Congressional

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

TO: David T. Ellwood
Mary Jo Bane
Bruce Reed

FROM: HHS/ASL Staff

SUBJECT: Draft House Ways and Means Committee Welfare Reform Mark-Up Document

DATE: October 21, 1994

Attached please find a copy of the draft House Ways and Means Committee Welfare Reform mark-up document. The Committee staff has asked HHS to review the document for technical accuracy only and to provide any comments to the Committee staff early next month. In order to comply with this request, we have asked the appropriate ASPE/HSP and ACF staff to review this document and provide comments to ASL by COB Friday, October 28.

cc: Wendell Primus
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H.R. 4605
WORK AND RESPONSIBILITY ACT OF 1994

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DRAFT

doc:wra94#1 parts I-III October, 1994

THE WORK AND RESPONSIBILITY ACT OF 1994:

DESCRIPTION OF PRESENT LAW AND EXPLANATION OF PROVISIONS

I. THE JOBS PROGRAM AND TIME LIMITS

(Note: See also item II.L., "Special JOBS and WORK Provisions Relating to Indian Tribes;" item II.M., "JOBS, WORK and Child Care Provisions Affecting Puerto Rico, the Virgin Island, Guam and American Samoa;" and item II.N., "Training and Employment for Noncustodial Parents.")

A. Requirements and Opportunities for Participation in JOBS (section 101 of the bill)

(1) In general

Present law

All non-exempt recipients of Aid to Families with Dependent Children (AFDC) to whom the State guarantees child care are required to participate in the Job Opportunities and Basic Skills (JOBS) program, to the extent the program is available and State resources permit. [sec. 402(a)(19)(B) of the SSA]

Explanation of provision

All non-deferred applicants for and recipients of AFDC who were born after 1971 and who are the parents of a dependent child would be required to participate in the JOBS program, to the extent the program is available. A parent of a dependent child who is living with the child's other parent who was born after 1971 (or was living with the other parent and receiving AFDC in any month after September 1995) would also be required to participate. The requirements would not apply to any individual who is eligible for AFDC as an unemployed parent (AFDC-UP), if the State limits the number of months that AFDC-UP families may receive AFDC.

The State would have to apply the participation requirement to additional classes of parents of dependent children to whom the State chooses to apply the time-limit on AFDC receipt (see item J. below, "Twenty-Four Month Limit"), and the classes would have to be identified in the State plan by date of birth, date of application or another reasonable basis, and to any other applicants for or recipients of AFDC, if identified in the State plan. However, the State could not require participation by a child who is not a custodial parent and is under age 16 or attending full time an elementary, secondary, or vocational (or technical) school (under current law, this class of recipients is exempt from participation; see item (5) below, "Deferral from participation").

(2) Participation by volunteers

Present law

The State must allow applicants for and recipients of AFDC who are exempt from participation to participate on a voluntary basis, to the extent the program is available and State resources permit. If a volunteer drops out of the program without good cause after beginning participation, he or she is not given priority so long as other individuals are actively seeking to participate. [sec. 402(a)(19)(B) of the SSA]

Explanation of provision

To the extent that Federal JOBS funds are available, the State would have to allow participation in the program by individuals who are not required to participate in the program, or who are in deferred status. Volunteers who meet the criteria for deferral status would have to be allowed to cease participation in the JOBS program. At their option, States could apply the time-limit on the receipt of aid to volunteers who, but for meeting a criteria for deferral, would be required to participate because they are in a class of parents to whom the States has opted to apply the time limit.

If a State exhausts its Federal JOBS allocation, it would have to consider the request of a volunteer for approval of a self-initiated education and training program, applying criteria generally applicable to approval of such activities under the JOBS program. Approval of the activity would only guarantee child care to the individual (see related item IV.A.(1) below, "Child Care Guaranteed to Certain AFDC Recipients -- General requirement").

(3) Priority among target group members given to volunteers

Present law

States face a reduced Federal JOBS match if they fail to target a specified percentage of JOBS funds on specified target groups (see item III.D. below, "Priority/target populations"). In determining priority for participation among individuals in the target groups, the State must give first consideration to individuals who volunteer. [sec. 402(a)(19)(B) of the SSA]

Explanation of provision

Would delete the provision of current law.

(4) State discretion to limit participation of certain individuals

Present law

The State does not have to require or allow an individual to participate if the individual's participation would result in the State's failure to meet the targeting requirements. [sec. 402(a)(19)(B) of the SSA]

Explanation of provision

Would delete the provision of current law.

(5) Deferral from participation

Present law

To be exempt from participation in the JOBS program, an individual must be:

a. ill (according to regulations, the illness or injury must be serious enough to temporarily prevent entry into employment or training and must be determined by the State on the basis of medical evidence or another sound basis);
b. incapacitated (according to regulations, the incapacity must be a physical or mental impairment that is determined by a physician or a licensed or certified psychologist and that prevents the individual from engaging in employment or training under JOBS;
c. of advanced age (according to regulations, is 60 years of age or older);
d. needed in the home because of the illness or incapacity of another family member (according to regulations, the illness or incapacity must be determined by a physician or a licensed or certified psychologist, and the exemption applies only if no other appropriate member of the household is available to provide the needed care);

e. the parent or other relative of a child under age 3 who is personally providing care for the child or, if provided in the State plan, any age that is less than 3 but not less than 1;
f. the parent or other relative of a child under age 6, unless the State assures that child care will be guaranteed and that participation will not be required for more than 20 hours a week;
g. employed 30 or more hours per week;
h. a child under age 16;
i. a child 16 or over who is attending full-time an elementary, secondary or vocational school;
j. a pregnant woman who is in at least the second trimester; or
k. residing in an area where the program is not available (regulations specify that an individual will be exempt if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time to transport children to and from a child care facility, would be required for a normal work or training day, but that if normal commuting time in the area is more than 2 hours, then commuting time cannot exceed generally accepted community standards).

[sec. 402(a)(19)(C) of the SSA, and regulations at 45 CFR 250.30]

For AFDC-UP families, the exemption due to the age of a child may be applied to only one parent. A State may make the exemption inapplicable to both parents and require both to participate if child care is guaranteed.
[sec. 402(a)(19)(D) of the SSA]

Explanation of provision

Participation in the JOBS program would not be required, and JOBS provisions would not apply (except those relating to the development of a personal responsibility agreement and employability plan), in the case of an individual who:

a. is found, on the basis of a certification by a licensed physician, psychologist or mental health professional (from a list of such professionals approved for this purpose by the State) to have an illness or incapacitating condition that, at least temporarily, prevents the individual from engaging in employment or training;
b. is 60 years of age or older;
c. is needed in the home because of the illness or incapacity (as confirmed by a licensed physician, psychologist, or mental health professional, from a list of such professionals approved for this purpose by the

State) of another member of the household and no other appropriate household member is available to provide the needed care;

d. is the parent of a child born less than one year earlier; or, in the case of a child conceived during a month in which the parent received AFDC, or a child whose parent is under age 20 and does not have a high school diploma or equivalent, born less than 12 weeks earlier or, if greater, the number of weeks specified in the Family and Medical Leave Act of 1993;
e. is a woman in the third trimester of pregnancy;
f. resides in an area of the State where the time required to travel to and from the site where the individual's participation in the program would take place would exceed a total of two hours (or, if greater, the generally accepted commuting time in that area) in a day;
g. meets other criteria, established by the State, that reasonably suggest an inability to participate. The average monthly number of individuals in this category for a fiscal year could not exceed a specified percent of the average monthly number of: (1) all parents born after 1971, and parents in a class to whom the State applies the time limit, who apply for or receive AFDC and (2) individuals registered in the WORK program, unless the Secretary allows for a greater number for a specified period of time based on extraordinary or unforeseeable circumstances. The percentage cap on such deferrals would be set at 5 percent through fiscal year 1999 and 10 percent thereafter.

The young-child deferral could be applied to only one parent of a child for any month. The provision of current law that allows States to require participation of both parents in an AFDC-UP family would be deleted.

(6) Participation by young parents

Present law

To the extent the program is available and State resources permit, the State must require custodial parents under the age of 20 who have not completed high-school and who are required to participate in JOBS (including an individual who would be exempt from JOBS participation based solely on the age of the youngest child) to participate in an educational activity under the program. The State agency may require participation in educational activities on a full-time basis. The agency may require the parent to participate in training or work activities in lieu of educational activities if the parent fails to make good progress in completing education activities or if it is determined that participation in education activities is inappropriate. The State may establish criteria under which parents under 18 may be exempted from the school attendance requirement. [sec. 402(a)(19)(E) of the SSA]

Explanation of provision

Same as current law, except the provision would delete the language that provides an exception if the program is not available and State resources do not otherwise permit. Also, teen parents would be eligible for a young-child deferral (see item (5) above, "Deferral from participation").

(7) Participation by AFDC-UP families

See item III.B.(2) below for special provisions relating to JOBS participation by AFDC-UP families.

(8) Requirement for prompt State notice

Present law

No provision.

Explanation of provision

The State would have to promptly advise each AFDC applicant and recipient of the participation requirements, and time limits on the receipt of AFDC, that may be applied.

B. Program Sanctions
(section 101 of the bill)

(1) In general

Present law

Sanctions must be applied to an individual who is required to participate if she (a) fails without good cause to participate in the JOBS program, or (b) refuses without good cause to accept any bona fide offer of employment in which she is able to engage. [sec. 402(a)(19)(G)(i) of the SSA]

Explanation of provision

Sanctions would have to be applied to an individual who is required to participate if she (a) fails without good cause to participate in the program, or (b) refuses without good cause to accept any bona fide offer of employment of 20 hours per week or more (or, at State option, a greater number not exceeding 30) in which she is able to engage.

(2) Nature of sanction

Present law

If a sanction is to be applied to a participant, the participant's needs must not be taken into account in determining the family's benefits. If the participant is a member of an AFDC-UP family, and his or her spouse is not participating, the needs of the spouse also must not be taken into account. When a parent is sanctioned, payments to the family must be made to a third party in the form of protective or vendor payments unless the agency is unable to arrange such payments.
[sec. 402(a)(19)(G)(i) of the SSA]

Explanation of provision

The sanction for failure to participate in JOBS would be the same as current law, except: (a) the special rule for AFDC-UP families (that requires that the needs of the spouse also not be taken into account) would be deleted; and (b) protective or vendor payments would be at State option.

For failure to accept employment, the individual's family would be ineligible for aid. However, the family would be considered to be receiving aid for purposes of the medicaid program. For purposes of any other Federal or Federally-assisted program, the family would be considered to be receiving the same amount of aid that would be payable if the individual were not being sanctioned.

(3) Length of sanction

Present law

Sanctions are applied as follows: (a) in the case of the first failure to comply, until the failure to comply ceases; (b) in the case of the second failure to comply, until the failure to comply ceases or 3 months, whichever is longer; (c) in the case of any subsequent failure to comply, until the failure to comply ceases or 6 months, whichever is longer.
[sec. 402(a)(19)(G)(ii) of the SSA]

The State must remind individuals who have failed to comply for three months, in writing, of the individual's option to end the sanction by complying. [sec. 402(a)(19)(G)(iii) of the SSA]

Explanation of provision

For failure to participate in the JOBS program, same as current law. For failure to accept employment, the sanction would apply for six months or, if sooner, the first month following the month in which the individual accepts an offer of employment.

Would retain language requiring State to remind individuals of their option to end the sanction by complying.

(4) Inapplicability of sanction in certain cases

Present law

No sanction applies based on the refusal of a parent of a child under age 6 to accept employment, if the employment would require the parent to work more than 20 hours a week. [sec. 402(a)(19)(G)(iv) of the SSA]

No sanction applies if child care (or day care for any incapacitated individual living in the home) is necessary for an individual to participate in the program or accept employment, such care is not available, and the State agency fails to provide care. [sec. 402(a)(19)(G)(iv) of the SSA]

The State agency may require a participant in the program to accept a job only if the agency assures that the participant's family will experience no net loss of cash income resulting from acceptance of the job. [sec. 402(a)(19)(H) of the SSA]

Explanation of provision

Would delete the provision providing good cause in the case of a parent of a child under age 6 who refuses to accept employment requiring work of more than 20 hours a week. Would retain current law with respect to circumstances in which child care is not available, and regarding the net loss of income standard.

(5) State evaluation of certain cases under sanction

Present law

No provision.

Explanation of provision

The State agency would have to evaluate the circumstances in each case: (a) where an individual, under sanction for the first failure to comply with JOBS participation, continues for three months to fail or refuse to comply, or (b) where an individual has a subsequent sanction applied. The agency would have to provide appropriate counseling and other supportive services to assist the individual in addressing the cause of the failure or refusal to comply.

C. **Fair Hearing**
(section 103(h) of the bill)

Present law

Each State must establish a conciliation procedure for the resolution of disputes involving an individual's participation in the program.

If the dispute is not resolved through conciliation, the State must provide an opportunity for a hearing. The hearing may be provided through a hearing process established especially for the hearing of disputes related to the JOBS program, or it may use the regular AFDC hearing process. (Under the AFDC hearing process, a State must provide for a State agency hearing, or an evidentiary hearing at the local level with a right of appeal to a State agency hearing, in all cases of intended action to discontinue, terminate, suspend, or reduce assistance. Agencies must provide timely and adequate notice, and assistance must not be reduced or terminated if the recipient requests a hearing within 10 days of mailing of the notice.) In no event may assistance be suspended, reduced, discontinued, or terminated as a result of a dispute until an individual has an opportunity for a hearing that meets the due process standards set forth by the Supreme Court in *Goldberg v. Kelly--1970*. [In the case of *Goldberg v. Kelly*, the Supreme Court held that "a pre-termination evidentiary hearing is necessary to provide the welfare recipient with procedural due process," and specified certain standards which such hearings must meet (e.g., the hearing must provide timely and adequate notice of reasons for termination, an opportunity for the recipient to confront adverse witnesses and to present arguments orally before the decisionmaker, and an impartial decisionmaker, but need not be a judicial or quasi-judicial trial).]

[sec. 482(h) of the SSA]

Explanation of provision

In resolving disputes involving an individual's participation in the JOBS program, States would have the option to use: (a) a conciliation process, meeting standards established by the Secretary, or (b) a procedure that includes advance notice to the individual of an apparent failure to comply with a program requirement, and 10 days in which to contact and meet with a State agency representative in order to resolve the dispute (or comply with the requirements) and make unnecessary the imposition of the sanction.

In cases where the dispute is not resolved (through whichever of the two procedures a State adopts) the hearing process of current law would apply.

D. Program Structure/Administration
(sections 102, 103(i) and 203 of the bill)

(1) Requirement for State participation

Present law

Each State with an AFDC program must have a JOBS program under a plan approved by the Secretary of HHS. The Secretary of HHS must consult with the Secretary of Labor on general plan requirements and criteria for approving plans. The Secretary of HHS has sole authority for approving or disapproving plans. [sec. 482(a)(1)(A) of the SSA]

Explanation of provision

Same as current law, except the Secretary of HHS would have to consult with the Secretary of Education in addition to the Secretary of Labor.

(2) Requirement for a Statewide program

Present law

Not later than October 1, 1992, each State is required to make the JOBS program available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors. If the State determines that the program is not to be available in all political subdivisions, it must provide justification to the Secretary. [sec. 482(a)(1)(D) of the SSA]

Explanation of provision

Would retain current law. However, JOBS program amendments under the bill would take effect as specified in item X. below, "EFFECTIVE DATES."

(3) Requirements for a State plan

Present law

The State plan is structured as an operational plan which must describe how the State intends to implement the program during the period covered by the plan. Federal requirements for the plan are not delineated, except that the plan must: (a) indicate that the JOBS program will be operated in accordance with the Federal law; (b) contain an estimate of the number of persons to be served by the program, a description of the services to be provided, the needs to be addressed, the extent to which the services are expected to be made available by other agencies on a nonreimbursable basis, and the extent to which services are to be provided or funded by the program; and (c) contain other information that the Secretary requires by regulation to determine that the State will meet the requirements of Federal law. [sec. 482(a)(1)(B) of the SSA]

Explanation of provision

Would retain current law.

(4) Admininstration of the JOBS and WORK programs
(section 203 of the bill)

Present law

The State agency responsible for administering or supervising the administration of the AFDC program is responsible for administering or supervising the administration of the JOBS program. [sec. 482(a)(2) of the SSA]

Explanation of provision

Would retain current law regarding administration of the JOBS program. However, the Governor could designate an alternative agency to administer or supervise the administration of the JOBS and WORK programs.

If an alternative agency is designated, it would have to submit the JOBS/WORK plan jointly with the State AFDC agency. It would also have to enter into an agreement with the AFDC agency outlining the responsibilities of each agency and submit that agreement to the Secretary. The AFDC agency would retain responsibility for AFDC eligibility determinations, tracking and notifying individuals about time limits, applying JOBS and WORK sanctions, and providing fair hearings related to reductions in AFDC or the application of time limits. Both agencies would have to agree to cooperate in exchanging necessary information, minimizing burdens on recipients and participants, and operating the programs effectively. The two would also have to agree on allocating and coordinating the following responsibilities: (a) deciding eligibility for deferrals, (b) deciding extensions to the time limit, and (c) conducting reviews and providing dispute resolution measures, including fair hearings as appropriate, on disagreements arising out of JOBS or WORK requirements. These joint JOBS/WORK plans would be subject to requirements under the AFDC statute with respect to the opportunity for applicants to get a fair hearing, proper and efficient administration, reporting, safeguarding and sharing of information, JOBS participation and sanction rules, and treatment of strikers.

Where an alternative agency is designated, the Secretary would transmit JOBS and WORK funds directly to that agency. In turn the designated agency would be responsible for the proper expenditure of funds. Also, references to the State agency would apply to this alternative agency when referring to functions assumed by the agency under the joint plan for JOBS and WORK.

In any State with a Statewide one-stop career center system for employment and training services, the JOBS and WORK programs would have to participate in that system and make employment and training services available through it.

(5) Coordination with other programs

Present law

The Secretary of HHS must consult on a continuing basis with the Secretaries of Education and Labor to assure maximum coordination of services. The Governor must ensure that program activities are coordinated with programs operated under JTPA and other relevant employment, training, and education programs. Components of the State plan relating to job training and workplace preparation must be consistent with the coordination criteria specified in the plan required under section 121 of JTPA (under section 121, States are required to prepare a coordination and special services plan which must establish criteria for coordinating activities under JTPA with certain specified agencies and programs). The State plan so developed must be submitted to the State job training coordinating council for review and comment not less than 60 days before its submission to the Secretary. Concurrently, the plan must be published and made reasonably available to the public for review and comment. Comments by the State job training coordinating council must be transmitted to the Governor.

The State agency must consult with the State education agency and the agency responsible for administering job training programs in the State. JOBS program activities must be coordinated with existing early childhood programs.

[sec. 483 of the SSA]

Explanation of provision

Same as current law, except adult and vocational education would be added to the list of programs with which JOBS must be coordinated.

(6) Federal administrative responsibility

Present law

The AFDC, child support enforcement, and JOBS programs must be administered by an Assistant Secretary within the Department of Health and Human services. [sec. 417 of the SSA]

Explanation of provision

The provision would include the new WORK program among the programs which must be administered by the Assistant Secretary.

(7) Contract authority/involvement of private sector

Present law

The State AFDC agency must administer the JOBS program directly or through arrangements or under contracts with JTPA administrative entities, State and local educational agencies, and with other public agencies or private organizations (including community-based organizations as defined under JTPA). Arrangements and contracts may cover services or activities, including outreach, to the extent that they are not otherwise available on a nonreimbursable basis.

The AFDC agency and private industry councils (as established under JTPA) must consult on the development of arrangements and contracts under the JOBS and JTPA programs.

In selecting providers, the State must take into account appropriate factors which may include past performance, demonstrated effectiveness, fiscal accountability, ability to meet performance standards, and such other factors as the State may determine to be appropriate.

The State AFDC agency must use the services of each private industry council to identify and provide advice on the types of jobs available or likely to become available in each JTPA service delivery area. The State agency must ensure that the JOBS program provides training for jobs of a type that are or are likely to become available in the area.

[sec. 485 of the SSA]

Explanation of provision

Would retain current law.

E. Personal Responsibility Agreement/Employability Plan (section 102 of the bill)

Present law

(1) Agreement

Following the assessment and the development of an employability plan (see items (2) and (3) below), the State agency may require the JOBS participant to negotiate and enter into an agreement with the agency that specifies such matters as the participant's obligations under the program, the duration of participation in the program, and the activities to be conducted and the services to be provided in the course of participation. If the State agency exercises this option, the agency must give the participant the assistance she needs to review and understand the agreement. [sec. 482(b)(2) of the SSA]

(2) Assessment

The State agency is required to make an initial assessment of the education, child care and other supportive services needs of each participant in the JOBS program, including a review of the skills, prior work experience, and employability of each participant, as well as the family circumstances. The agency may review the needs of the children as part of the assessment. [sec. 482(b)(1)(A) of the SSA]

(3) Employability plan

On the basis of the assessment, the State agency must, in consultation with the participant, develop an employability plan that explains the services that will be provided by the State agency and the activities in which the participant will take part, including child care and other supportive services, and sets forth an employment goal for the participant. To the maximum extent possible, the employability plan must reflect the preferences of the participant. The plan must take into account the individual's supportive service needs, available program resources, and local employment opportunities. The employability plan must not be considered a contract. [sec. 482(b)(1)(B) of the SSA]

(4) Case management

The State agency may assign a case manager to each participant and the participant's family. The case manager must be responsible for assisting the family in obtaining services which may be needed to assure effective participation in the program. [sec. 482(b)(3) of the SSA]

__Explanation of provision__

The bill would substantially revise existing law. The revised policy would be as follows:

(1) Agreement

At the time of application for aid (or first redetermination occurring after the effective date), each individual who is a parent or other caretaker relative (including individuals whose requirement for participation has been deferred), and a representative of the State agency, would have to sign a personal responsibility agreement. The agreement would have to, in the case of individuals to whom the time limit on the receipt of AFDC applies, set forth in clear terms, understandable by all parties, an acknowledgement that aid is subject to a general 24-month limit and should be considered transitional in nature. The agreement, in all cases, would have to acknowledge that the goal of both the individual and the State is to enable the individual to achieve maximum economic independence and self sufficiency. The bill further states: "To this end, the individual will participate in appropriate activities, and the State will furnish necessary enabling services and assistance."

(2) Assessment

Similar to current law, but the provision would apply with respect to each individual who is __required__ to participate in JOBS (other than an individual whose requirement for participation has been deferred). In addition, States would be required to assess the individual's literacy as part of the assessment.

(3) Employability plan

(a) In general

On the basis of the assessment, the State agency and the individual would have to, within 90 days from the earliest date from which AFDC payment is made (or from the first redetermination occurring after the effective date), jointly develop an employability plan for the individual. The purpose of the employability plan would be to lay out the fastest and most effective way to help the participant find employment and become self-sufficient. The plan would have to indicate the overall period of time that is expected to be necessary to achieve the individual's employment goal, taking into consideration, in the case of individuals to whom the time limit on the receipt of AFDC applies, the maximum remaining period of time for which aid may be paid. The plan would have to detail the activities in which the individual will be expected to engage in order to find employment, including job search, employment training and preparation, or education. The plan would have to be reasonable in light of the individual's literacy, skills, and needs, and the resources and opportunities for employment (including self-employment) within the community where the individual resides, and would have to, to the maximum extent possible, reflect the preferences of the individual. The employability plan would also have to describe the child care and other social services and assistance which the State agency will provide in order to allow the individual to take full advantage of the activities under the program, and the steps the individual should take to bring promptly to the attention of the State agency any difficulties the individual is encountering in participating in the program. As under current law, the employability plan could not be considered a contract.

(b) Work as primary activity

The State JOBS plan would have to provide that if the individual is employed an average of 20 hours a week (or up to 30 hours, as provided in the State plan) or more, work must constitute the primary activity under the individual's employability plan.

(c) Review mechanism

The employability plan would have to provide for a review mechanism to be available if the individual and the State agency are unable to agree on the content of the employability plan. The review process would have to, at least, provide for prompt involvement of another employee (or designee) of the State agency with supervisory or greater responsibilities than the person with whom the individual is in disagreement to provide further negotiation support. If agreement still cannot be reached, the State agency would have to, in accordance with regulations of the Secretary, afford the individual access to arbitration or a mediation process, to a more formal review or hearing, or to a combination of these processes.

(d) Sanction

Failure or refusal by an individual to sign an agreed-upon employability plan, or a plan that has been through the review mechanism and has been found appropriate, would result in denial of aid to the individual, except that no sanction or other penalty would continue after the individual has signed an appropriate plan.

(e) Employability plan for deferred individuals

The State agency and each individual in deferred status for whom participation in activities to prepare for JOBS participation has been found appropriate would have to jointly develop an employability plan. The plan would have to place primary emphasis on the activities in which the individual is able to engage that, together with any services provided by the State, will best prepare the individual for full participation in the JOBS program. However, procedures applicable generally to the development and enforcement of employability plans would not apply with respect to plans for individuals in deferred status.

(f) Periodic assessment

At least once every 6 months, a representative of the State agency together with the individual would have to conduct a review of the individual's employability plan (including the plan of an individual in deferred status) and the progress that is being made to achieve the goals set in the plan. The State agency would have to consider, in conducting the assessment, whether an individual in deferred status who is participating in JOBS-preparation activities has become ready to participate in the JOBS program, or whether an individual required to participate in the JOBS program should no longer be so required and instead should participate in activities to prepare for participation in JOBS. If it is decided that there should be a change in status, the individual's employability plan would have to be revised accordingly effective with the month following the month in which the revision is made. In the case of an individual participating in the JOBS program, the assessment would have to specifically address both the individual's participation and the State agency's delivery of services as agreed to in the employability plan. If it is found in the course of an assessment that there has been a substantial failure to provide services to the recipient in accordance with the employability plan, the plan (or some other State agency record) would have to document that finding, and the period during which the failure occurred.

(g) Revision of employability plan

The employability plan could be revised as necessary following a periodic assessment or at any other time that events warrant it, upon the agreement of the individual and the State agency. If there is disagreement about the need for revision, or the respects in which the plan will be revised or the new content of the plan, the review procedures described above in item (c) would be applicable.

(h) Substance abuse treatment

In the case of an individual required to participate in the enhanced JOBS program (or an individual deferred from JOBS participation) whose employability plan reflects the need for treatment for substance abuse, the State agency could require that the individual participate in substance abuse treatment that is available without charge to the individual. The State plan could, notwithstanding any other provision of law, apply to the individual required to participate in substance abuse treatment activities the sanctions that apply for failure to participate in the JOBS program, and if so, would have to advise the individual of the consequences of failure or refusal to accept treatment.

(4) Case management

Would retain current law. However, see item VI.C. below, "Case Management for Parents Under Age 20," for explanation of new case management provisions that would apply for parents under age 20.

F. Transition to WORK Program

(section 102 of the bill)

Present law

No provision.

Explanation of provision

The State agency would have to schedule a meeting with each individual who is subject to the time limit on the receipt of AFDC, with adequate advance notice, not later than 90 days prior to the end of his or her time limit. The agency would have to evaluate the individual's progress under the employability plan, determine whether any extension allowed under the time limit is necessary and available, and advise the individual about the job search requirement described in the next paragraph and steps to take to register for the WORK program. JOBS reassessments, AFDC eligibility redeterminations, or other meetings with the individual within 6 months prior to the end of the time limit could be used to meet this requirement.

At least 45 days prior to the end of the twenty-fourth month of receipt of aid (and, at State option, as much as 3 months prior), the State would have to require an individual to participate in job search to the extent consistent with the individual's employability plan. Job search participation would be a prerequisite for receiving a WORK assignment. ('Month of receipt of aid' would not include any month prior to the effective date; see item X. below, "EFFECTIVE DATES.")

G. <u>Orientation (Provision of Program and Employment Information)</u>
(sections 102 and 103 of the bill)

<u>Present law</u>

The State agency is required to ensure that all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing.

The agency must inform applicants and recipients of the education, employment, and training opportunities, and the support services (including child care and health coverage transition options) for which they are eligible, the obligations of the State agency, and the rights, responsibilities, and obligations of participants in the JOBS program. The agency must provide information on the types and locations of child care services reasonably accessible to participants, inform participants that assistance is available to help them select appropriate child care services, and on request provide assistance to participants in obtaining child care services.

The agency must inform applicants and recipients of the grounds for exemption from participation and consequences of refusal to participate if not exempt, and provide other participation information.

Each recipient must be notified by the State agency within one month after orientation of the opportunity to indicate his or her desire to participate in the program, including a clear description of how to enter the program.

[sec. 482(c) of the SSA]

<u>Explanation of provision</u>

Same as current law, except the provision would delete redundant language requiring notification, within one month after orientation, of opportunities for participation.

In addition, a provision would be added under which the State agency would have to provide the orientation information as promptly as possible, but in no event later than 90 days after initial payment of aid. In the case of an individual to whom the time limit on the receipt of AFDC applies, the information would have to be provided in person, on either an individual or group basis, and the State agency would have to obtain confirmation from the individual that the individual received and understood the information.

H. Services and Activities under the JOBS Program
(section 103 of the bill)

(1) General requirements

Present law

A broad range of JOBS services and activities must be made available by each State. A State is required to offer the following:

a. educational activities (as appropriate), including high school or equivalent education (combined with training as needed), basic and remedial education to achieve a basic literacy level, and education for individuals with limited English proficiency;
b. jobs skills training;
c. job readiness activities; and
d. job development and job placement.

States also must offer two of the following four activities:

a. group and individual job search (as described in item (5) below);
b. on-the-job training;
c. work supplementation programs (as described in item (3) below); and
d. community work experience programs (as described in item (4) below) or any other work experience program approved by the Secretary.

A State may offer postsecondary education (as appropriate) and other education, training and employment activities as determined by the State and allowed by regulations of the Secretary.

[sec. 482(d)(1)(A) and (B) of the SSA]

Explanation of provision

Same as current law, except: (a) group and individual job search would be a mandatory component of each State's JOBS program; (b) the language mandating "basic and remedial education to achieve a basic literacy level" would be deleted, and instead the provision would provide that States must offer "employment-related education to achieve literacy levels needed for economic self-sufficiency;" and (c) "programs to prepare for self-employment or to enable individuals to establish a micro-enterprise" would be added to the list of services from which States are required to provide two additional services.

In addition, the provision would require each State to include in its plan a description of whether and how it will provide training to prepare individuals to be child care providers, and a description of the steps the State will take to encourage training and placement in nontraditional positions of employment (including steps to increase the awareness of participants of the availability of nontraditional training and placement opportunities).

(2) Special requirement for education services

__Present law__

If the State requires an individual who is over age 20 and does not have a high school diploma (or its equivalent) to participate in the JOBS program, the agency must include education services consistent with his or her employment goals as a component unless (a) the individual demonstrates a basic literacy level, or (b) the employability plan identifies a long-term employment goal that does not require a high school diploma (or equivalent). Any other services or activities to which the participant is assigned may not interfere with participation in an appropriate educational activity. [sec. 482(d)(2) of the SSA]

(See also "Participation by young parents," item A.(6) above).

__Explanation of provision__

Would retain current law.

(3) Amendments to the work supplementation program

__Present law__

Under present law for the work supplementation program, a State may use AFDC benefits that would have been payable to a family to subsidize jobs provided by the State or local welfare agency or any other employer (this is sometimes referred to as grant diversion). A State may provide or subsidize any job which the State determines to be appropriate. Wages paid under a work supplementation program are considered to be earned income for purposes of any provision of law. Under JOBS, States may make work supplementation either mandatory or voluntary, and States are required to provide medicaid benefits to participants in the program.

States are permitted to reduce or eliminate the amount of earned income disregards for families participating in a work supplementation program, and are permitted to offer the "$30 plus one-third" earned income disregard for up to 9 months for participants (in general under the AFDC program, a $30 disregard against earned income is available to working recipients for up to 12 consecutive months, and a disregard of one-third of remaining income is available for 4 months).

The maximum period for work supplementation placements is limited by a provision which provides that the amount of Federal funds used to make payments for work supplementation must not exceed the amount which would have been paid if the family of each individual employed in the program had received the maximum AFDC grant for the lesser of: (a) 9 months, or (b) the number of months in which the individual was employed under the program.

[sec. 482(e) of the SSA]

Explanation of provision

The provision would retain current law, with two modifications that would: (a) extend the maximum period for work supplementation placements from 9 to 12 months, and (b) allow States to offer the $30 plus one-third income disregard for up to 12 months.

(4) Community work experience program (CWEP)

Present law

CWEP programs must be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. Programs are limited to projects that serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient must be utilized in making appropriate work experience assignments. Participants in this program may not fill established unfilled position vacancies.

The maximum number of hours in any month that the individual may be required to work is the number which equals the amount of aid to the family divided by the greater of the Federal or the applicable State minimum wage. After an individual has been assigned to a CWEP position for 9 months, the individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the cash benefit (excluding the portion of benefit for which the State is reimbursed by a child support payment) divided by the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site. At the conclusion of each CWEP assignment but, in any event, after each 6 months of participation in CWEP, the State agency must provide an assessment, and revisions, as appropriate, of the individual's employability plan.

[sec. 482(f) of the SSA]

Explanation of provision

Would retain current law.

(5) Amendments to the job search program

Present law

At their option, States may establish and operate a job search program for individuals participating in the JOBS program.

States may require AFDC applicants and recipients who are required to participate in JOBS and are not exempt from participation to participate in a job search program beginning at the time of application.

States may require up to 8 weeks of job search for applicants, and may, in addition, require up to 8 weeks of job search for AFDC recipients each year. This means that in the first year, up to 16 weeks of job search may be required, with 8 weeks per year thereafter. In no event may a State require an individual to participate in more than 3 weeks of job search before the State conducts an employability assessment for that individual. Additional job search activities may not be required by the State of an individual unless the job search activities are in combination with some other education, training, or employment activity which is designed to improve the individual's prospects for employment.

Job search cannot be treated for any purpose as an activity under the JOBS program if an individual has participated in job search for 4 out of the preceding 12 months.

[sec. 482(g) of the SSA]

Explanation of provision

A job search program would be a mandatory component of each State's JOBS program.

States would continue to have the option to require job search by applicants in the JOBS program. However, job search would be mandatory for individuals in the program upon approval of their AFDC application if they have a high school diploma (or its equivalent) or non-negligible work experience (as determined by the State), including individuals who, at the option of the State, have been required to participate in the JOBS program and to whom a time limit on the receipt of AFDC applies.

The bill would extend the maximum allowed period of job search for applicants from 8 to 12 weeks. It also would extend the total amount of job search allowed in a year to 4 months in any 12-month period. However, the period of job search engaged in by applicants, and job search required immediately before the end of the time limit on the receipt of aid, would be considered in the 4-month limit. Job search performed in conjunction with other activities would not be counted. The bill would retain the provision of current law limiting participation in job search during the period before an employability assessment is conducted.

The bill would retain the provision of current law prohibiting the treatment of job search as an activity under the JOBS program if an individual has participated in job search for 4 out of the preceding 12 months.

I. <u>Provisions Generally Applicable to the Provision of Services under JOBS or WORK</u>

(section 103(j) of the bill)

(1) Work standards

<u>Present law</u>

In assigning participants to any JOBS program activity, the State agency must assure that:

a. the assignment takes into account the physical capacity, skills, experience, health and safety, family responsibilities and place of residence of the participant;
b. individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition and shall have such rights as are available under any Federal, State or local law prohibiting discrimination;
c. the conditions of participation are reasonable, taking into account the proficiency of the participant and child care and other supportive services needs;

d. the participant will not be required, without his or her consent, to travel an unreasonable distance from home or remain away from home overnight; and
e. the assignment is based on available resources, the participant's circumstances, and local employment opportunities.

[sec. 484(a) of the SSA]

Explanation of provision

Would retain current law, and also extend these provisions (except for items c. and e.) to the new WORK program.

(2) Displacement

Present law

No work assignment under the JOBS program may result in:

a. the displacement of any currently employed worker or position (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits);
b. the impairment of existing contracts for services or collective bargaining agreements;
c. the employment or assignment of the participant or the filling of a position when (i) any other individual is on layoff from the same or any substantially equivalent position, or (ii) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program;
d. the infringement of the promotional opportunities of any currently employed individual.

Participants in CWEP and work supplementation may not fill established unfilled position vacancies.

JOBS funds may not be used to assist, promote, or deter union organization.

[sec. 484(c) of the SSA]

Explanation of provision

No work assignment under the JOBS or WORK programs could result in:

a. same as current law, except deletes "or position."
b. same as current law.

c. same as current law, except it also would preclude employment or filling of a position when any other person is on strike or has been locked out from, or has recall rights to, the same or substantially equivalent job or position with the employer.
d. same as current law.

In addition, the bill would add a provision precluding filling a vacancy for a position in a State or local government agency for which State or local funds have been budgeted, unless the agency has been unable to fill the vacancy with a qualified applicant through the agency's regular employee selection procedure during a period of not less than 60 days.

No JOBS or WORK participant could be assigned to a position to perform work under a contract for services for the first 90 days after the commencement of the contract if the contract immediately succeeds a contract for services under which an employee covered by a collective bargaining agreement performed the same or substantially similar work for another employer. No JOBS or WORK participant could be assigned to a position with a private nonprofit entity to carry out activities that are the same or substantially equivalent to activities that have been regularly carried out by a State or local government agency in the same local area, unless the placement meets the nondisplacement requirements outlined in items a. through d. above.

JOBS or WORK funds may not be used to assist, promote, or deter union organizing.

(3) Workers' compensation/health and safety standards

Present law

Appropriate workers' compensation and tort claims protection would have to be provided to participants in the JOBS program on the same basis as they are provided to other individuals in the State in similar employment (as determined under regulations by the Secretary). [sec. 484(b) of the SSA]

Explanation of provision

The bill would revise the provision of current law. Under the revised provision, to the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with the law would have to be available with respect to injuries suffered by JOBS and WORK participants. To the extent that the law is not applicable, participants would have to be provided with medical and accident protection for on-site injuries in accordance with regulations issued by the Secretary.

Health and safety standards established under State and Federal law that are otherwise applicable to the working conditions of employees would have to be equally applicable to the working conditions for JOBS or WORK participants.

(4) Additional protections applicable under the WORK program

Present law

No provision.

Explanation of provision

In addition to the protections outlined in items (1) through (3) above, the following assurances would have to be provided by the State agency in assigning individuals registered with the State's WORK program to a position of employment:

a. no individual eligible to register for the State's WORK program will be excluded from the program;

b. no family with a member eligible to participate in the State's WORK program will, by reason of such assignment, and upon participating the full number of hours provided by the assignment, have income less than the amount the family would have if it were receiving AFDC and had no other income (except if a sanction is applied);

c. each family with a member participating in the WORK program will be considered to be receiving AFDC for purposes of the medicaid program;

d. where a labor organization represents a substantial number of employees who are engaged in similar work in the same area as that proposed to be funded under the WORK program, an opportunity will be provided for the organization to submit comments on the proposal;

e. participants employed under the WORK program will be compensated for such employment in accordance with appropriate law, but in no event at a rate less than the highest of--

(i) the Federal minimum wage rate;

(ii) the rate specified by the appropriate State or local minimum wage law; or

(iii) the rate paid to employees of the same employer performing the same type of work and having similar employment tenure with the employer; and

f. except as otherwise provided, participants employed under the WORK program will be provided benefits (including health benefits, unless the State agency concludes that it would impose an undue financial burden on either the employer or the State), working conditions and rights at the same level and to the same extent as other employees of the same employer performing the same type of work and having similar employment tenure with the employer.

(5) Grievance procedures

Present law

For the JOBS program, the State must establish and maintain (pursuant to regulations jointly issued by the Secretaries of HHS and Labor) a grievance procedure for resolving complaints by regular employees or their representatives that the assignment of an individual under the program violates displacement provisions. A decision of the State may be appealed to the Secretary of Labor for investigation and such action as the Secretary finds necessary. Disputes relating to work standards, wage rates (in the case of CWEP participants) and workers' compensation are handled under the State's fair hearing process (see item I.C. above, "Fair Hearing"). A decision of the State under the fair hearing process may be appealed to the Secretary of Labor. [sec. 484(d) of the SSA]

Explanation of provision

For the JOBS and WORK programs, the State would have to establish and maintain grievance procedures for resolving complaints by regular employees or their representatives alleging violations of the nondisplacement provisions, or of the requirements relating to wages, benefits and working conditions.

Hearings on grievances would have to be conducted within 30 days, and a decision reached within 60 days. All grievances would have to be made within 45 days of the alleged occurrence.

Decisions and failures to make a decision within 60 days could be appealed or submitted to binding arbitration. Arbitrations would be conducted by qualified arbitrators who would be jointly selected and independent of the interested parties. Where an agreement is not reached on an arbitrator within 20 days, the parties would select an arbitrator from a list provided by the Federal Mediation and Conciliation Services or the American Arbitration Association. Arbitrations would have to be held within 45 days of being requested (or within 30 days of the appointment of an arbitrator), and decisions would have to be made within 30 days of an arbitration proceeding.

In general, costs of arbitration would be evenly divided between the parties. However, if a grievant prevails, the party in violation would pay the full cost (including attorney fees).

Suits to enforce arbitration awards could be brought in any district court of the U.S. having jurisdiction over the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

Remedies for a grievance would include suspension of payments to employers; the termination of the payments; the prohibition of the placement of a participant; reinstatement of a displaced employee to the position held by the employee prior to displacement; payment of lost wages and benefits of the displaced employee; reestablishment of other relevant terms, conditions and privileges of the displaced employee; and such equitable relief as is necessary to correct a violation or to make a displaced employee whole.

(6) Written notification to labor organizations

Present law

No provision.

Explanation of provision

For initial assignments to a position of employment under the JOBS or WORK programs, local labor organizations representing employees engaged in the same or substantially similar work would have to be notified at least 30 days prior to the date when an employer expects to bring on a participant. No notification would be required with respect to the subsequent assignment of participants to the same position with the same employer.

These organizations could object that program protections have been violated and may, as an alternative to the grievance procedures outlined above, file a complaint for an expedited grievance procedure. The expedited procedures would be similar to the binding arbitration procedures, except: a) request for arbitration would have to be filed within 30 days of the receipt of notice; b) the arbitrator would be selected within 10 days (or 15 days where initial agreement could not be reached and an arbitrator is appointed by the Federal Mediation and Conciliation Services or another agreed upon entity; c) the proceeding would have to be held and a decision reached within 30 days of the request for arbitration. Any placement would be stayed pending a decision.

(7) Work-related activities authorized under section 1115 of the Social Security Act

Present law

Work standard, displacement and grievance provisions apply to any work-related programs and activities authorized in connection with the AFDC program under section 1115 of the Social Security Act (which provides for State waivers of certain Federal laws for the purpose of conducting research).
[sec. 484(e) of the SSA]

Explanation of provision

Would retain current law.

J. Twenty-Four Month Limit
(section 104 of the bill)

Present law

Some States (those which did not have an AFDC-UP program in place as of September 26, 1988) are permitted to place a type of time limit on participation in the AFDC-UP program, restricting eligibility for AFDC-UP to as few as 6 months in any 13-month period. Thirteen states presently impose time limits on AFDC-UP eligibility. Under current law, however, no other type of time limits may be placed on participation in the AFDC program.
[sec. 407(b)(2) of the SSA]

Explanation of provision

A time limit on the receipt of AFDC would apply to individuals required to participate in the enhanced JOBS program (parents born after 1971, and additional classes of parents at State option; see item A. above, "Requirements and Opportunities for Participation in JOBS"), and individuals who have chosen to participate and to whom the State has elected to apply the time limit, and their dependent children living at home.

AFDC would not be available for more than 24 months (whether or not those months are consecutive) unless payments are provided for under the WORK program. The time limit would not apply in the case of individuals who have received AFDC for 24 months and who are working an average of 20 hours or more a week (or up to 30 hours a week at State option), or, if parents in an AFDC-UP case, are together working a total of more than 30 hours (or up to 40 hours at State option). Likewise, the time limit would not apply to an individual's children living with another relative who is not subject to, or has not reached, the time limit. Individuals who have less than 6 months of assistance left would "earn back" an additional month of assistance for every 4 months off, but never accrue more than 6 total months of aid remaining.

The following months would not count against the 24-month limit: 1) months prior to the effective date for program implementation (see item X. below, "EFFECTIVE DATES") or, for a recipient, months prior to the first redetermination following the effective date; 2) months prior to authorization of benefits; 3) months before an individual's 18th birthday; 4) months when an individual was working at least 20 hours a week (or up to 30 hours a week at State option); 5) for an AFDC-UP case where the deferral criteria apply to neither parent, months when the total number of hours worked by both parents exceeds 30 hours a week (or up to 40 hours, at State option); and 6) months during which an individual is in deferred status. Months when an individual is sanctioned under JOBS or for failure to cooperate with child support would be counted, as would months in which individuals have fewer hours of work because they fail to accept an offer of additional hours of employment, or reduce their hours of employment and thereby become eligible for additional aid.

Each individual in the family who is subject to the time limit would have to be advised at least every 6 months of the number of months of aid they have remaining.

The bill would specify the circumstances under which extensions to the 24-month limit would be granted. States would have to grant extensions when individuals have not completed the activities in their plans because of a substantial failure on the part of the State to provide services. A finding of failure to provide services would have to be based on the documentation made at the semi-annual assessment (see item I.E.(3)(f) above, "Periodic assessment"), together with any reports or information from the individual or agency with respect to the months between the assessment and the end of the twenty-fourth month. These extensions would have to be long enough to allow completion of agreed-upon activities, but not exceed 24 months.

The States would also have to grant extensions to individuals under age 22 receiving services under the Individuals with Disabilities Education Act when needed to finish high school (or its equivalent) and to individuals in structured learning programs like those under the School-to-Work Opportunities Act. A 'structured learning program' would mean one that begins at the secondary school level, continues into a post-secondary program, and is designed to lead to a degree or recognized skills certificate.

States could grant further extensions: 1) of up to 12 months to allow completion of high school level programs, so long as the individual is making satisfactory progress; 2) of up to 24 months to allow completion of a post-secondary program (so long as the individual is enrolled in a work-study program, or is employed at least 15 hours per week, and is making satisfactory progress towards getting a degree or certificate), or a structured micro-enterprise or self-employment program likely to improve the individual's economic self-sufficiency; and 3) for such time as allowed by the State in any case, determined on an individual basis, where the extension is necessary to afford an individual with significant learning disabilities or other substantial barriers to employment additional time to obtain the remedial education, job skills training, or other services specified in the employability plan needed to enable the individual to secure employment.

For any extension described above, the State would have to extend the employability plan, make appropriate revisions to the plan, and continue needed supportive services.

States could pay an additional month's worth of AFDC to individuals who are about to commence a regular job (not a WORK assignment) if they reach their time limit and need additional support until their first paycheck arrives. The State plan would have to describe the evidence of employment that the State will require in order to make this transitional payment.

The number of extensions a State could provide for substantial failure and discretionary reasons, without financial penalty, would be limited to 10 percent of those subject to a time limit and to JOBS participation, unless the Secretary approves a higher number (for a specified period of time) based on the State's showing of extraordinary or unforeseeable circumstances.

The Secretary would be authorized to approve up to 5 demonstrations testing alternative definitions of time limits. A project could be approved only if the proposal is consistent with the purpose of making AFDC a transitional program and with affording recipients support to help them prepare for unsubsidized employment. Also, an evaluation of the short-term and long-term effects of the alternative time limits would be required.

II. THE WORK PROGRAM

(Note: See item I.I. above, "Provisions Generally Applicable to Provision of Services under JOBS or WORK," for a description of the provisions that apply to WORK regarding work standards, displacement, workers' compensation, health and safety standards, additional protections and grievance procedures.)

A. Purpose and Definition
(section 201 of the bill)

Present law

No provision. [States are permitted to operate on-the-job training, work supplementation and community work experience programs as part of the JOBS program. Regulations, however, explicitly prohibit States from operating a program of public service employment under the JOBS program.]

Explanation of provision

The purpose of the WORK program would be to provide employment to individuals who have received AFDC for 24 months and participated in JOBS, but have not been able to secure unsubsidized employment. The bill would define a WORK position as a position of employment to which an individual is assigned under the WORK program.

B. Establishment and Operation of State WORK Programs; Effective Date
(section 201 of the bill)

Present law

No provision.

Explanation of provision

Each State would have to establish and operate a WORK program to locate and create temporary positions of employment for individuals who have received aid for 24 months. The WORK program would have to be in effect in each political subdivision of the State not later than 2 years after the State's enhanced JOBS program is in effect in the subdivision.

C. Requirement for State Plan
(section 201 of the bill)

Present law

No provision.

Explanation of provision

WORK programs would have to be operated under State plans approved by the Secretary in accordance with Federal law and the provisions of an approved plan. The State plan would have to specify how the program will be implemented and what types of strategies and activities will be undertaken to identify and develop WORK positions. The strategies would have to, to the extent practicable, be designed to identify and develop positions likely to result in the placement of participants in unsubsidized employment. The strategies and activities could include: (1) wage subsidies or other incentives to for-profit, nonprofit, and public employers to employ participants; (2) performance-based contracts with public or nonprofit or other private organizations to place participants in unsubsidized employment; (3) payments to nonprofit employers to assist in supervising participants employed by the employer; (4) assistance to participants in establishing microenterprises and other self-employment efforts; (5) payments to nonprofit employers and public agencies to employ participants in temporary projects designed to address community needs, such as projects to enhance neighborhood infrastructure and provide other community services; and (6) payments to employers to employ participants as child care providers.

D. **Coordination with the JOBS Program**
(section 201 of the bill)

Present law

No provision.

Explanation of provision

The WORK and JOBS plans must constitute a single State plan and reflect an integrated self-sufficiency strategy.

E. **Work Advisory Boards**
(section 201 of the bill)

Present law

No provision.

Explanation of provision

The plan would have to designate or set up a process for establishing or designating WORK advisory boards for each local area to provide advice and guidance on administration of the WORK program. States would have to ensure that local elected officials participate in the designation or establishment of the boards. The areas covered by these boards could be the service delivery areas specified under JTPA, the geographic boundaries of the labor market areas in the State, or other appropriate areas chosen by the Governor. Each WORK advisory board would have to include representatives of private sector employers, organized labor, nonprofit and community-based organizations, local government (such as local elected officials and representatives of economic development agencies, human service agencies and educational agencies), and other community leaders the State determines appropriate. The WORK advisory boards would comment on the State WORK plan and provide advice and guidance to the local agency administering the WORK program relating to: (1) the identification of potential WORK positions; (2) opportunities for placing WORK participants in unsubsidized employment; (3) methods for ensuring compliance with the requirements of the WORK program relating to nondisplacement and working conditions; (4) methods for carrying out the coordination requirements outlined below in item F.; (5) and other aspects of the WORK program that the board determines are appropriate.

F. Coordination with Other Programs and Entities
(section 201 of the bill)

Present law

No provision.

Explanation of provision

The plan would also have to describe cooperative arrangements established with appropriate programs and agencies to enhance administration of the WORK program. Examples would include the Employment Service, and other relevant employment and public service programs administered through public and private entities, such as programs supported under the National and Community Service Act and JTPA, and programs under the Child Care and Development Block Grant (CCDBG) to explore the development of positions in child care for WORK program participants. With respect to local coordination, the entity administering WORK in local areas would have to establish cooperative arrangements with other appropriate entities to enhance the administration of the program, such as local government and services agencies, public housing agencies, community-based organizations, business and labor organizations, voluntary organizations, and other appropriate entities.

G. **Eligibility for the WORK Program; Registration**
(section 201 of the bill)

Present law

No provision.

Explanation of provision

(1) Eligibility

Individuals who have reached their time-limit (and have not received extensions), are not eligible for a deferral (see item I.A.(5) above, "Deferral from participation"), and are otherwise eligible for AFDC would be allowed to register for participation in the State's WORK program, and, upon registration and continuing compliance with requirements that apply to those waiting assignment, would be eligible for an assignment and might also be eligible to receive AFDC payments.

States would have the option whether to require one or two parents in an AFDC-UP case (where both parents are subject to the time limit) to register for and participate in the WORK program in order for either parent to receive a WORK assignment and receive aid.

(2) Registration

The State plan would have to establish a simple procedure for registration and participation in the WORK program so that the individual may receive wages (if an appropriate assignment is available) or aid, or, if applicable, both in the month following the final month of the time limit. The plan would have to describe the methods that will be used to ensure that families that comply with requirements do not face a disruption in benefits.

(3) Work program assessment

Individuals entering the WORK program would have to be assessed promptly to determine an appropriate assignment. The assessment would cover the individual's JOBS experience and subsequent employment experience.

(4) Limitations on assignments

The State plan would have to: (a) ensure, to the extent practicable, that assignments produce wages sufficient to provide, on average, 75 percent of a participant's total income from wages and AFDC; (b) ensure no assignment would result in an average number of hours of work over any four-week period of less than 15 hours or more than 35 hours; and (c) to the maximum amount feasible, provide that WORK assignments will not interfere with any hours of unsubsidized employment in which the individual is already engaged at the time of assignment. No assignment to a WORK position could exceed 12 months. Subsequent reassignments to the same position would not be allowed.

(5) Payment of aid

AFDC payments would be determined as they were prior to the time limit except: (a) WORK wages would not be considered in determining continued eligibility for the WORK program; (b) in determining the amount of AFDC that is payable, the State agency would not have to apply to the WORK wages any earned income disregards that the State at its option chooses to apply beyond the standard monthly earned income disregard (see item VIII.D.(2) below, "Earned income disregards"); and (c) the State would not make adjustments to the AFDC payment if an individual worked less than the assigned number of hours.

(6) Treatment under other laws

Individuals in the WORK program, and their families, would be considered AFDC recipients for the purpose of Medicaid eligibility. Unless elsewhere specified, their WORK wages would be treated under other Federal laws like wages from unsubsidized employment.

(7) Criteria to determine if employment constitutes WORK participation

The Secretary could regulate on the matter of how to determine when an employed individual ceases to be a WORK participant.

H. <u>Provisions Generally Applicable to WORK Positions</u>
(section 201 of the bill)

<u>Present law</u>

No provision.

<u>Explanation of provision</u>

(1) Prohibition on contributions for retirement benefits

WORK funds could not be used for contributions to retirement plans on behalf of participants.

(2) Exclusion from unemployment compensation

WORK positions would not be covered by provisions in Federal or State unemployment compensation law.

(3) Sick and personal leave

The Secretary could issue regulations establishing a minimum number of hours that a participant may be on leave from a WORK position due to illness or other reasons specified by the Secretary without having the amount of wages to the participant reduced to account for the leave. The regulations would have to provide that if the employer provides, to similarly situated employees, paid leave that is equal to or exceeds the minimum prescribed by the Secretary, the employer would have to provide such paid leave to the participant. If the employer does not provide such paid leave, the State agency would have to develop procedures to provide such minimum leave benefits to a participant.

(4) Records on retention of participants

The WORK agency would have to maintain records on the extent to which individual employers participating in the WORK program retained WORK participants in unsubsidized employment.

I. Pre-Assignment Activities and Services; Priority of Assignments; Post-Assignment Assessment
(section 201 of the bill)

Present law

No provision.

Explanation of provision

(1) Assignments

The State plan would have to provide for establishing and maintaining a registry, updated regularly and frequently, of individuals waiting for WORK assignments and specify the criteria for determining the order in which registered individuals receive assignments. The criteria would have to provide that individuals subject to their first WORK sanction and individuals who have completed a second or subsequent WORK sanction must be assigned as promptly as an appropriate WORK position becomes available (see item J. below for information on the sanctions policy for the WORK program). Next preference would go to individuals who have not been assigned to a WORK position since their most recent registration.

(2) Job search; other WORK preparatory activities

The State plan would have to describe any requirements that the State chooses to apply to registrants awaiting assignment to WORK positions, including the extent to which such individuals would have to participate in individual or group job search (of up to 35 hours per week). The State plan would also specify the length of time job search would have to continue or specify requirements using other measures (such as number of contacts). Individuals in a WORK position or regular job could also be assigned to job search as long as their total hours of job search and work did not exceed 35 hours per week. Individuals who have completed a WORK assignment must participate in supervised job search while awaiting another assignment.

The State plan could specify activities that, in addition to job search, would be required of registrants awaiting assignment to a WORK position to help them prepare for employment or obtain unsubsidized employment. Such activities could be required for up to 35 hours per week and for such period of time as specified in the plan.

(3) Child care and other supportive services

The State agency would have to notify WORK registrants of the child care and other supportive services that would be available to them during both a pre-assignment period and employment under the WORK program. At State option, individuals in WORK positions could receive child care and supportive services to help them participate in education and training activities that the State agency has approved as likely to enhance the individual's ability to secure and retain permanent, unsubsidized employment. States that elect this option must advise all WORK registrants of the potential availability of these services.

(4) Comprehensive post-assignment assessment; sanction for failure to apply for or accept jobs

After every second assignment completed by a WORK registrant (or by an individual who has been registered for two years), the State agency would have to conduct a comprehensive assessment. Based on the assessment, the State would have to determine whether to assign the individual to another WORK assignment (if the individual was unable to find unsubsidized employment either because there were no jobs available that the individual had the necessary skills to fill or because the individual is incapable of working outside of a sheltered environment), to JOBS, or to deferral status.

If the State determines that the individual is employable and lives in an area where there are jobs that match his or her skills, then the State could require the individual to engage in intensive job search under the supervision of a job developer who could require the individual to apply for appropriate job openings to determine if the individual is making a good faith effort to find unsubsidized employment. Failure to apply for appropriate job openings, cooperate, or accept a private sector job without good cause would make the individual ineligible for both AFDC and a WORK assignment for 6 months. Following such a period of ineligibility, the State would reassess an individual's status and take such steps under this provision as it finds appropriate.

J. Failure to Meet WORK Program Requirements
(section 201 of the bill)

Present law

No provision.

Explanation of provision

(1) Actions constituting failure to meet requirements

The following actions, without good cause, would constitute failure to meet the requirements of the WORK program:

a. failing or refusing to accept a bona fide offer of unsubsidized employment of at least 20 hours per week (or less if the offered employment meets the criteria of section 482(d)(2) *****this reference is wrong**);
b. failing or refusing to accept or report for a WORK position to which the individual has been assigned;
c. voluntarily leaving such a position;
d. failing or refusing to engage, to the extent required under the State plan, in the job search or other required pre-assignment or interim (see item (5) below) activities.

(2) Misconduct resulting in discharge from WORK position

Being discharged from a WORK position because of misconduct would also be sanctionable.

(3) Definitions of good cause and misconduct

The Secretary would have to issue regulations for determining what constitutes good cause and misconduct. Such regulations would have to provide that: (a) individuals voluntarily leaving a WORK position must promptly notify the WORK program entity of the reasons for leaving, and (b) the State could, with the approval of the Secretary, use the misconduct criteria that apply under the State's unemployment compensation law in cases where a participant is discharged from a WORK position.

(4) Opportunity for hearing

The State plan would have to provide that WORK registrants receive advance notice when a sanction determination is made and be advised of their right to a hearing. The agency would have to provide a hearing, upon request by the individual, in accordance with rules of the Secretary. The rules of the Secretary would have to allow the State to adopt procedures followed in hearings on unemployment compensation claims that meet standards set forth by the Supreme Court in *Goldberg v. Kelly -- 1970*. [In the case of *Goldberg v. Kelly*, the Supreme Court held that "a pre-termination evidentiary hearing is necessary to provide the welfare recipient with procedural due process," and specified certain standards which such hearings must meet (e.g., the hearing must provide timely and adequate notice of reasons for termination, an opportunity for the recipient to confront adverse witnesses and to present arguments orally before the decisionmaker, and an impartial decisionmaker, but need not be a judicial or quasi-judicial trial).]

(5) Interim activities

Pending a hearing, an individual could be required to participate in appropriate activities under the WORK program.

(6) Sanctions

The sanction for refusing a job offer without good cause would be ineligibility of the whole family for AFDC benefits and ineligibility of the individual for a WORK position for 6 months. Sanctions for other actions would be: (a) for the first occurrence, a 50 percent reduction in the amount of AFDC payable for 1 month (or, if earlier, until the individual accepts a WORK assignment); (b) for a second occurrence, a 50 percent reduction in AFDC for 3 months and ineligibility for a WORK position during that period; (c) for a third occurrence, ineligibility of the whole family for AFDC for 3 months and ineligibility of the individual for a WORK assignment during that period; and (d) for any subsequent occurrence, ineligibility of the family for 6 months and no reassignments to WORK during that period.

Such sanctions would not affect the family's eligibility for other title IV-A and Medicaid purposes. For purposes of other Federal or federally assisted needs-based programs, while a sanction is in effect, the family would be assumed to be receiving the same payment as a family awaiting a WORK assignment.

Notwithstanding the above sanction policies, if an individual subject to sanction at any time accepts an offer of unsubsidized employment in a position that meets certain criteria, the sanction would cease at that time.

Individuals who leave an unsubsidized job that provides employment of 20 hours or more per week (or a higher number, if selected by the State) without good cause would be ineligible to register for WORK for 3 months.

(7) Evaluation following second WORK sanction

The State plan would have to provide that the State promptly conduct a thorough evaluation of an individual (and family) who become subject to a second sanction to determine whether there are particular circumstances, not previously recognized by the State agency, that are contributing to the individual's failure to meet the WORK program requirements, and to provide, where appropriate, any additional social services, evaluations, or other diagnostic or remedial services or take such other actions as may be necessary to assist the individual and protect the other family members. In conducting the evaluation, the State agency would have to consider whether the individual is appropriately registered in the WORK program, or whether the individual should be referred to deferral status.

K. Supportive Services for WORK Registrants
(section 201 of the bill)

Present law

In addition to child care, each State must guarantee to individuals participating in the JOBS program payment or reimbursement for transportation and other work-related expenses that the State determines are necessary to enable the individual to participate. [sec. 402(g)(2) of the SSA]

Explanation of provision

The bill would include WORK participants among those guaranteed reimbursement for work-related expenses.

L. Special JOBS and WORK Provisions Relating to Indian Tribes and Alaska Native Organizations
(section 204 of the bill)

Present law

Indian tribes or Alaska Native organizations (hereafter referred to as 'tribes') are authorized to apply to operate a JOBS program. Application had to be made by April 13, 1989.

Upon approval of an application, the Secretary is required to grant funds to the tribe (without a non-Federal matching requirement) to operate the program. The amount of funds is based on the ratio of adult tribal members receiving AFDC who reside within the tribe's designated service area relative to the number of adult AFDC recipients in the State (or, in the case of Alaska Native organizations, the ratio of adult Alaska Natives receiving AFDC who reside within the boundaries of the Alaska Native organization relative to the number of all adult AFDC recipients in Alaska), multiplied by the State's JOBS program allocation under the entitlement cap. The State's cap is appropriately reduced. Effective October 1, 1995, tribal allocations will be based on the number of Indians receiving AFDC who reside on the reservation, whether or not members of the tribe.

Requirements of the JOBS program may be waived if the Secretary determines that they would be inappropriate with respect to a tribe.

The JOBS program of a tribe may be terminated voluntarily by the tribe, or by the Secretary for substantial nonconformity with the terms of the approved application.

"Indian tribe" is defined as any tribe, band, nation or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, and for which a reservation exists. A reservation includes Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma.

[sec. 482(i) of the SSA]

Explanation of provision

The provision would substantially revise current law provisions relating to Indian tribes and Alaska Native organizations (hereafter referred to as 'tribes'). Under the revised policy, tribes would be able to apply to operate both a JOBS and a WORK program. An application to conduct the programs in a fiscal year would have to be submitted no later than July 1 of the preceding fiscal year.

Upon approval of an application, the Secretary would have to grant funds (without a non-Federal match) to the tribe. Two percent of the funds available for JOBS and WORK would be allocated among the tribes operating programs. [This provision likely will be dropped from the bill, since it was addressed in the Social Security Amendments Act of 1994: In each case, the allocation would be based on the relative number of Indians (regardless of their tribal affiliation) receiving AFDC in the tribal service areas, relative to the number of adult AFDC recipients in the State.] The Secretary would periodically review the allocation formula and make adjustments necessary to maintain the correct distribution of funding. Up to 20 percent of the payment for the JOBS or WORK program could be carried-over by the tribe to use for the following fiscal year. In addition, tribes could use up to 10 percent (or, if less, $5,000) of their JOBS funds for an economic development project which would include the training of JOBS participants in skills necessary for employment on the project.

The Secretary could determine that any of the requirements of the JOBS or WORK programs (including the JOBS participation rules) was inappropriate for a tribal program.

Tribal JOBS and WORK programs could be terminated voluntarily or terminated by the Secretary for substantial nonconformity with the terms of the approved application. Any Tribe that withdrew or was terminated from operating a JOBS/WORK program could not reapply for 5 years.

Tribes approved to operate these programs would be responsible for determining who in the tribe's services area is subject to JOBS deferrals and extensions to the time limit, as well as for reporting necessary information on these determinations to the State IV-A agency.

M. JOBS, WORK and Title IV-A Child Care Provisions Affecting Puerto Rico, the Virgin Islands, Guam and American Samoa

(section 205 of the bill)

Present law

(1) Federal reimbursement to the territories

(a) In general -- The territories receive Federal matching funds (at their medicaid matching rate, which is 75 percent) for expenditures under title IV-A of the Social Security Act (including the AFDC, emergency assistance and At-Risk child care programs); title IV-E of the Social Security Act (the foster care and adoption assistance programs); title XVI of the Social

Security Act (supplemental security income); and programs (except in American Samoa) for needy, aged, blind and disabled individuals, up to the following dollar ceilings per year:

Puerto Rico	$82.0 million
Virgin Islands	$ 2.8 million
Guam	$ 3.8 million
American Samoa	$ 1.0 million

(b) JOBS and AFDC child care -- The territories are required to operate a JOBS program. Federal reimbursement for JOBS expenditures does not fall under the general funding ceilings outlined above. Rather, like other States, the territories receive reimbursement under the JOBS funding stream up to their JOBS allotment. The Federal match is 75 percent.

Unlike other States, the territories do not receive reimbursement for AFDC child care on an open-ended entitlement basis. Rather, Federal reimbursement for AFDC child care is funded as a JOBS expenditure and is therefore subject to the JOBS cap.

(c) WORK -- No provision.

(d) At-Risk child care -- Although the territories receive a Federal allotment for At-Risk child care funds, the territories cannot access their share of funds under the program because as currently structured the law requires that At-Risk expenditures by the territories fall under the general funding ceiling outlined above.

[sec. 1108 and 1118 of the SSA]

(2) Applicability of JOBS provisions

JOBS provisions (including the formula for allocation of JOBS funds) apply to the territories.

Explanation of provision

(1) Federal reimbursement to the territories

(a) In general -- The territories would continue to receive 75 percent Federal matching funds for expenditures under title IV-A of the Social Security Act (including the AFDC and emergency assistance programs, but not including the At-Risk child care program); title IV-E of the Social Security Act (the foster care and adoption assistance programs); title XVI of the Social Security Act (supplemental security income); and programs (except in American Samoa) for needy, aged, blind and disabled individuals. However, beginning for fiscal years after 1996, the

following dollar ceilings, adjusted annually for inflation by the CPI, would be in effect:

Puerto Rico...........................	$102.5 million
Virgin Islands........................	$ 3.5 million
Guam..................................	$ 4.75 million
American Samoa........................	$ 1.0 million

(b) JOBS and AFDC child care -- Same as current law, except the Federal matching rate for JOBS and AFDC child care would be at an enhanced medicaid rate (see item III.A.(1)(b) below, "Federal matching rate").

(c) WORK -- In addition to funding for JOBS, Federal reimbursement for the WORK program would be excluded from the general funding cap that applies to the territories. Like other States, the territories would receive reimbursement for uncapped WORK expenditures (for wages) at the enhanced medicaid rate applicable for JOBS expenditures (see item III.A.(1)(b) below, "Federal matching rate"). Federal reimbursement for capped WORK expenditures (operational expenditures) would be 75 percent for the territories.

(d) At-Risk child care -- In addition to funding for JOBS and WORK, Federal reimbursement for At-Risk child care would be excluded from the general funding cap that applies to the territories. Like other States, the territories would receive reimbursement for At-Risk expenditures at the enhanced medicaid rate applicable to JOBS expenditures (see item III.A.(1)(b) below, "Federal matching rate").

(2) Applicability of JOBS, time limit and WORK provisions

The territories would be given the option whether to implement time limits under their State plans. If they choose to do so, they must operate a WORK program. Those deciding to implement these provisions would have to submit appropriate plan amendments to the Secretary for approval, including a description of their phase-in strategy and a timetable for achieving full implementation.

The Secretary could waive or modify any requirement pertaining to time limits, the WORK program, or the AFDC statute (including JOBS participation rates and performance standards), that would be inappropriate for a territory.

The territories could voluntarily terminate their participation in a program of time limits and their WORK program. However, they would be ineligible to participate for 5 years following such termination.

N. Training and Employment for Non-Custodial Parents
(section 206 of the bill)

Present law

The AFDC statute authorizes five States to provide services under the JOBS program, on a mandatory or voluntary basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Participating States are required to evaluate their efforts. [sec. 482(e) of the SSA]

Explanation of provision

The bill would retain the current law demonstration authority. In addition, however, all States would have authority to provide services under the JOBS program to non-custodial parents. The Secretary would have to approve applications that meet certain requirements.

The application would have to describe the geographical coverage of the program; describe the services that will be provided, including the training, job readiness services, and employment opportunities that will be available (and specify whether they will be provided through JOBS, WORK or a separate program or combination of programs); describe the supportive services that will be provided to enhance the participant's involvement and ability to obtain employment and meet his or her child support obligations; indicate whether an evaluation using random assignment will be conducted to measure effects on improved responsibility in meeting child support obligations; and provide assurance regarding compliance with program requirements.

The application would have to provide that a non-custodial parent will be eligible if: (1) his or her children are receiving AFDC or living with a parent receiving WORK wages; or (2) he or she owes past-due support for which an assignment exists under the AFDC statute, and is unemployed. Paternity would have to be established prior to program entry, and the parent would have to be cooperating in getting an award established and entered. Eligible individuals would be able to complete activities in which they are engaged if their children go off of AFDC or the custodial parent stops receiving WORK wages.

States would not have to serve all eligible applicants or provide the same services to all participants. JOBS (or similar) participation could not be a prerequisite to WORK (or similar) participation, and the non-custodial parent's eligibility could not be contingent on the custodial parent's participation in JOBS or WORK. The State agency would have to ensure that wages are paid for work performed by the participant and could, at State option, pay training stipends. Wages and stipends would both be subject to garnishment by the agency for distribution as a support collection.

If a State has jurisdiction over the child support obligation being enforced, it could credit, on a reasonable basis, hours of participation against past-due support owed to the State agency.

States with approved applications could use up to 10 percent of their capped JOBS and WORK allotments for expenditures for these programs, including stipends, wage subsidies, supportive services, training and administrative costs. The expenditures would be matched at the enhanced rate provided for under the JOBS program.

O. Federal Tax Treatment of WORK Remuneration
(section 207 of the bill)

(1) Treatment under FUTA

Present law

No provision. [However, under current law for the work supplementation program, wages paid are considered to be earned income for purposes of any provision of law.]

Explanation of provision

As described in item H.(2) above, "Exclusion from unemployment compensation," WORK positions would not be covered by provisions in Federal or State unemployment compensation law. This provision would provide that remuneration under the WORK program would not be subject to Federal unemployment taxes.

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The following provision is not in the jurisdiction of the Subcommittee on Human Resources:

(2) Treatment under other tax laws

Present law

Explanation of provision

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III. FEDERAL-STATE FUNDING OF JOBS AND WORK

A. <u>In General</u>
(section 202 of the bill)

(1) Federal-State funding of JOBS Expenditures

<u>Present law</u>

(a) Entitlement ceiling

Federal matching for JOBS program costs is available as a capped entitlement limited to $1.1 billion in fiscal year 1994, $1.3 billion in fiscal year 1995, and $1.0 billion a year thereafter.

(b) Federal matching rate

State expenditures on JOBS are currently matched at three different rates. The Federal match is 90 percent for expenditures up to the State's 1987 WIN allocation. Of additional amounts, the Federal match is at the higher of the medicaid rate or 60 percent for nonadministrative costs and for personnel costs for full-time JOBS program staff. The match for administrative costs (including transportation and other work-related supportive services) is 50 percent. Note that child care for AFDC recipients participating in education and training activities (including JOBS) is not reimbursed as a JOBS expenditure; rather, it is reimbursed under the AFDC child care program (see item IV.A. below, "Child Care Guaranteed to Certain AFDC Recipients").

(c) Allocation among States

The entitlement cap for JOBS is allocated among the States as follows: States receive an amount equal to their 1987 WIN allotment ($126 million for all States), and the remainder is allocated on the basis of each State's relative share of the average monthly number of adult recipients of AFDC.

[sec. 403(k) and (l) of the SSA]

<u>Explanation of provision</u>

(a) Entitlement ceiling

The entitlement ceiling for the JOBS program would be $1.75 billion for fiscal year 1996, $1.7 billion for fiscal year 1997, $1.8 billion for fiscal year 1998, $1.9 billion for fiscal years

1999 through 2004, and $1.9 billion adjusted for inflation by the CPI for fiscal years 2005 and beyond.

(b) Federal matching rate

State expenditures on JOBS would be matched by the Federal government at a single "enhanced" medicaid matching rate which would increase over time. The enhanced rate would equal the State's medicaid matching rate, plus: (1) 5 percentage points, but not less than 65 percent, for fiscal years 1996 and 1997; (2) 7 percentage points, but not less than 67 percent, for fiscal year 1998, (3) 9 percentage points, but not less than 69 percent, for fiscal year 1999; and (4) 10 percentage points, but not less than 70 percent, with respect to fiscal year 2000 and each succeeding fiscal year.

(c) Allocation among States

The entitlement cap for JOBS would be allocated among the States on the basis of each State's relative share of the average monthly number of adult AFDC recipients and WORK participants. However, prior to the State allocations, 2 percent would be set aside for allocation to Indian tribes and Alaska Native organizations to run their own JOBS programs (see item II.L. above, "Special JOBS and WORK Provisions Relating to Indian Tribes and Alaska Native Organizations"), and 2 percent (or 1 percent for fiscal years after 1998) would be set aside for demonstrations, research and evaluation, and technical assistance initiatives (see item V.D. below, "Research and Evaluation; Technical Assistance; Demonstration Projects"). Also, prior to allocations for fiscal year 1996, a limited amount of JOBS funds would be set aside for a "special adjustment fund" (see item K. below, "Special Adjustment Fund").

(2) *Federal-State funding of WORK Expenditures*

Present law

No provision.

Explanation of provision

WORK funding would consist of 2 sources of funds. The first would be a capped amount of money to match expenditures (other than wages) incurred by States in operating the WORK program, and the second would provide uncapped matching funds to cover expenditures on WORK wages (whether paid directly to the participant or in the form of wage subsidies to the participant's employer). Child care guaranteed to WORK participants would not be reimbursed as a WORK expenditure; rather, it would be reimbursed under the AFDC child care program (see item IV.A. below, "Child Care Guaranteed to Certain AFDC Recipients").

With respect to the capped amount for operating the WORK program, the entitlement ceiling would equal $200 million for fiscal year 1998, $700 million for fiscal year 1999, $1.1 billion for fiscal year 2000, $1.3 billion for fiscal year 2001, $1.4 billion for fiscal year 2002, $1.6 billion for fiscal year 2003, $1.7 billion for fiscal year 2004, and, in succeeding fiscal years, $1.7 billion adjusted by the CPI for inflation and a factor representing the increase over time in the relative size of the group subject to time limits. The factor would be a ratio, the numerator of which would represent the proportion of AFDC recipients and WORK registrants (who are not receiving aid) in the preceding fiscal year who are either AFDC recipients in the mandatory group for time limits or WORK registrants (who are not receiving aid). The denominator would include a similar number for fiscal year 2004. Both numerator and denominator would be computed using average monthly numbers). The capped portion would be allocated to States based on the State's relative share of the average monthly number of individuals subject to a time limit (and JOBS requirements) plus the average monthly number of WORK registrants in each State. Before allocation to the States, 2 percent would be set aside for WORK programs run by Indian tribes and Alaska Native organizations (see item II.L. above, "Special JOBS and WORK Provisions Relating to Indian Tribes and Alaska Native Organizations") and 2 percent (or 1 percent for fiscal years after 1998) for demonstrations, research and evaluation, and technical assistance (see item V.D. below, "Research and Evaluation; Technical Assistance; Demonstration Projects").

States would receive Federal matching funds from the capped portion (for operating the WORK program) at the same "enhanced" medicaid matching rate that would apply with respect to the JOBS program. With respect to the uncapped portion (for wages), the State would be reimbursed at its medicaid rate.

B. <u>Requirements on States, and Funding Issues, Relating to JOBS Participation</u>

(section 202 of the bill)

<u>Present law</u>

(1) ***In general***

A State's matching rate for the JOBS program is reduced to 50 percent for any year in which it fails to engage the following percentage of non-exempt AFDC recipients in the JOBS program: 7 percent in fiscal year 1990 and fiscal year 1991, 11 percent in fiscal year 1992 and fiscal year 1993, 15 percent in fiscal year 1994, and 20 percent in fiscal year 1995. The State's participation rate for a fiscal year is the average of its participation rates for specified computations periods in the year, which for fiscal years 1994 and 1995 are monthly periods.

The participation rate is computed by dividing the number of actual participants (including volunteers, but not including those who only have registered to participate) in the JOBS program by the number of individuals who are mandatory participants (mandatory participants for this calculation do not include parents caring for children under age 3 or the second parent in unemployed-parent families even if the State opts to require their participation).

If a State fails to meet the required participation rate for a year, the Secretary may waive the penalty (in whole or in part) if the State otherwise is operating a JOBS program in conformity with the law, has made a good faith effort to meet the participation rate requirement, and has submitted a proposal which is likely to achieve the required participation rate for subsequent years.

[sec. 403(l)(3) of the SSA]

(2) ***AFDC-UP participation requirements***

With respect to AFDC-UP families, the State must require one parent to participate in the JOBS program at least 16 hours per week during any period in which either parent is required to participate. Participation must be in work supplementation, community work experience or other work experience program, on-the-job training, or a State designed work program approved by the Secretary. An individual in a work supplementation program is considered to have met the requirement if she or he participates for a number of hours equal to the minimum wage equivalent based on the AFDC payment less any portion reimbursed by child support. In the case of a parent under age 25 who has not completed high school, a State may substitute participation in an educational program leading to a high school diploma or GED or other basic education program.

The AFDC-UP participation requirement is not considered to have been met unless it is met for the following average monthly percentages of AFDC-UP families: (a) 40 percent for fiscal year 1994, (b) 50 percent for fiscal year 1995, (c) 60 percent for fiscal year 1996, and (d) 75 percent for fiscal years 1997 and 1998. The calculation excludes from the denominator families who have been on the rolls less than 2 months provided that at least one parent in the family participates in intensive job search during the two months.

While Federal law does not specify the penalty that would apply for failure to meet AFDC-UP participation requirements, regulations specify that a State's matching rate for the JOBS program would be reduced to 50 percent for any year following a year in which it failed to meet the requirements. The Secretary may waive a penalty if she finds the State is operating the program in conformity with the law; the State has made a good faith effort to meet the participation rate requirement but has been unable to do so because of economic conditions in the State (including significant numbers of recipients living in remote locations or isolated rural areas where availability of work sites is severely limited), or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and the State has submitted a proposal that is likely to achieve the required participation rate for subsequent years.

[sec. 403(l)(4) of the SSA]

__Explanation of provision__

(1) *In general*

The JOBS participation rate would be calculated as follows: the average monthly number of recipients subject to the time limit, but not deferred, who are participating in a JOBS activity (including those employed the minimum number of hours adopted by the State or under sanction), divided by the average monthly number of all such individuals. The Secretary would have to issue regulations regarding the definitions and measurement of participation.

If a State JOBS participation rate exceeds 55 percent, the Secretary would pay the State an additional amount (without requiring additional nonfederal match) to carry out its JOBS program. The amount to be paid a State for exceeding the standard would be determined by the Secretary. Payments would first be made from penalties imposed on States for failing JOBS and WORK participation rates (see next paragraph) and for exceeding the caps on extensions and deferrals (see item G. below, "Funding Issues Relating to Deferrals and Extensions"). Any additional payments would come from the "special adjustment fund" (see item K. below, "Special Adjustment Fund"). A State would not be eligible for any additional amount for exceeding the 55 percent participation standard if the Secretary determines that the State has not accurately recorded or reported information about time limits or such other data as the Secretary requires, to an extent inconsistent with standards for accuracy prescribed by the Secretary.

If a State's participation rate is less than 45 percent for a fiscal year, then the Secretary would reduce by 25 percent the