

October 31, 1997  
L-97-45

**TO** : The Board

**FROM** : Catherine C. Cook  
General Counsel

**SUBJECT** : Amendment of Welfare Reform Legislation

The Balanced Budget Act of 1997 (Public Law 105-33, signed August 5, 1997) included an amendment to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193, "welfare reform legislation") which was proposed by the Railroad Retirement Board earlier this year in order to clarify the application of that 1996 legislation. Specifically, section 5561(b) of Pub. L. 105-33 provides that the prohibition on the payment of a Federal public benefit to an alien who is not a "qualified alien" shall not apply to any benefit payable under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) to an alien who is lawfully present in the United States "as determined by the Attorney General" or to an alien residing outside of the United States.

As you will recall, the welfare reform legislation established a general rule that an alien who is not a "qualified alien" is not eligible for any "Federal public benefit." "Federal public benefit" was broadly defined in the 1996 legislation to include any retirement, unemployment, or similar benefit. We stated in our analysis of the welfare reform legislation in a memorandum dated January 3, 1997, that benefits under both the RRA and the RUIA would appear to fall within that definition. We concluded in our analysis that unless an alien fell under the definition of "qualified alien," the welfare reform legislation might be read to prohibit payment of benefits under either the RRA or the RUIA.

The term "alien" was defined in the welfare reform legislation to mean any person who is not a citizen or national of the United States. "Qualified alien" was defined to include aliens admitted for legal permanent residence (i.e., immigrants), refugees, aliens paroled into the United States for at least one

year, aliens granted asylum or related relief, and certain abused spouses and children. Thus, under the welfare reform legislation as originally enacted, a Canadian citizen who resided in Canada and performed creditable railroad service in the United States could potentially be deemed to be ineligible for benefits under either the RRA or the RUIA.

The amendment enacted as part of the Balanced Budget Act of 1997 eliminates that possibility. Section 5561(b) in essence makes the prohibition against the payment of a Federal public benefit to a non-qualified alien inapplicable to an alien who resides outside of the United States and otherwise qualifies for a benefit under the RRA or RUIA. Section 5561(b) also extends to benefits payable under the RRA and the RUIA the same treatment given by section 401(b)(2) of Pub. L. 104-193 to any benefit payable under title II of the Social Security Act. In other words, so long as an alien is lawfully present in the United States as determined by the Attorney General, the alien could, if otherwise entitled, be paid a benefit under the RRA or the RUIA.

It should also be pointed out that section 5561(a) of Pub. L. 105-33 amends section 401(b) of Pub. L. 104-193 to provide that section 401(a) of Pub. L. 104-193 shall not apply to any benefit payable under Title 18 of the Social Security Act (relating to the Medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of title 18 (relating to hospital benefits), who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits. This amendment allows non-qualified aliens who earned eligibility for Medicare benefits through work in the United States to receive them so long as the alien was lawfully present when the work was performed and is lawfully present in the United States at the time of receipt of the benefits. This amendment applies to railroad retirement beneficiaries and together with the amendments made by section 5561(b), described above, would protect Medicare benefit payments provided under section 7(d) of the RRA.

It appears that the amendments made by section 5561 resolve the concerns which the enactment of Pub. L. 104-193 raised with respect to the payment of benefits under the RRA and the RUIA. The broad language used in that legislation has now been fine-tuned to allow an alien who meets the eligibility

requirements for benefits under either of the Acts administered by the Board to be paid those benefits regardless of whether the alien is also a “qualified alien” within the definition set out in the welfare reform legislation.<sup>1</sup>

Finally, in our analysis of P.L. 104-193, we pointed out that the statement of national policy in section 400 of that legislation indicated that the purpose of Title IV of the welfare reform legislation was to restrict the payment of Federal benefits so that aliens would not come to the United States primarily to obtain such benefits and to force aliens to find non-public means of support. Consistent with that purpose, section 5574 of P.L. 105-33 amended section 433 of P.L. 104-193, which concerns statutory construction, to make it clear that with respect to certain earned payments, the provisions of the welfare reform legislation apply only to aliens who are present in the United States. Specifically, section 5574(b) provides that the limitations on eligibility for benefits shall not apply to the eligibility for benefits of aliens who are not residing or present in the United States with respect to wages, pensions, annuities, and other earned payments to which an alien is entitled resulting from employment by, or on behalf of, a Federal, State, or local government agency which was not prohibited during the period of such employment. Section 5574(b) also provides that the limitations on eligibility for benefits shall not apply to eligibility of this same group of aliens (i.e., those not residing or present in the United States) for benefits under laws administered by the Secretary of Veterans Affairs. The House Report states that this provision clarifies that wages, pensions, and other earned payments, including veterans benefits, stemming from authorized work are not to be restricted for non-citizens living outside of the United States. The Report sets out the following explanation for this amendment:

Without clarification, several government agencies expressed concerns that, for example, noncitizen veterans of the U.S. armed forces who have since returned to their home countries (technically making them “non-qualified aliens” under the welfare law) could lose access to veterans benefits they earned through their service here. Other concerns raised involved noncitizens who work or have worked at U.S. embassies overseas, who some feared might become ineligible to receive salaries or other earned benefits resulting from their work. This provision clarifies that in administering all provisions of Title IV, and especially Sections 401 and 411 relating to benefits for non-

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<sup>1</sup>For that reason, we have not discussed amendments to the definition of “qualified alien” made by Pub. L. 105-33.

qualified aliens, restrictions on public benefits do not apply to earned benefits from work by noncitizens outside the U.S. or by noncitizens who have since left this country and are collecting veteran, pension or other benefits based on their prior work in the U.S. [H.R. Rep. No. 78, Part 1, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. 101 (1997)].

Both section 5561 and section 5574 are technical amendments which were intended to clarify, rather than substantively modify, existing law. Thus, the effective date for both sections is August 22, 1996, which was also the effective date for those sections of the welfare reform legislation which they clarify.