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Welfare-Technicals Bill

File - Re: Welfare-technicals bill

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

cc: Cynthia Rice
Diana Fortuna

Why are they proposing any new technical amendments? Didn't we have an (endless) interagency process for this?

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The Honorable Clay Shaw
Chairman
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 1048, a bill that would make various corrections to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The Administration supports enactment of H.R. 1048. We do, however, have a number of concerns and recommendations, as discussed below.

Constitutional concern. As a general matter, we are concerned that this legislation does not include all of the provisions contained in the Administration's draft PRWORA technical corrections bill, which was transmitted to Congress on December 16, 1996. We are particularly concerned about the omission from the draft bill of a proposed technical amendment regarding the charitable choice provisions of section 104 of the PRWORA. We strongly urge the incorporation of the section 104 amendments that the Administration recommended last November in any technical amendments to the PRWORA. The Establishment Clause of the Constitution prohibits states from funding pervasively sectarian organizations or religious activities. Congress' failure to clarify certain provisions in section 104 that might be read as inconsistent with this constitutionally compelled preclusion creates a serious risk that the provision will be implemented in an unconstitutional manner.

In addition to the section 104 amendments we previously proposed, we believe one further correction to section 104 should be made to clarify constitutional restrictions under the Establishment Clause. Section 104(j) limits the use of funds provided under subsection 104(a)(1)(A) (which allows states to contract with religiously-affiliated organizations) to non-sectarian activities. We would expand this limitation to reach also in-kind benefits provided by a state under subsection (a)(1)(B), which permits states to issue "certificates, vouchers, or other forms of disbursement" that are redeemable with religiously-affiliated organizations. Thus, we recommend that

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subsection (j) be amended, in toto, as follows:

> "LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES. -- No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) or (a)(1)(B) shall be used or expended for any sectarian activity, including sectarian worship, instruction, or proselytization.".

With this additional amendment to subsection (j), we thus reiterate the importance of including the other amendments to section 104 that we proposed earlier.

Verification of eligibility for federal public benefits. With respect to section 432 of H.R. 1048 ("verification of eligibility for federal public benefits"), amending section 432 of the PRWORA, the Department of Justice believes that the proposed amendments to section 432(a) are unnecessary and counterproductive. The Department is preparing interim guidance on how to verify citizenship, qualified alien status and eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which it intends to release promptly. To the extent that the amendments are intended to require regulations implementing a system for verification available to all providers comparable to the computerized system used by providers complying with section 1137 of the Social Security Act, it is not feasible to establish such a system within the proposed 90-day timeframe. The INS is, however, in the process of developing such a system, and will implement it as soon as it is technically and practically feasible to do so.

In addition, the purpose of paragraph (2) of the proposed amendment, which substitutes the phrase "setting forth procedures for verifying" for the word "requiring," is unclear. The Department of Justice asks that, if section 432 is retained, this provision be clarified. In particular, the Department believes that there should be no ambiguity that compliance with the Attorney General's regulations regarding verification of eligibility for federal public benefits is mandatory. Although the Department of Justice intends to build principles of flexibility into the final regulations to accommodate bona fide State needs, requiring providers of federal public benefits to abide by the verification procedures set forth in the regulations is necessary to ensure consistent determinations across programs, as well as to avoid discrimination against persons who are perceived to be foreigners.

Indian tribes in Alaska. Additionally, although Senator Stevens' office has raised concerns about this issue, a technical amendment to the definition of "Indian tribes in Alaska" remains necessary to conform the definition to the recognized definition of "Indian tribe" in the Indian Self-Determination and Education

Assistance Act, 25 U.S.C. 450b. The current definition of Indian Tribes in Alaska in section 419(4)(B) of the Social Security Act, as added by section 103 of the PRWORA, by including entities that are not Indian tribes and excluding existing federally recognized tribes, falls outside the line of authority that recognizes the special political relationship between the U.S. government and Indian tribes and conflicts with the principle of government-to-government relations with Indian tribes. As a result, this definition raises potential litigation and policy concerns. The amended definition, as set forth in the Administration's draft bill, is intended to reduce the risk of litigation on this issue. In addition, application of this variant definition to the portion of Child Care Development Block Grant (CCDBG) funding transferred from the Temporary Assistance for Needy Families program under section 418 of the Social Security Act (as added by section 603(b) of the PRWORA) will make impossible, in the case of Alaska Natives, the operation of a single unified child care program under CCDBG.

Definition of "qualified alien." We are also concerned about the scope of the amendments to section 431 of H.R. 1048. Although section 431(a) is responsive to our request that the benefit-administering agencies assume responsibility for determining the existence of a substantial connection between the battery or cruelty suffered by an alien and his or her need for a specific benefit, the bill does not adopt paragraph two of the Administration's proposed amendment to section 431(c), which clarifies that the Attorney General retains the responsibility for promulgating uniform guidance for the affected agencies on the definitions of battery and extreme cruelty, and the standards for determining the existence of a substantial connection. Without this provision, agencies may feel obligated to promulgate their own guidance, in which case aliens seeking benefits would be required to meet different standards when requesting benefits from different agencies, which might have the indirect effect of forcing a battered alien to remain in jeopardy longer as he or she struggles to meet disparate agency requirements. We respectfully request that the bill be amended, as follows, to clarify that the Attorney General retains the authority to issue the uniform guidance:

() BATTERED ALIEN DEFINED AS "QUALIFIED ALIEN" FOR LIMITED PURPOSES.--Section 431(c) of the PRWORA, as added by sec. 501 of P.L. 104-208, is amended by adding at the end of paragraph (2)(B) the following:

"After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and as appropriate with the heads of other Federal agencies administering benefit programs, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion), for purposes of this

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subsection and section 421 (f), on --

"(i) the meaning of the terms 'battery' and 'extreme cruelty'; and;

"(ii) the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State or local program.".

Other comments and concerns. In addition to the technical amendments discussed above, we suggest three others. First, we have a comment with respect to the technical amendment proposed in section 402 of H.R. 1048. Section 402 makes changes to references within the PRWORA to section 243(h) of the Immigration and Nationality Act (INA), to take into account the modification and recodification of section 243(h) as section 241(b)(3) of the INA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The technical amendment in section 402 assumes that the modification and recodification are effective upon enactment of IIRIRA; however, section 309 of IIRIRA provides that these changes are not effective until the first day of the first month beginning more than 180 days after enactment of IIRIRA (i.e., April 1, 1997). We therefore suggest the following amendment to section 402:

Sections 402(a)(2)(A)(iii), 402(b)(2)(A)(iii), 403(b)(1)(C), 412(b)(1)(C), and 431(b)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are each amended by striking "section 243(h) of such Act" each place it appears and inserting "section 243(h) of such Act (as in effect immediately before ~~enactment~~ the effective date of section 307 of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of Public Law 104-208)."

Second, we have ~~enclosed~~ two additional PRWORA technical amendments. Both ~~amendments~~ involve sections of the IIRIRA that amend section 421 of the PRWORA.

Thank you for your consideration of this matter. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Andrew Fois
Assistant Attorney General

Enclosure

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AMENDMENT TO PRWORA
(REGARDING SECTION 431(c))

Under the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA"), only "qualified aliens" are eligible for certain federal public benefits, and providers of such benefits must verify that applicants are indeed qualified aliens eligible for benefits. Section 432 of the Act in turn requires the Attorney General to issue regulations requiring such verification, and the regulations are, to the extent feasible, to adopt procedures comparable to those used in INS' Systematic Alien Verification for Entitlements System. Section 501 of IIRIRA amends section 431 of PRWORA to create an additional category of qualified alien: an alien who (or whose child) has been battered or subjected to extreme cruelty in the United States by a spouse, parent or member of the spouse's or parent's family with whom they reside if, in the opinion of the Attorney General, there is a substantial connection between the battery or cruelty and the alien's need for the public benefits sought, and if the alien has been approved for, or has a petition pending that sets forth a prima facie case for, admissibility or suspension of deportation under one of several specified provisions of the Immigration and Nationality Act ("INA"). See PRWORA § 431(c). In order for a benefit provider to determine whether an applicant is a qualified alien under this provision, it will generally have to obtain confirmation from the INS or EOIR that the applicant has indeed been approved for, or has a petition pending that sets forth a prima facie case for, admissibility or suspension of deportation under one of the specified provisions of the INA.

Section 384 of IIRIRA prohibits the Justice Department, including INS and EOIR, from disclosing to anyone outside of the Justice Department any information which relates to an alien who is the beneficiary of an application for relief under several of these same provisions. Although the commendable purpose of this provision is to prevent the misuse of information regarding battered aliens, it might be read to preclude the INS and EOIR from cooperating with federal, state or local entities seeking to verify the status of aliens seeking benefits pursuant to section 431(c) of PRWORA. Section 642(c) of the IIRIRA mandates that the INS respond to inquiries from government agencies seeking to verify citizenship or immigration status "for any purpose authorized by law." Section 642 requires INS to provide governmental entities with verification information regarding filings under the INA provisions referenced in section 431(c). Section 642 does not, however, on its face authorize EOIR (which has jurisdiction over determinations under some of the specified provisions) to release such information. Nor does it authorize disclosure of such verification information to non-governmental benefit providers. To clarify that both the INS and EOIR can disclose to all benefit providers information necessary for verification determinations mandated by PRWORA, we suggest the following technical amendment:

Proposed Amendment:

Amend section 384(b) of IIRIRA by a adding at the end thereof a new paragraph (5):

384(b)(5). Neither subsection (a)(2) nor any other provision of law shall be construed to limit the authority of the Department of Justice to disclose information to federal, state, or local public or private benefit-granting entities for use solely in determining benefit eligibility under sections 431(c) and 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as amended).

AMENDMENT TO PRWORA
(REGARDING SECTION 431(c))

Section 501 of IIRIRA adds to the categories of "qualified alien" under § 431 of PRWORA certain battered aliens who have been approved for, or have petitions pending that set forth a prima facie case for, admissibility or suspension of deportation under one of several specified provisions of the INA. One of the enumerated INA provisions is § 244(a)(3), which provides for suspension of deportation of an alien who (or whose child) has been battered or subjected to extreme cruelty. However, IIRIRA provides that aliens seeking such relief after April 1, 1997, must do so under a new provision, § 240A(b)(2), which provides for cancellation of removal of an alien who (or whose child) has been battered or subjected to extreme cruelty. Although IIRIRA replaces the process of "suspension of deportation" with that of "cancellation of removal," § 501 only references § 244(a)(3). Thus, it might be thought that aliens subject to the new cancellation of removal provision will not be qualified aliens under PRWORA, although their circumstances are identical to those who filed for suspension of deportation. We therefore propose amending § 501 to state explicitly that qualified aliens include aliens filing petitions under the new § 240A(b)(2).

Proposed Amendment:

Amend subsection (iii) of, and add a new subsection (iv) to, section 501:

(iii) suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such Act <u>(as in effect prior to April 1, 1997),</u>

<u>(iv) cancellation of removal pursuant to section 240A(b)(2) of such Act, or</u>