if they are legally residing in the United States: refugees, asylees, temporary residents, legal permanent residents and others.

The welfare law established a bar on federal SSI for most noncitizens, saving the federal government $13.3 billion over six years. This bar forced state policymakers to evaluate the provision of assistance to blind, disabled, or elderly immigrants. In particular, states wrestled with the issue of assistance for elderly or disabled refugees who were unable to naturalize, were unable to work, and had long passed the five-year exemption mark. Veterans were exempted from the SSI bar.

In the 1997 budget reconciliation law, the Congress restored benefits for immigrants who were receiving SSI as of August 22, 1996, and for those lawfully residing in the United States as of August 22, 1996, who become disabled. Those who become citizens or have 40 work quarters may receive SSI. The bill also modified the welfare law to extend the exemption for refugees and other humanitarian arrivals from five years to seven. SSI and Medicaid were reinstated for recipients who applied before 1979, when the Social Security Administration first began asking for proof of immigration status. PRUCOL immigrants received a one-year reprieve, temporarily extending their SSI benefits until September 30, 1998. Immigrants who lost SSI eligibility as a result of welfare reform and who were unaffected by the budget reconciliation's revisions include residents as of August 22, 1996 who reach age 65 after that date, but who are not disabled, and new immigrants who arrive after the welfare law's enactment.

Before the federal reprieve in the 1997 Balanced Budget Act, states considered and often put in place one of three options to provide an SSI-replacement cash benefit for immigrants: access to or expansion of the state's general assistance program, access to or expansion of the state's SSI-supplement or disability benefit program, or creation of a new program. In Washington, the legislature opted to make immigrants losing SSI eligible for the state's general assistance-unemployable program. Similarly, in Colorado and Nebraska, legal immigrants may apply for state aid to the aged, blind, and disabled programs regardless of the immigrant's date of entry, though sponsor deeming may apply. Rhode Island created a new cash assistance program for disabled and elderly legal immigrant residents. For other examples of state decisions regarding SSI replacement programs, please see appendix C, Supplemental Security Income.

With the restoration of federal SSI benefits for a significant portion of the affected immigrant populations, states face new decisions regarding the use of the money and programs intended to replace SSI.

Medicaid and Health Benefits

Medicaid is an entitlement program jointly funded by federal and state governments to provide medical care for low-income pregnant women and children and individuals who are aged, blind or disabled. In general, those eligible for Aid to Families with Dependent Children—now Temporary Assistance to Needy Families (TANF)—and Supplemental Security Income (SSI) were automatically eligible for Medicaid. States must cover these mandatory groups. States have an option to cover other needy groups, such as those with higher family incomes or the "medically needy" who meet the non-financial standards for coverage but who exceed

the income and resource requirements. Income levels generally are based on the federal poverty level—FPL—that is currently $16,000 for a family of four. In addition to being low-income, applicants must be at least one of the following: blind (20/200 with corrective lenses), elderly (65 years or older), disabled (physically or mentally unable to obtain "substantial gainful employment" for 12 continuous months), children (maximum age of 18 to 21 depending on the state) or pregnant. Immigrants generally have been eligible for Medicaid benefits on the same basis as citizens.

Under the federal welfare law, states now have the option to provide or deny Medicaid to qualified aliens residing in the United States before August 22, 1996. New arrivals are barred for their first five years in the country. Refugees and other humanitarian arrivals are exempt from the Medicaid bar for seven years. Veterans are exempt from the bar on Medicaid. States may provide or deny state-funded programs to current residents and newly-arriving immigrants. State- and local-funded programs may deem for new immigrants when the newly-enforceable affidavits of support are in effect. The welfare law permits immunizations as well as testing and treatment for communicable disease, but prohibits the use of Medicaid funds for such purposes. Emergency medical assistance must be provided to both qualified and not qualified aliens. The 1997 balanced budget law revised the welfare law to extend the refugee exemption from the original five years to seven and restored Medicaid for SSI-eligible immigrants.

The Health Care Financing Administration (HCFA) of HHS has informed states that, if they intend to deny Medicaid to qualified aliens who were in the United States prior to August 22, 1996, they must file a state plan amendment. According to HCFA, two states have filed such amendments: Louisiana and Wyoming. West Virginia had initially filed an amendment, but later decided to provide medical assistance to qualified aliens. Eighteen states have affirmed that they will continue to provide Medicaid to qualified legal immigrants: Alaska, Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, Pennsylvania, Rhode Island, Virginia, Washington and West Virginia. Minnesota has enacted legislation barring undocumented and nonimmigrants from medical care other than emergency services, but exempts children, Cuban-Haitian entrants, and aliens who are aged, blind or disabled. Connecticut will provide state-funded medical assistance to certain post-enactment immigrants until July 1, 1999; others may be eligible for six months. The state will provide benefits to victims of domestic voilence and to those suffering from mental retardation. Appendix D reviews the issue and highlights specific state programs to provide health benefits to immigrants since welfare reform.

Nutrition

The welfare law made most legal immigrants ineligible for food stamps until they become citizens or earn 40 quarters of work. New arrivals are ineligible for five years, with the exception of refugees, other humanitarian categories, and veterans. Estimates suggest that approximately 1 million immigrants will lose federal food stamp benefits due to the 1996 law. The value of their lost benefits is estimated to exceed $70 million per month. Although the 1997 budget restored SSI benefits for most legal aliens and extended the bar exemption for refugees, it did not redress any of the food stamp cuts. However, the federal FY 1997 supplemental appropriations bill, enacted June 12, 1997, granted states the option to purchase food stamps from USDA for those immigrants made ineligible by the welfare law. States pay the value of the benefit and the cost of printing, shipping, and redeeming coupons.

To date, 13 states have chosen to provide state-funded food assistance to some or all legal immigrants who will lose federal food stamp eligibility due to the welfare reform law, either by purchasing federal food stamps or developing state food benefits: California, Colorado, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Texas, and Washington. At least nine states have been approved by USDA to purchase Food Stamp coupons for immigrants. Many states also appropriated additional funds for emergency food assistance.

Most states are providing food assistance either at a lower benefit level to current residents of the state or to selected groups of immigrants, such as children and the elderly. In Florida, the state will provide about $12 million in food stamps for immigrants 65 and older who were residents as of February 1, 1997. Similarly, California allocated $35.6 million to replace food stamps for some 40,000 children and elderly immigrants who were residing in the United States as of August 22, 1996. New York permits counties and New York City to provide food assistance for individuals under 18 or over 65 years of age, resident as of August 22, 1996, who apply for naturalization within 30 days. In contrast, Washington, with a state history of supporting food programs, appropriated $65 million to purchase federal food stamps for *all* legal immigrants made ineligible by federal law at the federal benefit level. For a discussion of other states' decisions regarding Food Stamp replacement, see appendix E.

Although a number of states have taken significant steps to fill the gap in nutrition assistance for immigrants, many immigrants remain in vulnerable positions after the cuts of the federal welfare reform law. State legislatures are unable to completely fill the gap created by federal cuts, and many immigrant groups are yet to be covered. Many states are considering ways to reallocate state funds previously dedicated to SSI replacement to nutritional assistance programs.

Note: As we go to press, Congress seems likely to restore food stamp benefits to certain immigrants resident as of August 22, 1996. The $818 million package would provide benefits to approximately 250,000 immigrants, or about one-third of those who lost benefits as a result of welfare reform. The bill restores food stamps to elderly, disabled, and children, as well as Hmong and highland Lao tribe members who assisted the U.S. armed forces during the Vietnam War, their spouses, dependent children, and widow(er)s of those deceased.

Eligibility for Federally Funded USDA Food Stamps Is Limited to:

- Citizens
- Lawful permanent residents who can demonstrate 40 qualifying quarters of work
- Refugees, asylees, and those whose deportation has been withheld, Cuban and Haitian entrants and Amerasians during their first five years in the United States
- Veterans, active duty military, their spouses, and dependents

Unauthorized Immigrants

Although illegal, or unauthorized, immigrants have never been eligible for most public assistance benefits, some states had chosen to make certain programs available to undocumented immigrants in the interest of general public health and safety. For example, New York and California, along with several other states, have provided prenatal care to undocumented immigrant mothers. Many states and communities have made immunizations and vaccinations available as well. The welfare reform law explicitly barred immigrants who are in the country illegally from receiving federal, state or local "public benefits." States may provide such benefits only if they enact state law to affirmatively provide such eligibility after enactment of the federal legislation. This provision is open to constitutional challenge under the Tenth Amendment as a "commandeering" of state legislative authority.

The federal welfare law now includes as "not qualified" a group of immigrants formerly considered by the courts to be legally residing in the United States and eligible for benefits, namely those permanently residing under color of law (PRUCOLs). Some states, as a result of constitutional or statutory requirements, are placed in the difficult position of deciding whether and how to continue benefits to these individuals.

The new federal laws also imposed new reporting requirements on states. The welfare reform law requires agencies that administer SSI, housing assistance, and TANF to report the names and addresses of individuals known to be unlawfully in the United States to the U.S. Immigration and Naturalization Service (INS) on a quarterly basis. Implementing this provision, New York requires social service agencies to report names and addresses of unlawful aliens to the state, but Colorado is the only state to date to pass legislation that requires the state to report such recipients to INS; Colorado does provide an exception for those whose only federal benefit is Medicaid.

Additionally, the welfare law bars state and local governments from prohibiting or restricting communication between state and local agencies or their employees and the INS about the immigration status of aliens in the United States. This provision has raised the concern of many, namely New York Mayor Rudolph Giuliani, because it preempts state or local policies that prohibit the reporting of such information in the interest of preserving and protecting public health and safety. In the case of New York City, the mayor has filed suit against the federal government, alleging that implementation of this provision may dissuade undocumented immigrants from either reporting crimes to the police or seeking treatment for communicable diseases for fear of being reported to INS by city officials. The mayor is concerned that such distrust of public officials and services will prove detrimental to the public well-being of citizens and immigrants alike, should crimes go unreported and treatable illnesses go unchecked.

Naturalization Assistance

In the wake of welfare reform, many believed that naturalization would be the answer for those immigrants losing federal benefits. To this end, several states have considered naturalization and citizenship assistance programs.

- In New Jersey, the state has allocated approximately $2 million, which is being matched by $2 million in private funds for naturalization outreach and programs. Roughly $200,000 of these resources are likely to be targeted toward TANF recipients who lose food stamps.
- Florida has also appropriated $2 million for naturalization efforts.
- In California, the legislature appropriated $5 million for citizenship and naturalization preparation services, but the governor line-item vetoed the provision.
- In other states, such as Nebraska and Washington, legislation mandates that state welfare agencies make every effort to refer and assist immigrants who are receiving public assistance to understand and attempt the naturalization process, but does not allocate new resources.
- Some states, including Florida, Minnesota and Connecticut, will extend benefits on a temporary basis to immigrants who are pursuing citizenship.

During their 1997 legislative sessions, the states faced many complex and difficult decisions as they decided how to remake welfare within their borders. Implementation of the immigrant provisions in the federal welfare reform law presented state and local policymakers with hard choices about whether and how to assist some of the most vulnerable populations in their communities.

4. Legal Issues

The 1996 federal welfare law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) raised several federal and state constitutional issues related to the denial of public benefits on the basis of lawful alienage. The new law creates extensive cuts to and restrictions on immigrants' access to *federal* benefits, and seeks to grant new authority to states to restrict access to *state* public benefits. Although constitutional precedent had allowed the federal government to discriminate on the basis of lawful alienage, it also had clearly prohibited the states from doing so. The question for states is whether the Supreme Court will reconsider whether Congress can grant states the authority to violate the equal protection clause of the U.S. Constitution, or whether the law has merely shifted the burden from the federal to the state level.

The issue of congressional delegation of authority is not the only area for constitutional challenges. Another salient issue is whether the development of unique immigrant eligibility requirements for public assistance will violate the U.S. Constitutional requirement for a uniform rule of naturalization. Lawsuits either have been or are expected to be filed challenging the immigrant provisions of the federal welfare law, mainly in six areas of the U.S. Constitution: equal protection, due process, plenary power of Congress over immigration policy, federalism issues under the 10th Amendment and the Guarantee Clause, and the right to interstate travel (see figure 6).

Constitutional challenges are also likely to be brought at the state level. As many as 22 state constitutions provide some obligation to assist poor *residents*—not citizens—of the state.

This section reviews the main federal constitutional issues, some state constitutional issues and decisions, and recent lawsuits challenging the immigrant provisions of the 1996 welfare law.

Federal Constitutional Issues

Equal Protection

In a nutshell, recent Supreme Court decisions have held that the federal government may discriminate, but states may not. In *Graham vs. Richardson* (1971), a unanimous Supreme Court struck down state laws in Pennsylvania and Arizona that denied legal immigrants' access to state welfare programs because they violated the 14th Amendment of the U.S. Constitution (the equal protection clause) and because they infringed on the federal government's plenary power over immigration policy.

The Pennsylvania state law required citizenship as a condition of eligibility for the state general assistance program; the Arizona statute required a 15-year residency requirement for public assistance to the disabled, a program partly supported by federal funds. Pennsylvania and Arizona sought to justify their alienage restrictions on the basis of a state's "special public interest" in favoring its citizens over aliens in the distribution of limited resources such as welfare benefits.

Figure 6.
Immigration, Welfare and the U.S. Constitution

Equal protection. The Fourteenth Amendment of the U.S. Constitution prohibits a state from denying to anyone within its jurisdiction the equal protection of the laws, and has been used in the past to prohibit discrimination on the basis of national origin. In addition, the Due Process Clause of the Fifth Amendment has been interpreted to include equal protection, mirroring the Equal Protection Clause of the Fourteenth Amendment.

Due process. Both the Fifth and Fourteenth Amendments (referring to federal and state action, respectively) contain a due process clause. The due process clause (of the Fifth Amendment) states that "No person ... shall be deprived of life, liberty or property, without due process of law." That is, individuals have a right to notice and a hearing.

Congress' plenary power over immigration policy. Article I, section 8, clause 4 of the U.S. Constitution states that Congress' power is to "establish an uniform rule of naturalization." The Supreme Court has long held that the power over immigration and naturalization is exclusively within federal jurisdiction. Congress may classify on the basis of lawful alienage and, to comply with equal protection, must demonstrate only a "rational basis" for its action. One question to be addressed is whether unique immigrant eligibility requirements developed by the states for their programs will violate the constitutional requirement for uniformity.

Tenth Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The question is whether the federal government can dictate to states how to spend state funds and how to deliver state benefits, or whether this represents a commandeering of state legislative authority.

Guarantee Clause. Article IV, section 4 of the U.S. Constitution provides that "The United States shall guarantee to every state in this union a republican form of government...." In *New York vs. United States* (1992), the Supreme Court raised the possibility that the Guarantee Clause is a restriction upon Congress' power to regulate the states.

Right to interstate travel. The fundamental right of interstate movement has been upheld in many Supreme Court opinions, although, like the right to privacy, the source of this right has not been attributed to any particular constitutional provision. State residency requirements for certain public benefits are expected to be challenged as interference with the constitutionally protected right of interstate movement.

Under the Court's analysis of equal protection, states may not classify people for government benefits based on a "suspect" classification (such as alienage, race or ethnicity). The state faces the burden of proving that its legislation on a suspect classification is justified by a compelling governmental interest. In *Graham*, the Court held that a state's interest in reducing welfare spending was not sufficient to justify the classification. Justice Blackmun wrote, "Aliens like citizens pay taxes and may be called into the armed forces.... There can be no 'special public interest' in tax revenues to which aliens have contributed on an equal basis with the residents of the State." (See box on equal protection: strict scrutiny.)

In *Mathews vs. Diaz* (1976), the suit challenged the constitutionality of a federal statute that limited eligibility for Medicare benefits (the buy-in to Medicare Part B) to citizens and resident aliens with five years of residence in the United States. The Court ruled that federal power over immigration law is broad enough to permit the federal government to make distinctions between citizens and aliens and among various groups of aliens. However, the Court said that states do *not* have a legitimate basis for treating citizens and legal immigrants differently.

Under the 1996 welfare law, a question will be raised whether Congress can institute a permanent bar to an entitlement program (e.g., food stamps). The rationale in the *Mathews* case allowed Congress to limit immigrants' ability to buy into Medicare Part B by requiring five years of residence. The Court ruled that Congress could make distinctions between short-term permanent residents and those who had lived in the United States long enough to satisfy naturalization residency requirements. Under the food stamp bar of the welfare law, unlike the durational bar for Medicare, legal immigrants might never meet the requirements of citizenship or 40 quarters of work.

One other landmark Supreme Court case on equal protection was that of *Plyler vs. Doe* (1982), which considered the right of undocumented children to receive elementary education. The Court reaffirmed that education is not a fundamental right and that undocumented aliens are not a "suspect class," so statutes would not be subject to "strict scrutiny." However, the Court feared that denying these children an education might create a permanent underclass of illegal aliens who probably would remain in the United States the rest of their lives. Furthermore, discrimination against the children would punish them for the acts of their parents, since the children had no choice in entering the United States. The Court held that any state statute that created special burdens for undocumented alien children to receive an elementary education would be voided unless it could be shown that the statute furthered some substantial state interest.

EQUAL PROTECTION: STRICT SCRUTINY

The Supreme Court has held that aliens as a group constitute a "discrete and insular minority" deserving of heightened judicial protection, and that alienage is a "suspect classification" prompting strict scrutiny of state discrimination under the Equal Protection Clause. Under the Court's analysis of equal protection, states may not classify people for government benefits based on a "suspect" classification (such as alienage, race, or ethnicity). When a state is not acting with respect to a "suspect class" or a "fundamental right," it must demonstrate only that the legislation is *reasonably* related to a legitimate governmental purpose. Once the Court has determined that the state is legislating with respect to a suspect classification, the state faces the burden of proving that its classification is justified by a *compelling* governmental interest.

The Supreme Court has, however, upheld federal statutes discriminating among aliens, requiring only a rational basis to comply with the Equal Protection Clause.

Due Process

In *Goldberg vs. Kelly* (1970), the Court held that a welfare recipient's interest in continued receipt of welfare benefits is a "statutory entitlement" and as such is "property" within the meaning of the 14th Amendment Due Process Clause. To meet the constitutional requirements of due process, the court outlined the following minimal requirements: 1) pre-termination notices, 2) the opportunity to review and present evidence, and 3) the opportunity to have an impartial hearing officer as a decision maker.

Tenth Amendment

In *New York vs. United States* (1992), the U.S. Supreme Court declared unconstitutional a federal statute because it compelled states to adopt laws and regulations. The 1985 Low-Level Radioactive Waste Policy Amendments Act would have required states to either accept ownership of radioactive wastes within their borders and be liable for all damages, or to regulate according to the instructions of Congress. Justice O'Connor wrote that either option

was impermissible as a commandeering of state power and the imposition on states of a requirement to implement federal legislation.

In *Printz vs. United States* (1997), the U.S. Supreme Court held that Congress cannot compel the states to enact or enforce a federal program by directly conscripting the state officials. The case challenged the constitutionality of administrative requirements of the 1993 Brady Act, which required chief law enforcement officers to implement background checks on prospective handgun purchasers. In the opinion delivered by Justice Scalia, "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case by case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

Right to Interstate Travel

Some states have imposed requirements for Temporary Assistance for Needy Families that withhold benefits until the new resident has lived in the state for a certain period of time or that set the benefit level at that of the previous state of residence. Lawsuits are anticipated on the grounds that these residency requirements may interfere with the constitutionally protected "freedom to travel."

In *Shapiro vs. Thompson* (1969), the Supreme Court held unconstitutional state laws that denied welfare to those who were residents of the state for less than one year but who met all other eligibility requirements. The decisions were based on equal protection and the right to interstate travel. The prohibition of benefits to residents of less than one year created a classification which denied equal protection and did not serve a compelling government interest. In addition, these residents were exercising a constitutional right to movement. The classification penalized the exercise of the right to travel and did not serve a compelling government interest.

In *Memorial Hospital vs. Maricopa County* (1974), the U.S. Supreme Court held that a state statute requiring 12 months of residence in the state as a condition of eligibility for county-funded medical assistance violated the Equal Protection Clause.

State Constitutional Issues and Decisions

In addition to the federal constitutional issues discussed above, many state constitutions may also affect states' ability to deny or restrict benefits to immigrants. As many as 22 states[10] may have a constitutional provision imposing some degree of obligation on the state to provide for its residents' well-being by addressing issues of poverty, education, housing, shelter and nutrition. Some provisions are general, as in Hawaii, which states government should have an "understanding and compassionate heart toward all the people;" Alabama, which requires the counties to make adequate provision for maintenance of the poor; California, which authorizes the Legislature to grant assistance to needy children, blind, and disabled persons; Colorado, which makes available an old-age pension to residents of the state; and New York, which states that aid to the needy shall be provided.

In Connecticut, the court has ruled against state deeming requirements on general assistance. In *Barannikova vs. Town of Greenwich* (1994), the Supreme Court of Connecticut ruled that

the state welfare statute and regulations that required deeming of the sponsor's income to the alien for general assistance benefits were subject to strict scrutiny under the Equal Protection Clause, and were in violation of the Equal Protection Clause.[11]

A 1995 Pennsylvania decision (*Warrick vs. Snider*) upheld a 60-day residency requirement for general assistance. The court held that the denial of General Assistance did not impose a penalty on the right to travel because food stamps and medical assistance were available.

In New Mexico, the state imposed a limit on disabled adults to 12 of 21 months. In 1996, the judge in New Mexico's First Judicial Court ruled that the limit constituted unlawful discrimination against people with disabilities, violating the Americans with Disabilities Act.

Finally, the state attorneys general in Pennsylvania and in Hawaii issued opinions that the state may not impose welfare restrictions on aliens.

Pennsylvania Attorney General's Decision

Pennsylvania's Department of Public Welfare asked the attorney general's opinion regarding the enforceability of the durational residency and citizenship requirements of state law amending the public welfare code related to cash and medical assistance eligibility of the general assistance program (Act 1996-35). The statute disqualifies for cash and medical assistance an applicant who is not a citizen of the United States. Under Section 412 of the federal welfare reform law, states are permitted to determine the eligibility for state public benefits of aliens who are lawfully residing in the United States. The attorney general's December 9, 1996 opinion quotes *Graham vs. Richardson*:

> Although the federal government admittedly has broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization, Congress does not have the power to authorize the individual states to violate the equal protection clause. A congressional enactment to permit state legislatures to adopt divergent laws on the subject of citizenship requirements for federal supported welfare programs would appear to contravene this explicit constitutional requirement of uniformity.

The Pennsylvania attorney general's opinion states that, in *Mathews vs. Diaz*, state laws that discriminate against aliens in the provision of welfare benefits are unconstitutional unless narrowly tailored to achieve a compelling government interest. However, it notes that *Mathews* does not address whether a state law that establishes classifications of eligibility for welfare benefits based on alienage is subject to strict scrutiny if the state law is authorized by an act of Congress.

Graham held specifically that the Fourteenth Amendment prohibits Pennsylvania from requiring citizenship as a condition of eligibility for its General Assistance program.

Hawaii Attorney General's Decision

Hawaii's Department of Human Services (DHS) asked the attorney general whether the DHS may constitutionally exercise the option to exclude welfare benefits for legal aliens arriving after August 22, 1996. In a letter dated January 6, 1997, the attorney general concluded that "a federal court would most likely find it unconstitutional if the State were to exercise its option to exclude benefits for legal aliens."

The attorney general notes that Congress sought, in Section 400(7) of the welfare law,[12] to enable states to meet the standard of a compelling government interest if the state restriction is parallel to a federal restriction. However, the attorney general believes the provision cannot achieve its intended purpose because:

> (1) it is unlikely that Congress can dictate the proper judicial determination of what constitutes a compelling state interest and what is least restrictive; (2) a state that chooses to exclude aliens from benefits cannot logically be said to be serving a compelling federal interest in assuring that aliens be self-reliant in accordance with national immigration policy, because the state was given the option to include aliens; nor can Congress declare what is compelling with respect to state interests; and (3) sec. 400(7)'s ability to save (through Congress' authority over immigration and naturalization matters) otherwise invalid state discrimination against aliens is substantially weakened or destroyed by Graham's repudiation, on non-uniformity grounds, of Congress' authority to give states the option of discriminating against aliens.

The letter states that "It is doubtful Hawai'i will be able to come up with a compelling state interest to justify the discrimination." Attempts by DHS to exercise any of its options may face an equal protection challenge from legal aliens who are denied federal or state benefits.

Recent Lawsuits Challenging the Federal Welfare Law

During the first year of the federal welfare law, a handful of lawsuits were filed addressing the constitutionality of denying public benefits to aliens. New York City (and plaintiffs in a class action suit) challenged the denial of food stamps and Supplemental Security Income (SSI) on equal protection grounds. Florida filed a suit claiming the food stamps and SSI bar violated the Equal Protection Clause and the Tenth Amendment. (A similar class action suit in California became moot after the federal government restored most SSI benefits.) In Illinois, a class action suit was filed to stop the cutoff of food stamp and SSI benefits for those who had filed for naturalization but whose applications were still pending at the Immigration and Naturalization Service (INS). New York City also filed a lawsuit related to communication with the INS (preemption of a city executive order protecting undocumented immigrants from being reported to the INS). Finally, several newly created state residency requirements have been challenged on the basis of equal protection and the right to travel.

New York City: SSI and Food Stamp Benefits

The City of New York filed a suit against the federal government on March 26, 1997, challenging the constitutionality of denying food stamp and cash assistance benefits to elderly and disabled legal immigrants who were in the United States prior to passage of the federal law.[13] The lawsuit was filed with a class action suit (*Abreu vs. Callahan*). The case asserted that, by denying and terminating SSI and food stamps, the welfare act discriminates on the basis of alienage and thus denies lawful permanent residents equal protection of the law in violation of the Due Process Clause. The suit asked the court to declare Section 402 of the welfare reform law unconstitutional as a violation of Fifth and Fourteenth Amendment guarantees to equal protection; to enjoin the government from implementing Section 402; to restore all SSI and related food stamp benefits denied or withheld as a result of implementation of Section 402; and to order immediate processing of all SSI and related food stamp applications not adjudicated due to the welfare reform law. Mayor Giuliani filed suit to prevent the human and fiscal disaster

that was predicted for August and September, when more than 70,000 city residents were expected to lose their SSI benefits.

On July 24, 1997, Judge Kaplan of the Federal District Court for the Southern District of New York upheld the constitutionality of the welfare law. The court determined that, because some noncitizens remain eligible for SSI and food stamps, the law should not be analyzed as discrimination based on citizenship (strict scrutiny), but on a distinction between two groups of noncitizens (rational basis scrutiny, under Congress' plenary authority over immigration). Although recognizing the hardship of Section 402, the court deferred to Congress' responsibility to make these decisions. (The city intends to appeal this part of the decision.) However, the judge did rule that the Social Security Administration must provide SSI benefits to those who had applied before the federal welfare law was enacted but had not yet received benefits. This ruling restores SSI benefits to approximately 10,000 elderly and disabled living in New York, Connecticut and Vermont.

Florida: SSI and Food Stamps

Florida became the first state to sue the federal government over the federal welfare reform law (April 23, 1997). In a suit filed in the Federal District Court of Miami,[14] Florida asked the court to declare unconstitutional and void the denial of SSI and food stamp benefits to otherwise eligible immigrants and to restore these benefits. Florida argued that the welfare law violates the equal protection guarantees of the Fifth Amendment; an agreement with SSA to reimburse Dade County for interim assistance paid to legal noncitizens; Article IV and the Tenth Amendment of the U.S. Constitution by forcing Florida to assume the costs of caring for those who will lose benefits; and basic constitutional principles regarding discrimination. The noncitizens included in the suit seek to represent a class, and claim that the denial and termination of SSI and food stamps to noncitizens violates the Due Process Clause of the U.S. Constitution by denying equal protection to legal immigrants.

The case was heard on July 15 before Judge Graham; there was a federal motion to dismiss. In August, the judge reviewed the case in light of the federal restoration of SSI benefits. The state's case was denied in deference to Congress' jurisdiction over immigration policy. The class action suit was also dismissed. Plaintiffs will continue the food stamp issue: 97,648 legal immigrants were expected to lose food stamps in Florida, representing $89 million in lost benefits for those individuals. In addition, 3,714 Permanently Residing Under Color of Law (PRUCOL) immigrants will lose their food stamps after October 1, 1998.

A related class action suit, *Medina vs. Callahan*, 1997, addressed retroactivity of SSI terminations. The Social Security Administration agreed to reevaluate the eligibility of those who applied before August 22, 1996, and who were denied after that date because they were determined ineligible as a result of the welfare law. SSA estimates 8,000 individuals nationwide are affected.

New York City: Communication with the INS

Both the federal welfare law and the immigration reform law contain provisions that prohibit states and localities from restricting communication to the INS about the immigration status of an alien in the United States. This provision conflicts with New York City's executive order 124, which bars city employees from disclosing to federal immigration authorities the immigration status of aliens who come to their attention, unless required to do so by law, and specifically bars the New York City Police Department from reporting the immigration status of victims of crime. The policy was created so that victims of crime would not be deterred

from cooperating with police for fear of deportation, those infected with contagious disease would not be deterred from seeking treatment, and undocumented children would not be afraid to attend public schools.

Filed in October 1996, New York City's suit claimed that the federal law violates principles of federalism and the Tenth Amendment and Guarantee Clause of the U.S. Constitution because 1) they directly prohibit states and localities from engaging in the central sovereign process of passing laws or otherwise determining policy; and 2) they usurp state and local governments' administration of core functions of government, including the provision of police protection and regulation of their own workforces. The suit asks the court to declare Section 434 of the Welfare Reform Act and Section 642(a) and (b) of the Immigration Reform Act unconstitutional and void, and to enjoin defendants from enforcing them. In filing the suit, Mayor Giuliani cited the recent U.S. Supreme Court decision in *New York vs. United States*, which states that Congress must exercise its conferred powers subject to limitations contained in the Constitution, particularly in the Tenth Amendment.

On July 18, 1997, a New York court struck down the city's executive order (1989). Judge Koeltl stated that, "Although the statutes can be characterized as interfering with city policy that prevents its officials from cooperating with federal immigration authorities except in accordance with certain procedures, that affect on local policy is not the type of intrusion that is sufficient to violate the Tenth Amendment or principles of federalism." The judge ruled that, because the law does not *require* employees to turn in illegal immigrants, it did not infringe on the city's rights.

The city intends to appeal the decision. In the meantime, the mayor has stated he will encourage city employees not to report immigration status to INS.

Class Action Suits

Illinois: Benefits for those pending naturalization

A class action lawsuit was filed in Chicago, Illinois, on July 24, 1997, to stop the cut off of federal food stamp and SSI benefits for needy legal immigrants who have filed for but have not yet attained citizenship because of the INS backlog. Under the 1996 federal welfare law, most legal immigrant food stamp recipients lost their federal eligibility on August 22, 1997. The suit estimated that 10,000 Chicago residents, including many elderly and disabled immigrants, would lose Supplemental Security Income and twice that many would lose food stamps when the law took effect. The suit charged that the act violated constitutional guarantees of equal protection and due process by denying benefits solely on the basis of residency status.

Plaintiffs in *Shvartsman vs. Callahan* are legal immigrants who have filed citizenship applications. The lawsuit alleged the backlog in processing applications at INS makes it impossible for these individuals to become citizens within the timeframe outlined by the welfare law to continue eligibility for SSI and food stamps. The lawsuit asked the court to order the U.S. Department of Agriculture and Social Security Agency to continue food stamps and SSI to those individuals who have filed applications for citizenship until the INS makes a decision on their citizenship application.

With restoration of SSI benefits in the Balanced Budget Act of 1997, the SSI claims of the lawsuit were moot. The food stamp portion of the case continued. Plaintiffs sought an injunction

against termination of food stamps based on earlier Illinois ruling, *Youakim vs. McDonald* (1995), which concerned termination of payments to foster parents who were not licensed. The seventh circuit court decision held that foster children had a property interest in foster care payments, entitling them to due process and continued benefits until the licensing applications were determined. The district court denied the injunction because there is no continuing property right for food stamps because eligibility is redetermined periodically, and, based on *Atkins vs. Parker* (1984), the Supreme Court has held that when the legislature adjusts benefit levels, the legislative process provides due process.[15] The case was appealed. Plaintiffs argued that up to three years of delay by the INS in processing citizenship applications violated their right to due process in receiving food stamps.

On March 16, 1998, the seventh circuit court ruled against the plaintiffs' appeal, finding that the food stamp benefit has a closed period of entitlement, and plaintiffs did not have a property right after their recertification period ended. Therefore, plaintiffs did not have a property interest protected by due process. However, the court said that for a different kind of benefit that was open-ended, such as SSI or virtually any other program, the plaintiffs would have had a strong claim to property. Finally, the court limited its holding to the seventh circuit, allowing suits in other circuits to be brought forward.

The lawsuit was filed by the SSI Coalition for a Responsible Safety Net, the Poverty Law Project of the National Clearinghouse for Legal Services, the National Immigration Law Center and the National Senior Citizens Law Center. Also providing assistance to plaintiff's lawyers are the Food Research and Action Center, the Farmworker Justice Fund, Inc. and the Chicago firm of Lehrer & Redleaf.

Challenges on Residency

The federal welfare law sought to authorize states to treat new residents differently than other state residents. According to the National Conference of State Legislatures' welfare project, 14 states had adopted residency requirements as of October 31, 1997: California, Connecticut, Georgia, Illinois, Iowa, Minnesota, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Washington and Wisconsin.

A case recently heard in Pennsylvania, *Maldonado vs. Houstoun*, challenged the constitutionality of a multi-tier durational residency requirement created in 1996 for Pennsylvania public benefits (cash, medical assistance and food stamps). Pennsylvania law would have implemented a 12-month period where new residents would receive public assistance at either the level of their previous state of residence or Pennsylvania's, whichever was lower. The case asserted that the residency requirements imposed limits on constitutionally protected rights to travel, equal protection and nondiscriminatory treatment, and violated 42 U.S.C. section 1983. The court granted a preliminary injunction on October 6, 1997. The state will appeal to the third circuit.

A similar welfare residency requirement was enjoined in California (*Roe vs. Anderson*, 1997). The suit claims the policy violates equal protection, the right to travel, and the Privileges and Immunities Clause.

In Rhode Island, *Westenfelder vs. Ferguson* was filed August 21, 1997, challenging Rhode Island's policy of providing benefits at 30 percent less for those with less than one year of residence. On March 17, 1998, the court granted a preliminary injunction.

New York's durational residency requirement of six months was also enjoined. The state court ruled that the provision was an infringement of the right to travel and that it violated the state constitution's requirement of aid to the needy.

In New Jersey, a 12-month residency requirement has been challenged in *Sanchez vs. Department of Human Services,* filed September 15, 1997. The case claims violations of equal protection, right to travel, and the unequal treatment provision of the New Jersey state constitution. The case was filed on behalf of one individual; the state is providing benefits pending a decision.

In Minnesota, a state court granted a preliminary injunction of the state's residency law that provides benefits to new residents on the level available in their former state of residence, for their first year in Minnesota. The Minnesota Supreme Court struck down similar legislation in the early 1990s.

Conclusion

As states attempt to implement the immigrant provisions of the federal welfare law, states that have constitutional or statutory obligations to provide for the poor will probably see these laws tested in court. In the interim, states can expect to be required to continue to provide benefits to legal immigrants as the cases make their way through the judicial system. In terms of the U.S. Constitution, the following questions must be considered.

- Can Congress delegate to states the authority to discriminate on the basis of lawful alienage, i.e., violate the Equal Protection Clause of the U.S. Constitution?
- Will unique immigrant eligibility requirements developed by the states for their programs violate the Constitutional requirement for a uniform rule of naturalization?
- Do the permanent federal bars on the SSI and food stamps entitlement meet equal protection and due process principles?
- Can the federal government dictate to states how to spend state funds and how to deliver state benefits for "not qualified" aliens or does this represent a "commandeering" of state legislative authority?
- What is the authority of states to impose limits or restrictions on state programs on the basis of alienage, including deeming and durational residency requirements?

APPENDIX A

WELFARE REFORM AND IMMIGRANTS: Q&A

This Q&A incorporates benefit changes in the 1996 welfare reform law (P.L. 104-193, signed August 22, 1996); the immigration reform law (P.L. 104-208, signed September 30, 1996); the FY1997 supplemental appropriations bill (P.L. 105-18, signed June 12, 1997); and the FY1998 budget reconciliation law (P.L. 105-33, signed August 5, 1997).

KEY PROVISIONS RELATED TO IMMIGRANT BENEFITS

- ❑**SSI:** Recipients as of August 22, 1996, may retain SSI/Medicaid benefits. Residents as of August 22, 1996, who become disabled are eligible for SSI. (Ineligible: residents as of August 22, 1996, who reach 65, but are not disabled; and *new* immigrants, arriving after August 22, 1996.)
- ❑**Food Stamps:** Most noncitizens are no longer eligible for Food Stamp benefits.
- ❑*New* immigrants are barred from **federal means-tested benefits** (TANF, Medicaid, SSI and Food Stamps) for 5 years.
- ❑After the five-year bar, *new* immigrants who have sponsors must include their sponsors' income when applying for federal means-tested benefits, known as **deeming**, until the immigrant attains citizenship or 10 years of work.
- ❑States have the option to determine immigrants' eligibility for **TANF, Medicaid** and **SSBG** for those resident as of August 22, 1996 (for new immigrants, after the five-year bar).
- ❑States have the option to provide or bar **state-funded programs** to current residents and newly arriving immigrants. State- and local-funded programs may **deem** new immigrants who have the new enforceable affidavits of support. (These affidavits went into effect December 19, 1997).
- ❑**Undocumented immigrants** are ineligible for federal, state, and local public benefits.
- ❑All state and local agencies must **verify** that immigrant applicants for public benefits are "qualified aliens" and eligible for such benefit. HHS must define "federal public benefit" and INS must issue verification procedures. States must comply with federal regulations within two years.

SSI and Food Stamps

Q. When do legal immigrants lose SSI benefits?

The FY 1998 budget reconciliation law, enacted August 5, 1997, restored Social Security Income to those who were receiving benefits as of August 22, 1996, and permits those who were lawfully residing in the United States as of August 22, 1996, who become disabled in the future, to be eligible for SSI. (Immigrants residing in the United States as of August 22, 1996, who become 65 years of age but are not disabled, are *not* eligible for benefits.) The SSI exemption for refugees, asylees and those whose deportation is withheld has been extended from five years to seven. SSI and Medicaid benefits also are retained for those recipients who applied before 1979 (when the Social Security Administration first began asking for proof of immigration status.)

Exceptions to the SSI bar:

1. Refugees, asylees and those whose deportation is withheld for their first seven years in the United States (Cubans, Haitians, and Amerasians now are included in this exemption);
2. Veterans, those on active duty, and their spouses and unmarried dependent children;
3. Immigrants who have worked in the United States for 40 quarters. The immigrant's spouse and minor children can be credited with qualifying work quarters. (To count as a "qualifying quarter" after December 31, 1996, the individual must not receive any public benefits during the quarter.)

Q. When do legal immigrants lose Food Stamp benefits?
Effective September 1997, most legal immigrants lost their food stamp benefits. New arrivals are ineligible until they attain citizenship or 40 quarters of qualifying work.

Exceptions to the food stamp bar:

1. Refugees, asylees, and those whose deportation is withheld for their first five years in the United States (Cuban and Haitian entrants, and Amerasians are now included in this exemption);
2. Veterans, those on active duty, and their spouses and unmarried dependent children;
3. Immigrants who have worked in the United States for 10 years. The immigrant's spouse and minor children can be credited with qualifying work quarters. (To count as a "qualifying quarter" after December 31, 1996, the individual must not receive any public benefits during the quarter.)

States can also provide state-funded food stamps to immigrants who are made ineligible by the federal welfare law. The federal FY 1997 emergency supplemental appropriations law made it possible for states to purchase food stamps from the federal government. They must pay the federal government the value of the benefits plus other costs such as printing and shipping.

Five-Year Bar and Deeming

Q. When does the five-year bar on federal means-tested benefits take effect?
The five-year bar is prospective. Only new immigrants (arriving on or after August 22, 1996) are affected.

Individual exceptions from the five-year bar:

1. Refugees, asylees, those granted withholding of deportation, Cuban and Haitian entrants and Amerasians; and,
2. Veterans, those on active military duty, and their spouses and dependents.

Programs exempt from the five-year bar:

1. Emergency medical assistance;
2. Emergency disaster relief;
3. National school lunch benefits;
4. Child nutrition act benefits (including WIC);
5. Public health assistance (not including Medicaid) for immunizations, testing and treatment of symptoms of communicable diseases;
6. Foster care and adoption assistance;
7. Programs specified by the attorney general that a) are in-kind, community level services; b) do not condition assistance on the individual's income or resources; and c) are necessary for the protection of life or safety;

8. Higher education;
9. Means-tested programs under the Elementary and Secondary Education Act;
10. Head Start; and
11. Job Training Partnership Act.

Q. What is a "federal means-tested program?"
HHS has defined "federal means-tested program" as a program that requires both mandatory federal spending *and* provides benefits based on the individual's income and resources. TANF, Medicaid, SSI and Food Stamps are means-tested programs. (See the *Federal Register* notice published by USDA and SSA on August 22, 1997.)

Q. What about school meals?
School lunch and school breakfast are available to all immigrants regardless of status; states may provide certain other nutrition programs to undocumented immigrants.

Q. What is deeming?
Deeming means that the income and resources of the sponsor and his or her spouse count as the immigrant's income in determining program eligibility . Previously, deeming applied only to AFDC, SSI and Food Stamps. Deeming now applies to TANF, SSI, Food Stamps and Medicaid until the sponsored immigrant is naturalized or has worked for 10 years. An immigrant needs a sponsor to enter the United States if the State Department or the Immigration and Naturalization Service (INS) determines that the immigrant may become a "public charge," dependent on public assistance. Sponsors must now be citizens, nationals or lawful permanent residents; 18 years or over; a resident of the 50 states or Washington, D.C.; and the petitioner for admission of the immigrant. The immigration bill requires sponsors to have an income 125 percent of the federal poverty level, and to maintain the immigrant at that level. Active duty personnel must have an income of 100 percent of the federal poverty level to be a sponsor.

Q. How many immigrants have sponsors?
Family immigrants are often, but not always, sponsored. The 1996 immigration reform law requires new family-related immigrants to produce affidavits of support from their sponsor(s) that are now legally enforceable (effective fall 1997). Refugees are not sponsored immigrants. Employment-based immigrants are generally not sponsored.

Q. When do the new deeming rules take effect?
Deeming under the state option to deem for state programs became effective in December 1997. Deeming for federal programs will not begin until August 22, 2001 (e.g., after the five-year bar that applies to new immigrants). Deeming for all federal and state means-tested programs applies only to the newly executed affidavits of support, and thus does not affect immigrants currently living in the United States. (However, new immigrants are subject first to the five-year bar on federal benefits. Then, deeming applies for federal benefits until the immigrant attains citizenship or 10 years of work). The INS issued regulations on December 19, 1997, and the new affidavits of support are now effective. States have the option to deem for state-funded programs except for emergency health, disaster, school lunch and child nutrition, immunizations, testing and treatment of symptoms of communicable diseases, foster care and adoption assistance, the attorney general's discretionary programs (programs that are in-kind, not conditioned on income and necessary for the protection of life or safety, such as soup kitchens, child protection and short-term shelter).

Note: Veterans and active duty military personnel are not exempted from deeming as they are from the SSI and Food Stamps bar, the five-year bar, and the AFDC, Medicaid, SSBG state option. The immigration bill added an exception to deeming for battered spouses and children (if substantially connected to need for benefits) and for indigence (to avoid hunger or homelessness).

State Option for AFDC, Medicaid and SSBG

Q. What is the eligibility for immigrants under AFDC (Aid to Families with Dependent Children, now Temporary Assistance for Needy Families, or TANF), Medicaid and SSBG (Social Services Block Grant)?

The legislation offers states the authority to determine the eligibility of "qualified" immigrants for these three programs. Effective as of January 1997, states may choose to provide, deny, deem, or otherwise limit these programs for current immigrant residents. Immigrants arriving after August 22, 1996, are subject first to the five-year bar on federal means-tested benefits. After the five-year bar, states have the option to bar until citizenship. Legislative intent is unclear whether states can waive deeming after five years for TANF, Medicaid and SSBG.

Individual exceptions:

1. Refugees, asylees, and those whose deportation is withheld, Cuban and Haitian entrants and Amerasians (only for their first five years in the United States for TANF and SSBG, and seven years for Medicaid);
2. Veterans, those on active duty, and their spouses and unmarried dependent children;
3. Immigrants who have worked in the United States for 10 years.

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

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

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

Medicaid

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

No. Because SSI eligibility automatically qualified immigrants for Medicaid, the loss of SSI benefits was expected to terminate Medicaid benefits for legal immigrants. The budget reconciliation act maintains Medicaid benefits for those who receive SSI.

Q. Do states have to deem current immigrant residents for Medicaid?

States may not deem immigrants who were residing in the United States as of August 22, 1996. Deeming applies only to the new affidavits of support, effective December 1997.

Q. Can Medicaid funds be used for immunizations, testing and treatment of communicable disease?

No, only non-Medicaid funds can be used for "not qualified" aliens and for new arrivals subject to the five-year bar.

State Option for State-Funded Programs

States are given the authority to determine eligibility for state public benefits of qualified aliens, nonimmigrants or those paroled into the United States for less than one year.

Exceptions:
1. Qualified aliens shall be eligible for state public benefits;
2. Refugees, asylees, and those whose deportation is withheld, Cuban and Haitian entrants, and Amerasians for their first five years in the United States;
3. Veterans, those on active duty, and their spouses and unmarried dependent children;
4. Immigrants who have worked in the United States for 10 years.

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

Illegal or Undocumented Immigrants

Q. Who is eligible for public benefits?

Only "qualified aliens" (lawful permanent residents, refugees, asylees, those paroled into the United States for more than one year, those whose deportation has been withheld, Cuban and Haitian entrants, and conditional entrants before 1980) are eligible for federal public benefits. The immigration reform bill added battered spouses and children to the definition of qualified aliens, if there is a substantial connection to the abuse and the need for benefits. The budget reconciliation bill extended SSI for PRUCOL recipients of SSI until September 30, 1998. Only "qualified aliens," nonimmigrants or those paroled into the United States for less than one year are eligible for state or local public benefits. HHS will need to issue a definition of federal public benefits.

Undocumented immigrants are ineligible for most public benefits. States may provide benefits to ineligible immigrants only by enacting state law to affirmatively provide eligibility after enactment of the federal welfare reform law (August 22, 1996).

Source: "Welfare Reform & Immigrants: Q&A, "Immigrant Policy Project, National Conference of State Legislatures, December 31, 1997.

The law gives states the option to determine the TANF eligibility of immigrants who were in the United States on the date of the law's enactment, as well as the option to determine *new* immigrants' eligibility after the end of their five-year federal bar. States may choose to provide, deny, deem or otherwise limit TANF for immigrants resident as of August 22, 1996. It is unclear whether states can waive deeming after the five-year bar on new arrivals.

States are required to maintain state funding at a certain level in order to receive their full block grant allocation. This "maintenance of effort" (MOE) requirement is based on 80 percent of the state's FY 1994 spending on AFDC, JOBS, AFDC-related child care and emergency assistance. States may count expenditures on eligible immigrant families toward the MOE. In addition, states may count funds for services to legal immigrant families who were eligible for TANF but no longer qualify because of the welfare law's immigrant restrictions (for example, refugees in the United States for more than five years). State expenditures for illegal immigrants may count toward MOE if the state has enacted legislation after August 22, 1996, to affirmatively provide such services. States are required to use state funds when providing assistance to "not qualified" aliens (nonimmigrants, those paroled into the United States for less than one year, undocumented immigrants, and those "Permanently Residing Under Color of Law") or to qualified aliens arriving after August 22, 1996, during the five year federal ban.

Eligibility for TANF Is Limited to:

- Citizens
- Lawful permanent residents with 10 years of work
- Refugees, asylees, and those whose deportation has been withheld, Cuban and Haitian entrants and Amerasians during their first five years in the United States
- Veterans, active duty military personnel, their spouses, and dependents
- Lawful permanent residents in the United States on or before August 22, 1996 (at state option)
- Battered spouses and children may receive benefits if there is a "substantial" connection between the abuse and the needed benefit, and the immigrant no longer resides with the batterer

Note: Lawful permanent residents arriving after August 22, 1996, are barred for five years. Deeming then applies until citizenship or 40 work quarters is achieved.

The Balanced Budget Act of 1997

The 1997 budget reconciliation law added Cuban-Haitian entrants and Amerasians (children born in Southeast Asia of U.S. military or civilian personnel during the Vietnam War) to the list of qualified aliens exempted from the five-year ban on TANF benefits.

State Action

This dramatic change in federal policy has effectively shifted the national responsibility for needy immigrant families onto state budgets. Nearly all states chose to provide TANF to disadvantaged immigrant families, in conformance with the federal requirements and options. Most will provide assistance to the following groups: 1) qualified aliens who were in the United States at the time of the federal welfare reform law's enactment; 2) qualified aliens who enter the country after enactment, after their first five years in the United States; and 3) qualified aliens entering after enactment who are exempted from the five-year ban. In addition, several states created residency requirements for new state residents (e.g., providing a lower benefit level for new residents, usually for a short time period). According to the National Conference of State Legislatures' welfare project, 14 states had adopted residency requirements as of October 31, 1997: California, Connecticut, Georgia, Illinois, Iowa, Minnesota, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Washington and Wisconsin.

Assistance to Immigrants Living in the United States Prior to Federal Welfare Reform

As of July 15, 1997, all 50 states, the District of Columbia, the U.S. territories of Guam and the Virgin Islands, the Commonwealth of Puerto Rico, and many Indian tribes had filed TANF plans with the U.S. Department of Health and Human Services (HHS). Of those, only Alabama has chosen to deny TANF to all immigrants. Earlier state plans from Kentucky, West Virginia, Louisiana and Wyoming indicated that TANF benefits would be denied, but all four states have

since changed or clarified their plans to provide TANF to qualified immigrants. IDAHO will provide TANF to minor noncitizens living in the U.S. prior to enactment; noncitizen parents will not be eligible for TANF but must meet work requirements for the dependent minor to be eligible.

Assistance to Post-Enactment Entrants During the Five-Year Bar on Benefits
Although post-enactment immigrants may not receive federal TANF money for five years, unless they are exempt from the ban, states can opt to provide state-funded benefits to these immigrants. A small number of states have chosen to do so. Some examples follow.

- NEBRASKA will continue to serve legally admitted non-citizens under the same program regulations as are applied to other Nebraska families, regardless of their date of entry into the United States. After the new affidavits of support are released from the federal government, immigrants with sponsors must include their sponsor's income when applying for TANF.
- NEW YORK will provide safety net assistance to new arrivals and PRUCOLs; in general, public assistance benefits for the first 12 months of New York residency will be limited to either 50 percent of the New York benefit or the benefit available in the state of prior residence, whichever rate is higher.
- OHIO passed legislation requiring the Ohio Department of Human Services to draft regulations on eligibility, including residency and citizenship requirements, for the Ohio Works program and Ohio's disability assistance program.
- In UTAH, qualified aliens and those permanently residing under color of law (PRUCOLs) will be eligible for the same level of benefits that citizens receive under TANF, for a total of 36 months, regardless of their date of entry. Sponsor income deeming will be required for three years.
- The WASHINGTON legislature passed a law to create a state-funded program for legal immigrants and PRUCOLs that mirrors the state's TANF program. Sponsor income deeming is required for five years from the date the sponsor signed the affidavit. The law also requires 12 months of residency before post-enactment immigrants are eligible for assistance.

Thus far, almost every state has taken steps to ameliorate the loss in welfare benefits to immigrant families. However, few states will provide benefits to those new entrants facing a five-year ban, and unqualified aliens remain largely uncovered by public assistance programs. In addition, states anticipate that coverage to legal entrants will be significantly restricted by the sponsor income deeming requirement. Thus, the hole in the immigrant safety net remains until federal or state legislatures choose to further close the gap.

Sources and References

- "Summary of Selected Elements of States Plans for Temporary Assistance for Needy Families," National Governors' Association Center for Best Practices, July 15, 1997.
- CBO Estimates of Savings from Banning Medicaid and TANF Services to Current and Future Immigrants (October 1993 estimates).
- *Immigrant Policy News ... State LegisLine,* Immigrant Policy Project at NCSL.

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Source: "Welfare Reform & Immigrants: Temporary Assistance for Needy Families," Immigrant Policy Project, National Conference of State Legislatures, December 15, 1997.

This information is periodically updated on the StateServ website (www.StateServ.hpts.org).

Appendix C

Supplemental Security Income

The 1996 federal welfare reform barred most legal immigrants from receiving Supplemental Security Income (SSI), a cash assistance program for the elderly, blind and disabled. Many state policymakers were concerned about the loss of assistance to long-term residents who often had no other source of support. States such as Illinois, Nebraska, Washington and Colorado provided access to state-funded programs to fill the gap created by the federal government. In 1997, Congress reversed most of the cuts, restoring benefits to those receiving benefits on August 22, 1996, and those who are or become disabled. Immigrants no longer covered are those who become elderly (65 years of age) after August 22, 1996, and immigrants who arrive after August 22, 1996, unless they meet one of the law's exceptions.

Background

Supplemental Security Income is a federal income support program administered by the Social Security Administration for low-income blind, elderly and disabled individuals. In addition to being low-income, applicants must be at least one of the following: elderly (65 years or older), blind (20/200 with corrective lenses), or disabled (physically or mentally unable to obtain "substantial gainful employment" for 12 continuous months). After five years of residence in the United States, immigrants have been eligible for SSI on the same basis as citizens. During these first five years, the income of the immigrants' sponsor was counted toward the income of the immigrant for eligibility determinations. The following categories of immigrants were previously eligible to receive SSI: lawful permanent residents; refugees, asylees, those granted withholding of deportation, parolees, Cuban and Haitian entrants, conditional entrants; aliens granted indefinite voluntary departure, stay of deportation, suspension of deportation and order of supervision; Family Unity, deferred enforced departure; residents since 1972; and PRUCOL (those residing in the United States with the permission of the U.S. Immigration and Naturalization Service). Immigrants granted temporary protected status, nonimmigrants and unauthorized immigrants were not eligible.

The Federal Welfare Law of 1996

The Personal Responsibility and Work Reconciliation Act of 1996 barred immigrants from eligibility for SSI benefits until they achieved citizenship or 40 quarters of qualifying work. Exemptions were given to 1) refugees, asylees, and those whose deportation has been withheld; and 2) veterans, active duty military personnel, and their spouses and dependents. Originally, federal funding for immigrant SSI benefits was to be terminated on August 22, 1997. However,

the 1997 disaster relief law, enacted on June 12, 1997, provided an additional $221 million to extend SSI benefits to eligible immigrants through September 30, 1997. On August 5, 1997, the federal Balanced Budget Act was signed, restoring SSI to most immigrants at risk of losing their benefits (more than 350,000 individuals, according to the Social Security Administration).

The Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (P.L. 105-33) reversed $11.4 billion of the $23.8 billion in immigrant benefits stripped away by the 1996 welfare reform law. The act restored SSI to individuals who were receiving SSI benefits on August 22, 1996, and to immigrants lawfully residing in the United States as of that date who are or become disabled. Those who remain ineligible for SSI are 1) low-income immigrants residing in the United States as of August 22, 1996, who become elderly (65 years of age) but are not disabled; and 2) those who arrive after August 22, 1996, unless they meet one of the law's exemptions.

Other provisions:

- Current recipients who are PRUCOL may retain their SSI and Medicaid benefits until September 30, 1998. This helps approximately 24,000 recipients who would otherwise lose benefits this year because they are not included in the new definition of "qualified alien." ("Not qualified" aliens include undocumented or illegal aliens, nonimmigrants and PRUCOL immigrants—who are immigrants living in the United States for an indefinite period under INS discretionary authority).
- The law specifically retains "derivative eligibility," that is, immigrants receiving SSI may retain eligibility for Medicaid.
- The act lengthens from five years to seven the period during which SSI eligibility is guaranteed to refugees, asylees and aliens whose deportation has been withheld. Cuban and Haitian entrants and Amerasians (children born in Southeast Asia of U.S. military or civilian personnel during the Vietnam War) have been added to this exemption.
- Certain American Indians living along the Canadian border who have legal permanent resident status are exempted from the SSI and Medicaid bar.
- The act also restored SSI and Medicaid to recipients who had applied prior to 1979, the year that the Social Security Administration began asking for proof of citizenship and immigration status. This provision affected many citizens—as well as immigrants—who were at risk of losing benefits because they had no birth certificate or other documentation proving citizenship or naturalization.

Litigation

In March 1997, the City of New York filed suit against the federal government, challenging the constitutionality of denying food stamp and cash assistance benefits to elderly and disabled legal immigrants who were in the United States prior to passage of the federal law. The case asserted that the welfare act discriminated on the basis of alienage and denied equal protection to lawful permanent residents. The district court upheld the constitutionality of the welfare law, but did rule that the Social Security Administration must provide SSI to those who had applied for benefits before the enactment of the law on August 22, 1996.

A class action lawsuit was filed in Illinois in July 1997 to prevent termination of benefits for immigrants who had applied for but had not attained citizenship due to the INS backlog on the

Table C-1. Estimate of Current, Noncitizen SSI Recipients To Lose Eligibility Due to Welfare Reform

	Noncitizen Recipients[1]			Federal Savings per Month[2]		
State	Type I	Type II	TOTAL	Type I	Type II	TOTAL
Alabama	360	9,215	9,575	$155,520	$3,980,880	$4,136,400
Alaska	380	117	497	$164,160	$50,544	$214,704
Arizona	4,390	2,979	7,369	$1,896,480	$1,286,928	$3,183,408
Arkansas	250	4,569	4,819	$108,000	$1,973,808	$2,081,808
California	165,380	76,356	241,736	$71,444,160	$32,985,792	$104,429,952
Colorado	2,760	1,898	4,658	$1,192,320	$819,936	$2,012,256
Connecticut	2,560	1,111	3,671	$1,105,920	$479,952	$1,585,872
Delaware	190	334	524	$82,080	$144,288	$226,368
District of Columbia	500	769	1,269	$216,000	$332,208	$548,208
Florida	39,440	21,999	61,439	$17,038,080	$9,503,568	$26,541,648
Georgia	2,650	9,474	12,124	$1,144,800	$4,092,768	$5,237,568
Hawaii	2,310	1,026	3,336	$997,920	$443,232	$1,441,152
Idaho	290	405	695	$125,280	$174,960	$300,240
Illinois	13,260	6,783	20,043	$5,728,320	$2,930,256	$8,658,576
Indiana	700	1,749	2,449	$302,400	$755,568	$1,057,968
Iowa	630	1,053	1,683	$272,160	$454,896	$727,056
Kansas	800	608	1,408	$345,600	$262,656	$608,256
Kentucky	460	4,028	4,488	$198,720	$1,740,096	$1,938,816
Louisiana	1,460	6,550	8,010	$630,720	$2,829,600	$3,460,320
Maine	290	1,039	1,329	$125,280	$448,848	$574,128
Maryland	4,330	2,456	6,786	$1,870,560	$1,060,992	$2,931,552
Massachusetts	13,590	7,782	21,372	$5,870,880	$3,361,824	$9,232,704
Michigan	4,290	5,232	9,522	$1,853,280	$2,260,224	$4,113,504
Minnesota	3,850	1,529	5,379	$1,663,200	$660,528	$2,323,728
Mississippi	250	7,852	8,102	$108,000	$3,392,064	$3,500,064
Missouri	1,080	3,141	4,221	$466,560	$1,356,912	$1,823,472
Montana	100	302	402	$43,200	$130,464	$173,664
Nebraska	370	427	797	$159,840	$184,464	$344,304
Nevada	1,390	783	2,173	$600,480	$338,256	$938,736
New Hampshire	210	187	397	$90,720	$80,784	$171,504
New Jersey	12,780	6,403	19,183	$5,520,960	$2,766,096	$8,287,056
New Mexico	1,960	2,195	4,155	$846,720	$948,240	$1,794,960
New York	66,080	28,583	94,663	$28,546,560	$12,347,856	$40,894,416
North Carolina	1,320	7,468	8,788	$570,240	$3,226,176	$3,796,416
North Dakota	80	314	394	$34,560	$135,648	$170,208
Ohio	3,060	4,281	7,341	$1,321,920	$1,849,392	$3,171,312
Oklahoma	670	3,743	4,413	$289,440	$1,616,976	$1,906,416
Oregon	2,890	1,323	4,213	$1,248,480	$571,536	$1,820,016
Pennsylvania	6,470	6,579	13,049	$2,795,040	$2,842,128	$5,637,168
Rhode Island	1,940	1,194	3,134	$838,080	$515,808	$1,353,888
South Carolina	360	5,535	5,895	$155,520	$2,391,120	$2,546,640
South Dakota	100	337	437	$43,200	$145,584	$188,784
Tennessee	800	7,622	8,422	$345,600	$3,292,704	$3,638,304
Texas	32,410	31,421	63,831	$14,001,120	$13,573,872	$27,574,992
Utah	860	389	1,249	$371,520	$168,048	$539,568

Table C-1. Estimate of Current, Noncitizen SSI Recipients To Lose Eligibility Due to Welfare Reform *(continued)*

	Noncitizen Recipients[1]			Federal Savings per Month[2]		
State	Type I	Type II	TOTAL	Type I	Type II	TOTAL
Vermont	100	385	485	$43,200	$166,320	$209,520
Virginia	3,890	3,830	7,720	$1,680,480	$1,654,560	$3,335,040
Washington	7,970	2,622	10,592	$3,443,040	$1,132,704	$4,575,744
West Virginia	80	1,181	1,261	$34,560	$510,192	$544,752
Wisconsin	2,930	2,562	5,492	$1,265,760	$1,106,784	$2,372,544
Wyoming	30	97	127	$12,960	$41,904	$54,864
TOTAL	**$415,300**	**$299,817**	**$715,117**	**$179,409,600**	**$129,520,944**	**$308,930,544**

Notes:

1. Estimates of noncitizen recipients likely to lose SSI due to federal welfare reform were prepared by the Social Security Administration (SSA). *Type I* recipients are those for whom SSA had citizenship information indicating an immigrant status. *Type II* recipients (pre-1978 applicants) are those for whom SSA has no citizenship information. SSA produced the national figure, accounting for immigrants meeting the law's exemptions, and then applied national reduction ratios to the totals of current recipients in each state to achieve state estimates. These figures are rounded to the nearest 10.

2. Estimates of monthly federal savings were calculated by the Immigrant Policy Project using SSA's average monthly SSI benefit of $432 per person. This figure represents a cost-shift to states that opt or are required to replace federal SSI benefits with state benefits; these calculations do not reflect any Medicaid-related costs.

Sources: Social Security Administration, News Release, March 21, 1997, and The Immigrant Policy Project, March 1997.

basis that they have been denied due process. The court ruled that Congress has authority to determine benefit eligibility for immigrants; the case is on appeal.

State Action

Prior to enactment of the Balanced Budget Act, states considered ways to compensate for lost SSI benefits. States examined three options: access to or expansion of the state's general assistance program, access to or expansion of the state's disability program, or creation of a new program. Many states were planning to provide state-funded SSI benefits to individuals who would lose federal SSI as a result of their immigration status. It was predicted that state resources, on average, would provide approximately one-half of the federal monthly benefit.

- Colorado enacted legislation that will allow legal immigrants, regardless of their date of entry, to be eligible for state-funded general assistance. The Old Age Pension, Aid to the Blind, and Aid to the Needy Disabled programs will be used to assist eligible individuals.
- Illinois allocated $10 million for an SSI replacement program.
- Minnesota will provide state-funded general assistance to legal immigrants who were residing in the state as of March 1, 1997, and who are pursuing citizenship. The state will also provide for future immigrants that become elderly or disabled after arriving in the state.

- Nebraska also plans to provide for elderly and disabled immigrants, regardless of their date of entry. Recipients will be subject to deeming.
- Rhode Island enacted a new cash assistance program for disabled and elderly legal immigrant residents who were receiving state supplementary assistance on July 1, 1997, but lost eligibility for federal benefits due to the federal welfare reform law.
- Washington enacted legislation permitting immigrants who lose their SSI to apply for the state's general assistance-unemployable program.

Conclusion

With the passage of the Balanced Budget Act, a significant cost-shift to states has been avoided. The restoration of federal SSI benefits to preenactment immigrants will provide states with new opportunities to allocate state funds that had previously been set aside for these individuals. During the next legislative session, states are likely to review these allocations and consider whether to replace other social services that are no longer provided by the federal government.

Sources and References

- *Guide to Alien Eligibility for Federal Programs*, National Immigration Law Center, (Los Angeles, Calif., 1993)
- *Immigrant Policy News ... State LegisLine*, Immigrant Policy Project, NCSL (Washington, D.C.)

Contacts and Referrals

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http://www.nsclc.org

Source: "Welfare Reform & Immigrants: Supplemental Security Income, "Immigrant Policy Project, National Conference of State Legislatures, January 9, 1998.

This information is periodically updated on the StateServ website (www.StateServ.hpts.org).

Appendix D

Medical Assistance and Health Benefits

The 1996 federal welfare reform law made significant changes to immigrants' eligibility for medical assistance, allowing states to deny Medicaid benefits to current immigrant residents and effectively denying access to Medicaid for new arrivals until the immigrant works 40 quarters or becomes a citizen. In the 1997 state legislative sessions, most states decided to continue Medicaid for current residents and bar Medicaid for new arrivals. Several states authorized some state funds for those barred from federal benefits, such as children and the elderly, and a few states sought to implement new deeming provisions and state residency requirements.

Background

Medicaid is an entitlement program jointly funded by federal and state governments to provide medical care for low-income pregnant women and children and individuals who are aged, blind or disabled. In general, those eligible for Aid to Families with Dependent Children—now Temporary Assistance to Needy Families (TANF)—and Supplemental Security Income (SSI) were automatically eligible for Medicaid. States must cover these mandatory groups. States have an option to cover other needy groups, such as those with higher family incomes or the "medically needy" who meet the non-financial standards for coverage but who exceed the income and resource requirements. Income levels generally are based on the federal poverty level—FPL—that is currently $16,000 for a family of four. In addition to being low-income, applicants must be at least one of the following: blind (20/200 with corrective lenses), elderly (65 years or older), disabled (physically or mentally unable to obtain "substantial gainful employment" for 12 continuous months), children (maximum age of 18 to 21 depending on the state) or pregnant.

Immigrants generally have been eligible for Medicaid benefits on the same basis as citizens. The following categories of immigrants were previously eligible to receive Medicaid: lawful permanent residents; refugees, asylees, those granted withholding of deportation, parolees, Cuban and Haitian entrants, conditional entrants; aliens granted indefinite voluntary departure, stay of deportation, suspension of deportation, and order of supervision; residents since 1972; and those permanently residing under color of law (PRUCOL). Immigrants granted temporary protected status, family unity, nonimmigrants and unauthorized immigrants were eligible only for emergency medical assistance.

The Federal Welfare Law of 1996

The Personal Responsibility and Work Opportunity Act of 1996 established, for the first time, a bar on immigrant access to Medicaid. Federal savings from the Medicaid provisions were estimated at $5 billion over seven years, affecting approximately 600,000 immigrants. The law cut $23.8 billion in benefits for legal immigrants, accounting for 44 percent of the federal savings in the welfare law. Most of the savings derived from barring most noncitizens from the Supplemental Security Income Program (SSI). The loss of SSI also threatened the automatic link to Medicaid eligibility for many elderly and disabled immigrants.

Significant Medicaid provisions in the welfare law include the following.

- TANF eligibility no longer automatically provides eligibility for Medicaid; however, those who would have been eligible for Medicaid under AFDC as of July 16, 1996, may retain Medicaid eligibility.
- Immigrants arriving after the law's enactment on August 22, 1996, are barred from Medicaid for five years, with exceptions for refugees and veterans.
- After the five-year bar, these immigrants are subject to "deeming:" the income and resources of the sponsor and the sponsor's spouse are deemed, or counted, as available to the immigrant in determining his or her eligibility for Medicaid. Deeming applies until the immigrant works 40 quarters or becomes a citizen. Refugees and other humanitarian entrants are not sponsored and, therefore, are not subject to deeming.
- States have the option to provide or deny Medicaid to immigrants residing in the United States on or before enactment. States will receive federal matching funds for these immigrants. It is unclear whether states may waive the deeming requirements after the five-year bar for new arrivals.
- States may provide or deny state-funded programs to current residents or newly-arriving immigrants, nonimmigrants (e.g., tourists) and those paroled into the United States for less than one year. States must provide benefits to refugees, asylees, withholding of deportation, Cuban and Haitian entrants, and Amerasians for their first five years in the U.S.; veterans and active duty military, spouses and dependents; and immigrants with 40 work quarters. States may deem after the new affidavits of support become effective on December 19, 1997. Exempted programs include emergency medical, emergency disaster, school and child nutrition programs, public health assistance for immunizations, and testing and treatment of symptoms of communicable disease; payments for foster care or adoption assistance; and attorney general discretion programs.
- States may not provide Medicaid to "not qualified" aliens. "Not qualified" includes undocumented immigrants, nonimmigrants and PRUCOLs.
- States that wish to provide medical assistance to "not qualified" aliens, other than emergency medical, must pass a law affirmatively providing such services after the federal welfare law's enactment, even if the state already had such a law in effect.
- States may not use Medicaid funds for public health immunizations or for testing and treatment of symptoms of communicable diseases for qualified immigrants arriving after August 22, 1996, or for "not qualified" aliens.
- Emergency medical assistance must be provided to all immigrants, regardless of status. Emergency services include medical conditions, including labor and delivery, with acute symptoms that could place the patient's life in jeopardy, impair bodily functions, or cause serious dysfunction of any bodily organ or part. All labor and delivery services fall within the definition of emergency medical services.

- The INS must issue regulations by February 1998 regarding verification that immigrant applicants for "public benefits" (as yet undefined) are qualified aliens and eligible for such benefit. States must comply within two years. The INS issued interim guidance on verification on November 17, 1997.

Eligibility for Medicaid Is Limited to:
- Citizens;
- Lawful permanent residents with 40 qualifying quarters of work;
- Refugees, asylees, and those whose deportation has been withheld, Cuban and Haitian entrants and Amerasians during their first seven years in the United States;
- Veterans, active duty military personnel, their spouses and dependents;
- Lawful permanent residents in the United States on or before August 22, 1996 (at state option);
- SSI recipients (categorical link to Medicaid is retained);
- SSI recipients who are PRUCOL (until September 30, 1998); and
- Battered spouses and children may receive benefits if there is a "substantial" connection between the abuse and the needed benefit, and the immigrant no longer resides with the batterer.

Note: Lawful permanent residents arriving after August 22, 1996, are barred for five years. Deeming then applies until citizenship or 40 work quarters is achieved.

The Balanced Budget Law of 1997

The Balanced Budget Act of 1997, P.L. 105-33, reversed $11.4 billion of immigrant benefits stripped away by the 1996 welfare reform law. The act restored SSI to individuals who were receiving SSI benefits on August 22, 1996. Immigrants lawfully residing in the United States as of that date who are or become disabled will be eligible for Medicaid and SSI benefits. Current recipients who are PRUCOL may retain their SSI and Medicaid benefits until September 30, 1998. This helps approximately 24,000 recipients who are not considered "qualified aliens," who would otherwise lose benefits this year. The law specifically retains "derivative eligibility," that is, immigrants receiving SSI may retain eligibility for Medicaid. Those who remain barred from SSI are low-income immigrants residing in the United States as of enactment who become elderly (turn 65) but are not disabled.

The act lengthens from five years to seven the period during which Medicaid eligibility is guaranteed to refugees, asylees and aliens whose deportation has been withheld. Cuban and Haitian entrants and Amerasians (children born in Southeast Asia of U.S. military or civilian personnel during the Vietnam War) have been added to this seven-year extension. Certain American Indians living along the Canadian border who have legal permanent resident status are exempted from the SSI and Medicaid bar.

The act also restored SSI and Medicaid to recipients who applied for benefits before 1979, the year that the Social Security Administration began asking for proof of citizenship or immigration status. This provision affected many citizens—as well as immigrants who were at risk of losing benefits—because they had no birth certificates or other documentation proving citizenship or naturalization.

Additional funding for emergency health services will be provided to states that have high numbers of undocumented aliens. For each of four fiscal years (1998-2001), $25 million will be distributed among the 12 states with the highest number of undocumented aliens. The 1992 estimates prepared by the Statistics Division of the INS will be used to determine which states will receive the funds. The 12 states with the greatest number of undocumented aliens in 1992 were Arizona, California, Colorado, Florida, Illinois, Maryland, Massachusetts, New Jersey, New York, Texas, Virginia, and Washington.

Battered spouses and children

The immigration reform law of 1996 amended the definition of qualified alien to include battered women or spouses and children. The law would have required the attorney general to determine on a case-by-case basis the existence of a "substantial connection" between the battery and the need for benefits. The Balanced Budget Act allows the benefit agency to determine the substantial connection between battery and benefit according to guidance issued by the attorney general.

Amended definitions

The law contains a "sense of Congress" provision that Hmong and other highland Lao lawful permanent residents who fought on behalf of the United States during the Vietnam conflict should be considered veterans. However, this language does not carry the force of law. Congress must pass specific language to extend veteran status to this population.

The definition of "veterans" has been clarified to include all veterans, such as Filipinos eligible for veteran benefits, and clarifies spouse to include widows and widowers.

Medicare

Medicare provides hospital and supplemental medical insurance for those over 65 and the disabled. Most Americans age 65 and over are automatically eligible for Medicare through the payroll tax on earnings covered by Social Security. The welfare law permitted those who paid into Social Security to receive that benefit, but not Medicare. The balanced budget act permits immigrants to receive Medicare if the immigrant was lawfully present when the work was performed and is lawfully present when benefits are provided.

State Actions

The recent changes in federal legislation to continue immigrant eligibility and lengthen the period of coverage for various classes of immigrants came after nearly all states had ended their 1997 legislative sessions. Therefore, the majority of the state legislation passed concerning immigrants' receipt of Medicaid was based on immigrant eligibility guidelines set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The Health Care Financing Administration (HCFA) of HHS has informed states that, if they intend to deny Medicaid to qualified aliens who were in the United States before August 22, 1996, they must file a state plan amendment. According to HCFA, LOUISIANA, WEST VIRGINIA and WYOMING filed such amendments. LOUISIANA and WEST VIRGINIA have since reversed their decisions to deny Medicaid.

Most states seem to be simply codifying the federal law, providing Medicaid to current residents, denying Medicaid to new arrivals, and authorizing emergency assistance to "not qualified" aliens. A few states have funded medical assistance for prenatal care, for children, or for nursing home residents. A few states—ARIZONA, MINNESOTA, NEBRASKA and NEW YORK—intend to begin deeming.

Medical Assistance for Post-Enactment Immigrants

- ARIZONA passed legislation that makes noncitizens who do not provide verification of qualified alien status eligible only for emergency medical services. Deeming shall apply to eligibility determinations for all qualified aliens. For the purposes of hospitalization and medical care, the state's definition of indigent is expanded to include qualified aliens who entered the country before enactment or those who entered after enactment and are members of the excepted groups identified in the federal welfare reform law.
- CONNECTICUT will provide state-funded medical assistance until July 1, 1999, for individuals who arrived after the August 22, 1996, cutoff date and were determined eligible for Medicaid before July 1, 1997. Those not determined eligible before July 1, 1997, may receive assistance after six months of residence in CONNECTICUT, until July 1, 1999. Victims of domestic violence and those with mental retardation may receive benefits.

- LOUISIANA enacted an appropriations bill to fund programs that may serve immigrant and refugee communities, but does not address eligibility standards. Services provided include preventive services to promote reduced morbidity and mortality resulting from chronic diseases, infectious and communicable diseases, high-risk conditions of infancy and childhood, and accidental and intentional injuries. Specific activities include immunizations, influenza high-risk services, refugee health screening, tuberculosis control, family planning, and maternal and child health.
- MASSACHUSETTS enacted a law giving MassHealth medical benefits to those who would not qualify for Medicaid under the Welfare Reform Act.
- MINNESOTA has enacted legislation barring undocumented immigrants and nonimmigrants from medical care other than emergency services, but exempts children, Cuban and Haitian entrants, and aliens who are elderly, blind or disabled. Medicaid will be available to legal post-enactment immigrants who have sponsors and affidavits of support.
- NEBRASKA allows qualified immigrants to receive medical assistance, regardless of their date of entry, although deeming applies. This decision will require the state to pay the full cost of Medicaid for those who arrived after August 22, 1996. Nebraska estimates this will cost the general fund $200,000 during FY 1998 and $275,000 during FY 1999.
- NEW YORK will provide safety net and medical services necessary for treatment of an emergency medical condition for newly arriving immigrants and PRUCOLs. Medical assistance benefits are limited to care and services (not including organ transplant procedures) necessary for the treatment of an emergency medical condition. This coverage may increase with available federal financial participation. After the five-year ban on Medicaid, the income of the immigrant's sponsor will be "deemed." New immigrants are eligible only for emergency Medicaid, unless the state changes its policy, or federal financial participation becomes available.
- RHODE ISLAND will continue to provide Medicaid benefits to noncitizen children that were legally admitted for permanent residence on or after August 22, 1996.
- WASHINGTON law will continue Medicaid to post-enactment immigrants if the parents or legal guardians have resided in the state for at least 12 months.

Prenatal Care and Children

- In CALIFORNIA, the legislature authorized continuance of prenatal care for unauthorized immigrants, but the governor vetoed the language. A proposed state plan to end state-subsidized prenatal care for unauthorized immigrants has been blocked by the courts for failing to ensure continued access to screening and treatment of communicable diseases.
- ILLINOIS' governor signed a law stating that the relevant state department may, by rule, cover prenatal care or emergency medical care for noncitizens who are not otherwise eligible.
- MARYLAND will provide medical care and other health services for legal immigrant children and pregnant women who arrive after August 22, 1996.
- RHODE ISLAND plans to provide Medicaid coverage for children and noncitizen women and prenatal, delivery and postpartum care for any women who lacks health insurance and cannot qualify for medical assistance under Medicaid, regardless of their date of entry in the United States.
- VIRGINIA will provide full medical assistance services to noncitizens under age 19 who would be eligible for Medicaid but for the federal welfare law.

Elderly and Long-Term Care

- A CONNECTICUT law provides home-care services for qualified aliens.
- NEW YORK will continue medical assistance for PRUCOL immigrants who were receiving assistance as of August 4, 1997, and were living in a residential health care facility.
- VIRGINIA will continue to serve immigrants who receive Medicaid and reside in long-term care facilities or were participating in home- and community-based waiver programs on June 30, 1997, at state expense if federal financial participation is not available.

Sources

- *Guide to Alien Eligibility for Federal Programs*, National Immigration Law Center, (Los Angeles, Calif., 1994).
- "Welfare Reform & Immigrants: Medicaid Provisions Q&A," Lynda Flowers, NCSL (Washington, D.C., April 1997).
- *Immigrant Policy News ... State LegisLine*, Immigrant Policy Project, NCSL (Washington, D.C.).

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www.healthlaw.org

Source: "Welfare Reform & Immigrants: Medical Assistance and Health Benefits," Immigrant Policy Project, National Conference of State Legislatures, November 29, 1997.

This information is periodically updated on the StateServ website (www.StateServ.hpts.org).

APPENDIX E

NUTRITIONAL ASSISTANCE

The federal welfare reform law of 1996 left many legal immigrants without much-needed food assistance, resulting in a cost-shift for those states that chose to pick up the slack. Estimates suggest that approximately 1 million immigrants will lose federal food stamp benefits due to the 1996 law. The value of their lost benefits is estimated at $70 million per month. Thirteen states have chosen to purchase federal food stamps or develop state-funded programs. A significant number have also allocated additional funds for emergency food assistance.

Prior Law

Most legal immigrants were eligible for food stamps as long as they met the income and resource requirements expected of citizens. To qualify, an applicant's net income had to be below the federal poverty line—$16,050 for a family of four in 1997. During their first three years in the United States, immigrant applicants were required to include the income of their U.S. sponsor when applying for benefits. Some immigrant categories had already been excluded from food stamp assistance under previous law: Permanently Residing Under Color of Law (PRUCOL), nonimmigrants, and undocumented immigrants. Only the following groups were eligible: legal permanent residents; refugees, asylees, parolees, and those granted withholding of deportation; Cuban and Haitian entrants; lawful temporary residents under the farmworker program (SAWs); and aliens granted family unity.

Immigrants in all categories were eligible for emergency food assistance. All 50 states match federal assistance, at differing levels, to emergency food providers under the Emergency Food Assistance Programs.

The Federal Welfare Reform Law of 1996 and Subsequent Legislation

The 1996 federal welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193), eliminated food stamp eligibility for most noncitizens as of August 22, 1997, until they become citizens, can demonstrate 40 qualifying quarters of work in the United States, or meet the following five-year or military exemptions. Refugees, asylees and those granted withholding of deportation are exempt from the food stamp ban for their first five years in the United States The Balanced Budget Act of 1997 added Cuban-Haitian entrants and Amerasians to the exemption. Veterans, active duty military, their spouses, and unmarried dependent children are also exempt from the food stamp ban, although they are subject to the sponsor income deeming requirement. Both qualified and not qualified immigrants retain eligibility for emergency food assistance. Legal immigrant children continue to be

Eligibility for Federally Funded Food Stamps is Limited to:

- Citizens
- Lawful permanent residents who can demonstrate 40 qualifying quarters of work
- Refugees, asylees and those whose deportation has been withheld, Cuban-Haitians and Amerasians during their first five years in the United States
- Veterans, active duty military personnel, and their spouses and dependents

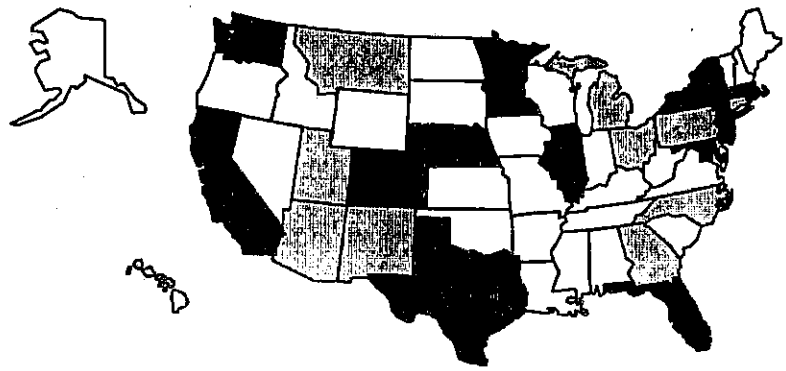
eligible for the following child nutrition programs as well: school lunch, summer feeding programs, child care programs and the Women, Infants and Children (WIC) program. Undocumented immigrant children are eligible for school lunch and school breakfast.

States can choose to provide state-funded food stamps to immigrants made ineligible by the federal welfare reform law. The federal FY 1997 Emergency Supplemental Appropriations law (enacted June 12, 1997) made it possible for states to purchase food stamps from the federal government, saving them the expense and duplication of setting up a new system. States pay the U.S. Department of Agriculture (USDA) the value of the benefits plus any federal costs such as printing and shipping. The cost for printing, shipping, and redeeming coupons is $2,800 for every $1 million in coupons.

State Actions

Thirteen states have chosen to provide state-funded food assistance to some or all legal immigrants who will lose federal food stamp eligibility due to the welfare reform law, either by purchasing federal food stamps or funding state programs. The 13 states are California, Colorado, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Texas and Washington. Many states also appropriated additional funds for emergency food assistance.

Figure E-1. State Action on Immigrant Food Assistance



Food assistance for legal immigrants made ineligible due to citizenship status; of those states that are providing food assistance, only Nebraska has not provided additional funding for emergency feeding.
Additional state funding for emergency feeding programs.

The USDA has approved the purchase of federal food stamp coupons for legal immigrants by nine states: California, Florida, Illinois, Maryland, Nebraska, New Jersey, New York, Rhode Island and Washington. California allocated $35 million to replace food stamps for some 40,000 children and elderly immigrants residing in the United States as of August 22, 1996. Florida will provide about $12 million in food stamps for immigrants 65 and older, resident as of February 1, 1997. Illinois' governor has announced that $4.7 million will be available to support nutrition services for the remainder of fiscal year 1998 for 14,800 elderly, disabled and child immigrants who lost their federal food stamps. Maryland plans to spend $2.15 million on state-run food stamp benefits for legal immigrant children. Benefit levels will be the same as those for citizens—approximately $80 per child. Nebraska will provide state-funded benefits

to approximately 2,240 immigrants at the federal level. The governor of NEW JERSEY approved $15 million for legal immigrant children, the elderly and disabled who were resident as of August 22, 1996. The benefit is available for their first five years in the United States, at which time they are eligible to apply for citizenship. NEW YORK permits counties and New York City to provide food assistance for individuals under 18 or over 65 years of age, resident as of August 22, 1996, who apply for naturalization within 30 days. New York City and 18 counties are participating and paying 50 percent of the costs. RHODE ISLAND will provide food stamps to immigrants resident as of August 22, 1996. WASHINGTON appropriated $65 million to purchase food stamps for all legal immigrants made ineligible by federal law, at the federal benefit level. Legislation was introduced in many other states but failed to pass, and several states are reviewing the food stamp purchase option.

MASSACHUSETTS, MINNESOTA and TEXAS have developed state food benefits. MASSACHUSETTS appropriated $5 million for food stamps to legal immigrants, with benefits expected to be between $15 and $24 per person per month. Benefits will eventually be provided via electronic benefit transfer. MINNESOTA is providing "Minnesota grown" coupons at 35 percent of the federal benefit level, for those residing in Minnesota as of July 1, 1997. Recipients must work toward citizenship. The governor of TEXAS has announced a plan to provide up to $18 million to approximately 28,000 aged and disabled immigrants. The average benefit will be $53 per month, distributed via the state's electronic benefit transfer system.

All states provide matching funds for emergency food assistance, which is available to all immigrant groups. Reported increases in emergency food demand throughout the country have prompted several states to increase funding for food banks and emergency food assistance providers. MONTANA and MASSACHUSETTS, for instance, have appropriated $50,000 and $3 million, respectively, for emergency feeding services support. COLORADO appropriated $2 million for emergency assistance, which may be used for food. CALIFORNIA allocated $2 million for the food assistance needs of the legal immigrant, migrant seasonal farmworker population.

Conclusion

Although several states have taken significant steps to fill the gap in nutritional assistance for immigrants, many immigrants remain in vulnerable positions after the food stamp cuts in the federal welfare reform law. State legislatures are unable to completely fill the gap created by federal cuts, and many immigrant groups are yet to be covered. Further, many states with the highest immigrant food stamp populations before welfare reform have not passed state food stamp provisions.

Table E-1. Estimate of Immigrant Food Stamp Recipients To Lose Eligibility Due to Welfare Reform

State	Immigrant Recipients[1]	Percent of State Caseload[2]	Value of Lost Benefits[3]
Alabama	800	0.1%	$49,000
Alaska	500	1.1%	$29,000
Arizona	34,700	6.8%	$2.303,000
Arkansas	700	0.3%	$57,000
California	426,900	13.1%	$26,718,000
Colorado	10,500	4.3%	$665,000
Connecticut	8,700	3.7%	$519,000
Delaware	500	1.0%	$37,000
Florida	125,600	8.8%	$8,983,000
Georgia	5,600	0.7%	$424,000
Hawaii	10,600	8.1%	$1,260,000
Idaho	2,300	2.9%	$116,000
Illinois	38,000	3.4%	$2,822,000
Indiana	2,200	0.5%	$188,000
Iowa	1,500	0.8%	$75,000
Kansas	3,900	2.0%	$245,000
Kentucky	800	0.2%	$37,000
Louisiana	5,400	0.7%	$377,000
Maine	600	0.4%	$28,000
Maryland	12,800	3.1%	$895,000
Massachusetts	29,900	7.0%	$1,800,000
Michigan	13,400	1.4%	$905,000
Minnesota	5,300	1.7%	$332,000
Mississippi	300	0.1%	$29,000
Missouri	4,600	0.8%	$331,000
Montana	400	0.5%	$21,000
Nebraska	900	0.8%	$64,000
Nevada	3,900	3.5%	$264,000
New Hampshire	600	1.0%	$17,000
New Jersey	41,400	7.4%	$3,208,000
New Mexico	15,200	6.3%	$923,000
New York	251,000	11.7%	$19,590,000
North Carolina	3,800	0.6%	$246,000
North Dakota	200	0.5%	$16,000
Ohio	11,900	1.0%	$659,000
Oklahoma	3,600	0.9%	$225,000
Oregon	11,700	3.9%	$683,000
Pennsylvania	22,900	2.0%	$1,654,000
Rhode Island	6,900	7.3%	$467,000
South Carolina	600	0.2%	$55,000
South Dakota	300	0.5%	$21,000
Tennessee	1,500	0.2%	$104,000
Texas	245,200	9.4%	$15,983,000
Utah	2,400	2.0%	$160,000
Vermont	200	0.4%	$11,000
Virginia	9,200	1.6%	$734,000
Washington	19,000	3.8%	$1,208,000
West Virginia	600	0.2%	$45,000
Wisconsin	7,400	2.3%	$385,000
Wyoming	400	1.1%	$20,000
District of Columbia	1,900	2.0%	$153,000
Guam	800	5.2%	$119,000
Virgin Islands	3,500	14.6%	$340,000
Total	**1,413,500**		**$96,599,000**

Notes:

1. These figures represent all immigrant recipients, including those who may qualify for one or more of the exemptions to the bar. Source: *Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995*, as submitted by Mathematica Policy Research, Inc. to USDA, February 13, 1997.
2. This column provides the percentage of the entire state caseload comprised of immigrant recipients. Source: Food Research and Action Center Special Analyses, February 26, 1997, and April 3, 1997.
3. This column estimates the monthly value of the food stamp benefit that immigrants will lose and that states may choose to replace. These numbers are prorated to separate benefits attributed to permanent aliens directly; the total value of benefits to households that contain at least one permanent resident alien (but may also contain U.S. citizens) is $1,870,039,000. Source: Food Research and Action Center Special Analyses, February 26, 1997, and April 3, 1997.

The 1996 federal welfare reform law made most noncitizen U.S. residents ineligible for the U.S. Department of Agriculture's food stamp program. Immigrants who become citizens, can demonstrate 40 qualifying quarters of work history, or meet the military exception are exempt from the bar. Refugees, asylees and those granted withholding of deportation are also exempt from the bar for their first five years in the United States. Immigrants entering the country after enactment of the welfare law are not eligible for food stamps. Immigrants who were receiving food stamps at the time of enactment kept their benefits until April 1, 1997. States were required to redetermine eligibility for all recipients between April 1 and August 22, 1997. This table provides a state-by-state estimate, based on FY 1995 USDA data, of the number of legal immigrant food stamp recipients.

Sources and References

- Center on Budget and Policy Priorities, "State Funded Food Stamps for Legal Immigrants: 9/24/97."
- Food Research and Action Center and Second Harvest National Food Bank, "State Government Responses to the Food Assistance Gap," (Washington, D.C., November 3, 1997).
- Food Research and Action Center, Special Analyses (Washington, D.C., February 26, 1997 and April 3, 1997).
- *Immigrant Policy News ... State LegisLine*, Immigrant Policy Project, NCSL.
- Mathematica Policy Research, Inc. *Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995* (submitted to USDA, February 13, 1997).
- U.S. Department of Agriculture, Food and Consumer Services, "Guidance on State Option Food Stamp Programs," August 8, 1997.

Contacts and Referrals

Food and Consumer Services
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Source: "Welfare Reform & Immigrants: Nutritrional Assistance," Immigrant Policy Project, National Conference of State Legislatures, December 15, 1997.

This information is periodically updated on the StateServ website (www.StateServ.hpts.org).

APPENDIX F

SUMMARY OF THE 1996 IMMIGRATION REFORM LAW

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996
Division C of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (P.L.104-208)
Enacted September 30, 1996

The immigration reform bill (formerly H.R. 2202) incorporated in the FY 1997 omnibus appropriations law primarily addresses border control and enforcement issues. The law also includes provisions that are important to state and local governments related to benefits for immigrants; sets federal standards for birth certificates and driver's licenses; and authorizes, although does not appropriate, grants to reimburse states for medical services. Highlights from the bill are summarized below.

Benefits

Exemption for battered spouses and children: Victims of domestic violence may be considered "qualified aliens" for federal, state or local public benefits. The immigrant must no longer reside with the batterer and the attorney general must find a "substantial" connection between the abuse and the need for benefits (§501). As "qualified aliens," such immigrants still would be subject to the five-year bar on federal means-tested programs and state options for Temporary Assistance for Needy Families (TANF), Social Services Block Grant (SSBG) and Medicaid.

Food stamps: The welfare reform's bar on food stamps for current immigrant recipients was delayed until April 1, 1997. Immigrants must be recertified by August 22, 1997. With limited exceptions (such as refugees or military personnel), legal immigrants will be ineligible for food stamps until they attain citizenship or 40 qualifying quarters of work (§510).

Exemptions to deeming: An immigrant may be exempted from deeming for up to 12 months if he or she would go hungry or homeless without the assistance. Battered spouses and children may be exempt from deeming for 12 months if there is a "substantial" connection between the abuse and the need for benefits and the immigrant no longer resides with the batterer. After 12 months, assistance may be continued if the battery is recognized by a court order or the Immigration and Naturalization Service (INS) (§552).

Housing: This law provides for prorating assistance in cases where some members of a family are eligible and others are not, establishes procedures and timetables for verification of immigration status and benefit eligibility and establishes an appeals process for those whose benefits are terminated. It also sets forth compliance rules for public housing agencies and provides that no individual or family applying for assistance may receive it before the affirmative establishment and verification of eligibility of at least one family member (§571-7).

The General Accounting Office must submit a study within 180 days of enactment on the extent to which means-tested public benefits are being paid to ineligible aliens on behalf of dependent U.S. citizens or eligible aliens (§509).

Deeming

As in welfare reform, virtually all individuals immigrating under family visas must have sponsors as a condition of admission. Sponsors enter into legally binding affidavits of support, meant to ensure that the immigrant will not become a public charge. INS regulations regarding the affidavit of support went into effect December 19, 1997. The new immigration reform law institutes an income standard, requiring the sponsor to maintain the immigrant at 125 percent of the federal poverty level. Affidavits may be enforced by the immigrant, by federal, state or local government, or by any entity that provides means-tested public benefits and remains in force until the immigrant either has been naturalized or has worked 40 qualifying quarters.

Sponsors must be 18 years of age, U.S. residents and able to support themselves, their families and the immigrant at an annual income level equal to at least 125 percent of the federal poverty guidelines for their family size. Active-duty military petitioning for their spouse or child need to demonstrate income at 100 percent of poverty. Under penalty of fines, sponsors must inform the INS and the immigrant's state of residence any time they move or change address. The sponsor must be the petitioner for admission of his or her relative. If the petitioner does not meet the income requirement, a second co-sponsor who meets the 125 percent requirement and is willing to accept joint and severable liability for the sponsored immigrant may be added to the affidavit of support. Affidavit of support information is to be included in the System for Alien Verification of Eligibility (SAVE) (§551).

General Assistance Programs

As in the welfare reform law, states and localities are granted the authority to prohibit or limit eligibility for state-funded general cash assistance programs. States may not be more restrictive than similar federal programs (§533).

Public Charge

The enacted immigration law drops the formal public charge definition previously included in the bill and codifies the current practice of excluding any immigrant who consular officials believe would likely become a public charge. Consular officers may consider age, health, family status, assets and resources, education and skills in making their determinations. Family-based immigrants must submit legally enforceable affidavits of support to ensure against the immigrant becoming a public charge (§531).

Medical Services Reimbursement

Hospitals that do not otherwise qualify for reimbursement under any other federal program may be reimbursed in full for emergency medical assistance to immigrants not lawfully present, effective January 1, 1997. Reimbursement is subject to appropriations and contingent upon the hospital's verification of immigrant status through procedures established by the secretary of the U.S. Department of Health and Human Services (HHS) and the attorney general (§562). States and localities may be reimbursed for emergency ambulance services to those who are injured while illegally crossing the border and who are in state or local custody (§563). No appropriations for these reimbursements were made in the omnibus appropriations bill.

Driver's Licenses and Birth Certificates

States must meet federal standards for birth certificates and state-issued driver's licenses. Federal agencies are forbidden to accept a birth certificate or other identification for any official purpose unless the document conforms to these new standards. Federal authorities must promulgate regulations concerning birth certificates by September 30, 1997, and states must begin using the new certificates by October 1, 2000. Federal rules are to 1) require birth certificates be certified by the state issuing agency and include safety paper, a seal and other features designed to limit tampering, counterfeiting and photocopying; 2) avoid a single certificate design; and 3) accommodate the states' varying production and storage methods. The secretary of HHS is ordered to make grants, subject to appropriations, to assist states in issuing birth certificates that conform to the new federal standards and in matching birth and death records.

Federal agencies may not accept a state-issued driver's license as proof of identification unless the document contains a Social Security number and is in a form consistent with requirements set by the U.S. Secretary of Transportation after consultation with the American Association of Motor Vehicle Administrators. The license shall contain security features designed to limit tampering, counterfeiting, photocopying or other means of fraudulent duplication. The law provides exceptions for states if 1) the state presently does not require licenses to contain a Social Security number; and, 2) the state requires every applicant for a driver's license to submit the Social Security account number for verification with the Social Security Administration. The secretary of Transportation is ordered to issue regulations within one year and to make grants available to assist states in issuing these revised identification documents (§656). No appropriations were made for these grants.

Verification

The attorney general is required to implement at least three pilot programs for the verification of employment eligibility (§401), participation in which will be voluntary (§402). The attorney general, in cooperation with HHS, must establish a procedure within 18 months for applicants of federal public benefits to prove citizenship in a fair and nondiscriminatory manner (§504). In addition, states are required to submit documents to INS to verify an individual's eligibility for Social Security benefits or higher education benefits or assistance (§507). Nonprofit charitable organizations are not required to determine, verify or require proof of eligibility of any applicant for federal, state or local public benefits they may provide (§508).

Law Enforcement

The law authorizes the hiring of 6,600 new border patrol agents and support staff during the next five years and orders the attorney general to coordinate with state and local officials in the redeployment of border patrol personnel to prevent a degradation of interior state law enforcement (§101). The law permits the attorney general to enter into written agreements that allow specially trained officers from state or local agencies to detain and arrest aliens (§133); the attorney general may also authorize state or local law enforcement officers to perform immigration officer duties in the event of a mass influx of aliens off the coast or at a border (§372). INS is required to maintain at least 10 full-time agents in each state (§134). The law also forbids the prohibition of communication between any federal, state or local official or governmental entity and INS regarding the status of an immigrant (§642).

Source: Prepared by the Immigrant Policy Project, October 24, 1996.

APPENDIX G

IMMIGRANT BENEFIT PROVISIONS IN THE 1996 WELFARE AND IMMIGRATION REFORM LAWS AND IN THE 1997 BALANCED BUDGET ACT

		IMMIGRANT BENEFIT PROVISIONS IN THE 1996 WELFARE AND IMMIGRATION REFORM LAWS AS AMENDED BY THE BALANCED BUDGET ACT OF 1997 **Public Laws 104-193, 104-208, & 105-33** *Prepared by the Immigrant Policy Project at the National Conference of State Legislatures*
	Prior Law	**Current Law** P.L. 104-193 reforms in normal font; P.L. 104-208 provisions in italics; P.L. 105-33 changes in small caps and strikeouts
Programs Barred to Legal Immigrants	None	**Permanent bar on SSI** (§402) Exceptions: • Refugees, asylees, or those granted withholding of deportation for their ~~first 5~~ FIRST 7 YEARS in the U.S.; • Lawful permanent resident with 40 qualifying quarters of work (to count qualifying quarters after 12/31/96 the individual must also not receive any federal means-tested public benefit); the spouse and minor children can be credited with qualifying quarters–see §435; • Veterans, active duty military, spouses and dependents; • LAWFULLY RESIDING IMMIGRANTS RECEIVING SSI AS OF 8/22/96; • LAWFULLY RESIDING IMMIGRANTS AS OF 8/22/96 WHO ARE OR BECOME DISABLED; • RECIPIENTS WHO APPLIED FOR SSI BEFORE 1979; and • AMERASIANS OR CUBAN-HAITIAN ENTRANTS. Transition: CURRENT RECIPIENTS WHO ARE PRUCOL RETAIN SSI UNTIL 9/30/98. **Permanent bar on Food Stamps** (§402) effective 8/22/97 Exceptions: • Refugees, asylees, or those granted withholding of deportation for their first 5 years in the U.S.; • Lawful permanent resident with 40 qualifying quarters of work (to count qualifying quarters after 12/31/96 the individual must also not receive any federal means-tested public benefit); the spouse and minor children can be credited with qualifying quarters–see §435; • Veterans, active duty military, spouses and dependents; and • AMERASIANS OR CUBAN-HAITIAN ENTRANTS. Transition: Recertification of current recipients was completed by 8/22/97. **5-year bar on federal means-tested public benefits for new arrivals who are qualified aliens** (§403(a)) Exceptions: • Refugees, asylees, those granted withholding of deportation for their first 5 years in U.S.; • Veterans, active duty, spouses and dependents; • AMERASIANS OR CUBAN-HAITIAN ENTRANTS; and • Refugee program activities for Cuban and Haitian entrants (§ 403(d)). (See program exceptions under Definition of Means-Tested Public Benefit, below.)
State and Local Government Program Eligibility	States and localities may deny their benefits to illegal immigrants and nonimmigrants.	**States are authorized to determine the eligibility of "qualified aliens" for TANF (formerly AFDC), Social Services Block Grant and Medicaid.** (§402(b)) (After the 5-year federal bar, state option to bar until citizenship. For current Medicaid recipients, state option to continue services after 1/97.) Effective date for current recipients: 1/1/97. (§402(b)(2)(D)) Exceptions: • Refugees, asylees, alien whose deportation has been withheld, CUBAN-HAITIAN ENTRANTS, AND AMERASIANS are eligible for first 5 years; THOSE RECEIVING SSI WOULD RETAIN MEDICAID ELIGIBILITY FOR THEIR FIRST 7 YEARS. • Lawful permanent residents with 40 qualifying quarters of work (spouses/minor children can be credited) • Veterans, active duty military, spouses and dependents.

APPENDIX G (continued)

IMMIGRANT BENEFIT PROVISIONS IN THE 1996 WELFARE AND IMMIGRATION REFORM LAWS AND IN THE 1997 BALANCED BUDGET ACT

	Prior Law	Current Law P.L. 104-193 reforms in normal font; P.L. 104-208 provisions in italics; P.L. 105-33 changes in small caps and strikeouts
State and Local Government Program Eligibility (continued)	States and localities may not deem or prohibit legal immigrants from accessing their programs.	**State authority to limit eligibility of qualified aliens** (§412): States may determine eligibility for state public benefits of qualified aliens, nonimmigrants, or those paroled into the U.S. for less than one year. Except these aliens shall be eligible: refugees, asylees, and those granted withholding of deportation for their first 5 years in the U.S.; lawful immigrants who have worked 40 qualifying quarters and did not receive federal means-tested public benefits; veterans, active duty and their spouses and dependents; and, current recipients are eligible until 1/1/97. *States may not be more restrictive than similar federal programs (§553).* STATES AND LOCALITIES MAY REQUIRE APPLICANTS FOR STATE AND LOCAL PUBLIC BENEFITS, IN PARTICULAR GENERAL CASH ASSISTANCE, TO PROVIDE PROOF OF ELIGIBILITY. Ineligible immigrants: Only qualified aliens, nonimmigrants, or those paroled into the U.S. for less than 1 year are eligible for state or local public benefits. Excepted benefits: emergency medical; emergency disaster relief; public health for immunizations, testing and treatment of symptoms of communicable diseases; and Attorney General discretion (in-kind, not conditioned on income, necessary for the protection of life or safety.) (§411) States may provide public benefits to not qualified immigrants only through enacting state law after this bill is enacted. (§411(d)) **School lunch and breakfast provisions:** School lunch and breakfast available to all immigrants regardless of status; states may provide certain other nutrition programs to undocumented immigrants. (§742)
Definition of Means-Tested Public Benefit	n/a	**Federal programs** (§403(c)): cash, medical, housing, food assistance, and social services of the federal government in which eligibility of the individual, household, or family is based on income, resources, or financial need. HHS has defined federal means-tested programs as SSI, Food Stamps, Medicaid, and TANF. Except: emergency medical assistance; short-term, non-cash, in-kind emergency disaster relief; National School Lunch benefits; Child Nutrition Act benefits; public health assistance (not including Medicaid) for immunizations, testing and treatment of symptoms of communicable diseases; foster care and adoption assistance (unless parent is qualified alien subject to 5-year bar); programs specified by the Attorney General (in-kind, etc.); higher education; means-tested programs under ESEA; Head Start; JTPA. **State or local programs** (§411(c)): any grant, contract, loan, professional license; any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or similar benefit provided to an individual, household, or family.
Definition of "Qualified Alien"	n/a	**"Qualified Alien"** = permanent residents, refugees, asylees, those paroled for at least 1 year; deportation withheld; conditional entrants before 1980 (§431), CUBAN-HAITIAN ENTRANTS, *and victims of domestic violence who no longer reside with the batterer and for whom the Attorney General has found a "substantial" connection between the abuse and the needed benefit (§501).* (Notes: withholding of deportation is similar to political asylum; BBA added Cuban-Haitian entrants but not Amerasians to the definition of qualified alien.)

APPENDIX G (continued)

IMMIGRANT BENEFIT PROVISIONS IN THE 1996 WELFARE AND IMMIGRATION REFORM LAWS AND IN THE 1997 BALANCED BUDGET ACT

	Prior Law	Current Law P.L. 104-193 reforms in normal font; P.L. 104-208 provisions in italics; P.L. 105-33 changes in small caps and strikeouts
Programs Restricted by Deeming	AFDC, Food Stamps, SSI (Note: deeming = sponsor's income and resources are considered, or "deemed", available to immigrant when determining program eligibility)	**Federal means-tested programs must deem.** Income and resources of any person (and his/her spouse) who executed an affidavit of support shall be deemed available to alien in determining eligibility and amount of benefits for ANY federal means-tested public benefit program. (§421) Effective date (§421(d)): • for programs that deem, date of enactment; • for programs that do not currently deem, effective for eligibility determinations made 180 days after enactment. Exemptions for up to 12 months of benefits: • *if the immigrant would go hungry or homeless without assistance; and* • *for battered spouses and children if there is a "substantial" connection between the abuse and the needed benefit and the immigrant no longer resides with the batterer; benefits may be extended if the battery is recognized by a court order (§501).* **State option to deem** Except: emergency health, disaster, school lunch/child nutrition; immunizations and testing/treatment of symptoms of communicable diseases; foster care/adoption assistance; A.G. discretion programs (soup kitchens). (§422)
Length of Deeming Provisions	AFDC and Food Stamps (3 years): SSI (5 years)	**Deeming applies until citizenship or 40 qualifying quarters of work** with no receipt of federal means-tested public assistance in quarters earned after 1996. (§421(b))
Affidavits of Support	Unenforceable	**Affidavits are legally enforceable against the sponsor** by the sponsored alien, the federal government, and by any state or locality that provides means-tested programs up to 10 years after receipt of benefit. Affidavits of support are enforceable until citizenship. (Reimbursement may not be sought for the 11 excepted programs to federal means-tested benefits defined above.) **Sponsors must notify the Attorney General and the state where the sponsored alien resides of any change of address of the sponsor.** Sponsor must be a citizen, national or lawful permanent resident; 18 years or over; resident of the 50 states or D.C.; the petitioner for admission of the immigrant, *and able to support themselves, their families, and the immigrant at 125% of the federal poverty level (§551).* Effective date: The Department of Justice promulgated the new affidavits of support on 12/19/97.
Eligibility of Immigrants "Not Qualified"		**Immigrants not "qualified" are barred from federal, state and local public benefits:** A) grants, contracts, loans, licenses; B) retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit provided to an individual, household, or family by the U.S. or by appropriated funds of the U.S. (§§401, 401(c), 411) Exceptions: (§401(b)) • emergency medical assistance under Medicaid (if alien meets the eligibility requirements under the state plan); • short-term, non-cash, in-kind emergency disaster relief;

APPENDIX G (continued)

IMMIGRANT BENEFIT PROVISIONS IN THE 1996 WELFARE AND IMMIGRATION REFORM LAWS AND IN THE 1997 BALANCED BUDGET ACT

	Prior Law	Current Law P.L. 104-193 reforms in normal font; P.L. 104-208 provisions in italics; P.L. 105-33 changes in small caps and strikeouts
Eligibility of Immigrants "Not Qualified" (continued)	Eligibility of immigrants INS does not plan to deport varies by program. Undocumented immigrants ineligible for all major federal programs; *exceptions include:* *-emergency Medicaid* *-public health* *-child nutrition* *-K-12 public education*	• public health (not including Medicaid) for immunizations and for testing and treatment of symptoms of communicable diseases • programs identified by the Attorney General that deliver in-kind services at the community level, do not condition assistance on the individuals' income or resources, and are necessary for the protection of life or safety (such as soup kitchens); • Housing or community development assistance for current recipients. FUNDS FOR STATE EMERGENCY HEALTH SERVICES TO UNDOCUMENTED ALIENS: $100 MILLION IS AVAILABLE DURING FY1998 – FY2001 TO THE 12 STATES WITH THE HIGHEST NUMBER OF UNDOCUMENTED ALIEANS. ALLOCATIONS WILL BE BASED ON A RATIO OF THE STATE'S UNDOCUMENTED POPULATION, BASED ON INS 10/92 DATA, TO THE NUMBER OF UNDOCUMENTED NATIONWIDE.
Reporting; Verification; Cooperation with INS	Immigration information may be kept confidential by organizations such as battered women's shelters, hospitals, and law enforcement agencies (e.g., witness protection programs).	**Reporting under Title IV of Social Security Act:** Requires agencies that administer SSI, housing assistance, or TANF to report quarterly to the INS the names and addresses of individuals they know are unlawfully in the U.S. (§404). *States must submit documents to INS verifying an individual's eligibility for Social Security and higher education benefits or assistance. Non-profit charitable organizations are not required to determine, verify, or require proof of eligibility of any applicant for federal, state, or local public benefits they provide (§§507-508).* **The Attorney General with the Secretary of HHS must issue regulations within 18 months requiring verification** that alien applying for federal public benefits is a qualified alien and eligible for such benefit. States administering federal public benefits must comply with the verification system within 24 months of regs being adopted. Authorizes "such sums as may be necessary" to carry out this section. (§432) **No state or local government entity may be prohibited or restricted from communicating information to the INS** about the immigration status of an alien in the U.S. (§434)
CBO Estimated Federal Savings	n/a	$23.8 billion for immigrant provisions (accounts for 44% of the total savings of $54.1 billion over 6 years for H.R. 3734): ~~$13.2 billion in SSI savings~~ (all but nullified by BBA); $5.3 billion in Medicaid savings; $3.6 billion in Food Stamps, and over $0.2 billion in AFDC/TANF savings.

Revised: March 23, 1998

Appendix H

Chronology of Immigration Legislation

1920s—A ceiling was placed on most immigration and a per-country quota was established based on the national origin of the U.S. population in the 1910 census.

1952—The Immigration and Nationality Act, P.L. 82-414 (also known as the McCarran-Walter Act) was the first codification of immigration and nationality law and is still the basic code. It set a ceiling of 150,000 for non-Western hemisphere countries and established a preference system for distributing visas within each country's allotment (favoring highly skilled workers). Regarding refugees, Section 212(d) (5)) empowered the U.S. Attorney General to admit for up to two years any person whose admission would be in the American interest. Originally meant for emergencies (medical treatment), it has been broadly interpreted to permit mass admission of refugees.

1965—The Immigration Act of 1965 ended the national origins quota system and added a new preference system oriented toward family reunification. Innovations in the act were a ceiling on visas for immigration from the Western hemisphere at 120,000, and 170,000 for all other countries; and no more than 20,000 from one country. Also, all nonrelative and nonrefugee immigrants were required to obtain a labor clearance certifying that American workers were not available and the immigrants would not lower prevailing wages and working conditions. The act established a seventh preference for refugees, which was limited to people fleeing from a communist-dominated country or the Middle East.

1978—The two ceilings for "Western hemisphere" and "other"" were combined into a single annual ceiling of 290,000 visas.

1980—The Refugee Act, P.L. 96-212, brought the definition of refugee into conformity with the international definition; it dropped the seventh preference and reduced the worldwide quota to 270,000. Refugee admissions were split off from immigration and organized as a separate process. Refugees became entitled to certain federally reimbursable social and medical services (the length of reimbursement has decreased from 36 to 8 months for special refugee assistance, and from 36 to 0 months for categorical programs). Appropriations were authorized for three years. Also, 5,000 asylees per year were allowed to adjust their status from asylee to permanent resident. The president, in consultation with Congress, sets admission levels for refugees (125,000 for FY 1990); there are six priority levels for determining who may enter.

1982—Refugee Assistance Amendments, P.L. 97-363, extended authorization of appropriations for refugee assistance and domestic resettlement for one year (FY 1983). (FY 1984-85 were authorized through continuing resolutions.)

1986—Refugee Assistance Extension Act, P.L. 99-605, extended funding for two years for domestic resettlement activities under the Refugee Act of 1980 (FY 1986 and FY 1987) . The appropriations included $100 million for social services; $50 million for targeted assistance to heavily impacted areas; and "such sums as necessary" for cash and medical assistance, special educational assistance, matching grant program, and administrative costs. Since 1975, the federal government has maintained a policy of reimbursing state and local governments for 100 percent of the costs they incur in resettling refugees, "subject to appropriations." (FY 1988 was funded through a continuing resolution, P.L. 100-202. Total funding for states and other grantees under the refugee domestic assistance program was $347 million.)

1986—Immigration Reform and Control Act (IRCA), P.L. 99-603, (popularly known as the "Simpson-Rodino" Act), was signed into law November 6, 1986. Its purpose was to control illegal or undocumented immigration, chiefly by establishing penalties for employment of undocumented aliens; and to provide legalization of status of certain aliens illegally resident in the United States. Nearly 3 million undocumented people were granted amnesty under this act. The act also established the State Legalization Impact Assistance Grant (SLIAG) to reimburse states for costs incurred for public assistance, public health, and education provided to these amnesty immigrants who were barred from receiving federal assistance for 5 years.

1988—Immigration Amendments, P.L. 100-658, was enacted to promote diversification in the legal immigration system by providing for issuance over a two-year period of 50,000 visas for countries that have sent few immigrants over recent years.

1989—Immigration Nursing Relief Act, P.L. 101-238, allows SLIAG funds to be used for public education and outreach for the Phase II legalization process under IRCA; and outreach regarding unfair discrimination in employment.

1990—The Immigration Act of 1990, P.L. 101-649, increased the overall immigration ceiling for family reunification and employment to 675,000 entrants per year. Immediate relatives of U.S. citizens (spouses, minor children and parents) are now counted under the ceiling, although there is no limit on the number of immediate relatives who may enter. The legislation created 55,000 "diversity" visas for countries that are disadvantaged under the current system (primarily Europe); increased the per country limit of 20,000 visas to 25,000; created a "temporary protected status" that allows nationals who are fleeing natural or manmade disasters to remain in the United States until their countries are deemed safe; and permitted work authorization for spouses and children of those granted amnesty under the 1986 act. The act permits 10,000 asylees to adjust to permanent resident each year.

1993—P.L. 103-37 reauthorized appropriations for refugee assistance for FY 1993 and FY 1994. The current appropriations level is $400 million for the domestic refugee resettlement program.

1996—The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, ended the welfare reform entitlement, creating a capped block grant to states. Immigrants' eligibility for public benefits is dramatically cut. New arrivals are barred from federal means-tested programs for five years. SSI and food stamps are barred for most immigrants until 10 years of work or citizenship. Nearly half the federal savings in the bill are derived from cutting immigrant benefits ($23.8 billion, or 44 percent of $54.1 billion over 6 years).

APPENDIX I

SUMMARY OF KEY FEDERAL REGULATIONS RELATED TO IMMIGRANTS: 1996-97

Attorney General's Exemption for Community Programs

Congress authorized an exemption for which both "qualified" and "not qualified" aliens will continue to be eligible: programs specified by the attorney general that a) are in-kind, community level services; b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual's income or resources; and c) are necessary for the protection of life or safety. The attorney general issued a provisional definition of these programs to include crisis counseling and intervention programs related to child protection, adult protective services, domestic violence, mental illness and substance abuse; short-term shelter or housing assistance for those who are homeless, victims of domestic violence, or runaway, abused, or abandoned children; assistance related to heat, cold, or other adverse weather conditions; soup kitchens, community food banks, meals on wheels; and medical and public health services necessary to protect life or safety. (*Federal Register*, August 30, 1996)

Definition of Lawfully Present

The INS has issued an interim rule defining "lawfully present in the United States" for purposes of Title II Social Security benefits (retirement, disability and Medicare Part B). (*Federal Register*, September 6, 1996)

Naturalization/Disability Waiver

The INS has also issued a final rule on exceptions to educational requirements for naturalization applicants who have a physical or developmental disability or mental impairment. (*Federal Register*, March 19, 1997)

Definition of Federal Means-Tested Public Benefit

The U.S. Department of Health and Human Services has defined "federal means-tested program" as a program that requires both mandatory federal spending *and* provides benefits based on the individual's income and resources. TANF, Medicaid, SSI and Food Stamps are means-tested programs. (*Federal Register*, USDA and SSA, August 26, 1997)

Affidavit of Support

The new federal affidavit of support became effective December 19, 1997. Sponsors must be able to support the immigrant at 125 percent of the federal poverty level. This affidavit is

legally enforceable, committing the sponsor to repay any benefits received by the immigrant, until the immigrant becomes a naturalized citizen or works 40 quarters. (*Federal Register,* October 20, 1997)

Verification

The welfare law requires verification that an applicant for a means-tested program is a qualified alien and is eligible for the benefit. To comply with the statute and avoid exposure to antidiscrimination legislation, state and local government agencies will be required to provide citizenship and status verification for *every person* who is served by programs outlined in the federal definition. The statute defines federal public benefit to include grants, contracts and licenses, as well as retirement, welfare, health, disability, housing, post-secondary education and food assistance. Certain programs are exempted, such as the attorney general's list of community programs necessary for protection of life or safety; wages or other earned payments to which an alien is entitled as a result of federal, state or local government employment; veterans' benefits; contracts or licenses related to an employment visa; emergency medical assistance; emergency disaster relief; public health assistance for immunizations; housing or community development assistance; Social Security; school lunch, school breakfast and emergency food assistance; and Medicare. States that are administering public benefits must comply with the verification system within 24 months of the regulations. (See Interim Guidance on Verification, *Federal Register,* November 17, 1997)

APPENDIX J

COMMON TERMS

These definitions refer to commonly-used terms for immigrant arrivals and conditions for their admission. The categories of immigrants are presented in the order of legal permanent immigrants, humanitarian entrants, temporary immigrants, unauthorized immigrants and nonimmigrants.

Immigrant. As a general term for new arrivals, this includes legal immigrants, refugees, asylees, parolees, and others. Legal immigrants are granted admission to the United States on the basis of family relation or job skill. The Immigration Act of 1990 permits up to 675,000 visas for legal immigrants annually: 480,000 (71 percent) to immigrants related to U.S. citizens and permanent resident aliens, 140,000 (21 percent) to specially skilled (or employment-based) immigrants, and 55,000 (8 percent) visas to what are called "diversity" immigrants from countries awarded few visas during the previous five years.

Qualified Alien: This term, created in the 1996 welfare reform legislation (P.L. 104-193), refers to lawful permanent residents, refugees, asylees, aliens paroled into the United States for a period of at least one year, aliens granted withholding of deportation by the INS, aliens granted conditional entry into the United States, and certain battered alien spouses and children. The Balanced Budget Act of 1997 restored Cuban and Haitian entrants and Amerasians to the refugee category. The term was created to define eligibility for public benefits.

Not Qualified Alien: This term, also created in the 1996 welfare reform law, includes undocumented immigrants, nonimmigrants and most PRUCOL immigrants.

Lawful Permanent Resident (LPR). A person who lives in the United States permanently and qualifies as a refugee, asylee or immigrant, or who has been granted amnesty other than suspension of deportation is an LPR. Lawful permanent residents may be issued immigrant visas by the Department of State overseas or adjust to LPR status with the INS after entering the United States. Generally, lawful permanent residents are those individuals who have "green cards" and are permitted to apply for naturalization after five years of U.S. residence. Some 915,900 immigrants were granted LPR status during 1996.

Refugee. A person who flees his or her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion or membership in a particular social group. Refugees are eligible for federal resettlement assistance. Refugees are eligible to adjust to lawful permanent resident status after one year of continuous residence in the United States. Refugee arrivals in 1996 numbered 118,528. The 1997 ceiling for refugee arrrivals was 122,000.

Cuban-Haitian Entrant: This category was created for the Cuban and Haitian arrivals of 1980 who are allowed to obtain work permits and to apply for public assistance. Cuban and Haitian

entrants are eligible for most refugee services. In 1996, 17,188 Cuban and Haitian entrants arrived in the United States.

Amerasians. This category was created for children who were born in Cambodia, Korea, Laos, Thailand or Vietnam between 1951 and 1982 and who were fathered by a U.S. citizen.

Asylee. Similar to a refugee, this is a person who seeks asylum and is already present in the United States when he or she requests permission to stay. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous residence in the United States. There is a 10,000 per year limit on adjustments; in FY 1995, more than 146,000 applications were filed.

Parolee. The Justice Department has discretionary authority to permit certain individuals or groups to enter the United States in an emergency or because it serves an overriding public interest. Parole may be granted for humanitarian, legal or medical reasons. These entrants are granted temporary admission, are ineligible for special federal benefits and are not on a predetermined path to permanent resident status. Types of parole include deferred inspection, humanitarian parole and public interest parole. In some cases, parolees do qualify for work authorization, depending upon personal circumstances. During FY 1995, there were approximately 114,000 arrivals.

Withholding of Deportation. This immigration category refers to individuals who would be deportable but who are not being deported because the federal attorney general has determined that the individual's life or freedom would be threatened if returned to his or her home country because of race, religion, nationality, political opinion or membership in a particular social group.

Conditional Entrant. Individuals who sought to enter the United States before 1980 because of a fear of persecution were called conditional entrants. Since the United States became a signatory to the Geneva Convention in 1980, these individuals have been called refugees.

Temporary Protected Status (TPS). TPS is granted to people living in the United States who are from designated countries where unsafe conditions make it a hardship for them to return. TPS provides a stay of deportation and work permit, but no special federal assistance. Countries that have been designated under TPS in the past include El Salvador, Kuwait, Lebanon, Somalia and Liberia. TPS recipients are not considered to be PRUCOL.

Permanently Residing Under Color of Law (PRUCOL). PRUCOL is not an immigration status provided by the INS; rather, it is a legal term that applies to aliens in the United States "under statutory authority and those effectively allowed to remain in the United States under administrative discretion." Prior to the enactment of the 1996 federal welfare reform law, PRUCOL status meant that an alien was considered to be legally residing in the country for an indefinite period for the purpose of determining benefit eligibility for public assistance, including Medicaid. Examples of PRUCOL include: those granted indefinite voluntary departure; those residing in the United States under orders of supervision; those who have lived in the United States continuously since January 1, 1972; aliens granted stays or suspension of deportation; and aliens whose departure INS does not contemplate enforcing.

Illegal Alien. Also known as an undocumented or unauthorized immigrant, this is someone who enters or lives in the United States without official authorization, either by entering illegally

or violating the terms of his or her visa (for example, entering without inspection by the INS, entry based on fraud, overstaying his or her visa or working without authorization). Under the Immigration Reform and Control Act of 1986, Congress granted amnesty to approximately 2.6 million undocumented immigrants who had lived in the United States for five years or were special agricultural workers. This law initiated a requirement that employers verify work authorization of their employees or face stiff financial penalties. Approximately 300,000 undocumented immigrants enter and stay in the United States each year.

Nonimmigrants. Nonimmigrants are those who are allowed to enter the United States for a specific purpose and for a limited period of time, such as tourists, students and business visitors. Nearly 22.1 million nonimmigrants entered the United States in FY 1994.

Sponsors, Affidavits of Support and Deeming. In the past, immigrants who entered the United States to rejoin families were often, but not always, sponsored. Beginning in 1998, immigrants who are seeking to join their families in the United States must have an affidavit of support from their sponsor(s). (Note: Refugees are not sponsored immigrants. Employment-based immigrants are generally not sponsored.) Sponsors must now be citizens, nationals or lawful permanent residents; 18 years or over; a resident of the 50 states or Washington, D.C.; and the petitioner for admission of the immigrant. Sponsors must sign an affidavit of support, now a legally enforceable document, agreeing to financially assist the immigrant. The 1996 immigration reform law requires sponsors to have an income at 125% of the federal poverty level and to maintain the immigrant at that level. Active duty military personnel must have an income of 100% of federal poverty to become a sponsor.

Deeming means that the income and resources of the sponsor and his or her spouse count as the immigrant's income in determining the immigrant's eligibility for public benefits. Previously, deeming applied only to AFDC, SSI and Food Stamps. Deeming now applies to all federal means-tested programs until the sponsored immigrant becomes a naturalized citizen or has worked for 10 years. Deeming for all federal and state means-tested programs applies only to the newly executed affidavits of support, effective December 19, 1997. Newly arriving immigrants are subject first to the five-year bar on federal benefits. Then, deeming applies for federal benefits until the immigrant attains citizenship or 10 years of work.

Public charge. The federal government expects newcomers to become self-sufficient as soon as possible after their arrival. Immigrants who become dependent on public assistance, fail to find employment, and are unlikely to be self-supporting in the future may be deported on the grounds they have become a "public charge."

Naturalization. This is the process by which a foreign-born individual becomes a citizen of the United States. To naturalize, immigrants must be at least 18 years old; have been lawfully admitted to the United States; have resided in the United States continuously for five years; demonstrate a basic knowledge of English, American government and history; and have good moral character. During FY 1995, nearly 446,000 people became naturalized citizens.

Immigration and Naturalization Service (INS). The INS is the agency within the U.S. Department of Justice that administers the nation's immigration laws. It is responsible for visa petitions, citizenship, deportations and border control.

NOTES

1. Ann Morse, ed. *America's Newcomers: An Immigrant Policy Handbook* (Denver: National Conference of State Legislatures, 1994), p. 68.

2. Temporary Assistance for Needy Families; Proposed Rule. 62 *Federal Register* 224 (November 20, 1997).

3. *Report to the Congress: FY 1995 Refugee Resettlement Program.* Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

4. Temporary Assistance for Needy Families; Proposed Rule. 62 *Federal Register* 224 (November 20, 1997), Section 271.52, Page 62188-89.

5. *Report to the Congress: FY 1995 Refugee Resettlement Program.* Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

6. The New Americans: Economic, Demographic and Fiscal Effects of Immigration, National Research Council (May 1997).

7. NGA/NCSL/APWA Analysis of P.L. 104-193, August 30, 1996, p. 8.

8. The U.S. Department of Health and Human Services has defined a "federal means-tested public benefit" as the Temporary Assistance for Needy Families, the Supplemental Security Income, the Food Stamps, and the Medicaid programs. There has been some discussion of adding the Child Health Program (CHiP) to this list.

9. The 1997 budget reconciliation law, P.L. 105-33, added Cuban-Haitian entrants to the list of immigrant categories exempted from the five-year bar.

10. Ala. Const. art. IV, §88; Calif. Const. art 16, §§3, 11; art. 34; Colo. Const. art. XXIV, §3; Ga. Const. art. IX, §III, para 1; Hawaii Const. art IX, §3; Idaho Const. art. X, §1; Ind. Const., art IX, §3; Kan. Const, art. 7, §4; Louisiana Const. art. _§8; Mass. Const. amend. XLVII; Mich. Const. art. 4, §51; Miss. Const. art. IV, §86, art. XIV §262; Mont. Const. art. 12, §3(3); Nev. Const., art. 13, §1(1); N.Y. Const. art. 17, §1; N.C. Const. art XI, §4, Okla. Const. art. 17, §3; Texas Const. art. XI, §2; Utah Const. art. XIX, §2; W. Va. Const. art. IX, §2; Wyo. Const. art 7, §18. Neuborne, Burt, "State Constitutions and the Evolution of Positive Rights," Rutgers Law Journal 20:881 (1989).

11. 229 Conn. 664, argued March 24, 1994, decided June 14, 1994. Source: 643 *Atlantic Report*, 2d Series.

12. Section 400(7) of the federal welfare reform law states: "With respect to the State authority to make determinations concerning the eligibility of qualified aliens for public benefits in this title, a State that choose to follow the Federal classification in determining eligibility of such aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy."

13. *City of New York v. The United States of America, James Callahan, Acting Commissioner of the Social Security Administration, and Dan Glickman, Secretary of the Department of Agriculture.*

14. Governor Chiles was joined in the suit—*Rodriquez vs. Shalala*—by the state's attorney general, the Department of Children and Family Services and the Agency for Health Care Administration, as well as Dade County Mayor Alex Penelas.

15. Yates, Thomas. "Due Process for Legal Noncitizens Facing Loss of Food Stamps Benefits," *Loyola Public Interest Law Reporter*, (Chicago: Loyola University, forthcoming).

References

Carrasco, Gilbert Paul. "Congressional Arrogation of Power: Alien Constellation in the Galaxy of Equal Protection." *Boston University Law Review* 74, no. 4 (September 1994), pp. 591-641.

Center on Budget and Policy Priorities. "State Funded Food Stamps for Legal Immigrants." Washington, D.C.: CBPP, September 24, 1997.

Congressional Research Service, Library of Congress. "Whether Congress May Authorize the States to Deny State-Funded Public Benefits to Legal Aliens," Memorandum. Washington, D.C.: CRS, February 22, 1995.

Dunlap, Jon. "Selected Constitutional Issues in Welfare Reform." Presentation at a joint APWA, NCSL, NGA Welfare Reform Briefing, Washington, D.C., September 9-10, 1996.

Fogle, Diana. "Potential Legal Challenges to Immigrant Restrictions on Welfare," W-Memo. Washington, D.C., American Public Welfare Association, 1995, pp. 21-24.

Food Research Action Center. In Focus: Food Stamp Benefits for Legal Immigrants. Washington, D.C., FRAC, July 27, 1997.

Food Research and Action Center and Second Harvest National Food Bank, "State Government Responses to the Food Assistance Gap," Washington, D.C., FRAC, November 3, 1997.

Food Research and Action Center, Special Analyses. Washington, D.C., FRAC, February 26, 1997 and April 3, 1997.

Immigrant Policy News ... State LegisLine, Immigrant Policy Project, National Conference of State Legislatures. Washington, D.C. , 1997, 1998.

Mathematica Policy Research, Inc. *Characteristics of Childless Unemployed Adult and Legal Immigrant Food Stamp Participants: Fiscal Year 1995.* Submitted to the U.S. Department of Agriculture, February 13, 1997.

Morse, Ann, ed. *America's Newcomers: An Immigrant Policy Handbook.* Denver: National Conference of State Legislatures, 1994.

National Governors' Association Center for Best Practices. "Summary of Selected Elements of States Plans for Temporary Assistance for Needy Families," July 15, 1997.

National Immigration Law Center. *Guide to Alien Eligibility for Federal Programs.* Los Angeles: National Immigration Law Center, 1994.

Neuborne, Burt, "State Constitutions and the Evolution of Positive Rights," *Rutgers Law Journal* 20:881, 1989.

Pennsylvania Office of Attorney General, official opinion No. 96-11. "Department of Public Welfare; Enforceability of Durational Residency and Citizenship Requirement of Act 1996-35", dated December 9, 1996, published in the *Pennsylvania Bulletin* 26, no. 52, December 28, 1996.

Smith, James P. and Barry Edmonston, eds. *The New Americans: Economic, Demographic and Fiscal Effects of Immigration.* Washington, D.C., National Research Council, 1997.

U.S. Department of Agriculture, Food and Consumer Services, "Guidance on State Option Food Stamp Programs," Washington, D.C., August 8, 1997.

U.S. Department of Health and Human Services, Office of Refugee Resettlement. *Report to the Congress: FY 1995 Refugee Resettlement Program.* Washington, D.C. [Date not ascertainable.]

Weissbrodt, David. *Immigration Law and Procedure.* 2nd ed. In a Nutshell Series. St. Paul, Minn.: West Publishing Co., 1989.

Welfare Law Center. "States Seek to Pay Lower Benefits to New Residents: Advocates Respond with Litigation," *Welfare News.* New York, New York: Welfare Law Center, March/April 1997.

Wheeler, Charles. "The New Alien Restrictions on Public Benefits: The Full Impact Remains Uncertain." *Interpreter Releases* 37, no. 36 (September 23, 1996).

Yates, Thomas. "Due Process for Legal Noncitizens Facing Loss of Food Stamps Benefits," *Loyola Public Interest Law Reporter.* Chicago: Loyola University, forthcoming.

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America's Newcomers

Mending the Welfare Safety Net for Immigrants

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, which not only ended the 60-year federal guarantee to poor families, but also ended immigrants' access to a broad range of means-tested programs. The welfare law cut $23.8 billion in benefits to legal immigrants and refugees, and complicated an already complex eligibility system for public benefits.

The new bars, restrictions and options created a number of challenges for state and localities: the anticipation of cost shifts from federal programs to state and local safety net programs, concerns about secondary consequences such as the potential loss of Medicaid benefits for elderly immigrants who were make ineligible for Supplemental Security Income (SSI), and the need to develop new verification systems for a host of newly-affected benefit programs. The 1997 budget reconciliation law eased the worst aspect of the law by restoring $11.8 billion in SSI benefits for elderly, blind and disabled immigrant residents. Food stamp benefits were not restored, and states now must determine whether and how to provide nutritional assistance to those who have lost federal benefits.

The new law also raised constitutional questions at both the federal and state levels. The law seeks to grant states the authority to deny benefits on the basis of immigrant status. Although constitutional precedent had allowed the federal government to discriminate on the basis of lawful alienage, it also had clearly prohibited the states from doing so. Several state constitutions provide some obligation to assist poor residents of the state, not citizens. In addition, the development of unique immigrant eligibility requirements for public assistance is likely to violate the U.S. Constitution's requirement for a uniform rule of naturalization.

This report reviews the federal debate and congressional reconsideration of benefits for immigrants, as well as early decisions made in TANF, Medicaid, nutritional assistance and naturalization programs. Finally, it examines federal and state constitutional issues related to public benefits for immigrants and some recent legal challenges.

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