U.S. Department of Labor

Office of the Assistant Secretary for Policy
200 Constitution Avenue NW,
Room S-2312
Washington, D.C. 20210
Phone 202-219-6197
Fax 202-219-9216

① Treas - exempt from tax work supp
② TANF - 2 real life ex - yes/no
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interim - 2 existing rules
- private guidance - 6 mos.
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OSHA
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FAX COVER SHEET

May 7, 1997

TO: Diana Fortuna

FAX: 456-~~5570~~ 7431

FROM: Staccy Grundman

OF PAGES: 23 plus cover

MESSAGE: Attached is the latest version of our materials and the cover memo that explains what each of them are.

Better tough Q&A
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SECRETARY OF LABOR
WASHINGTON

MEMORANDUM FOR KEN APFEL

FROM: CYNTHIA A. METZLER

SUBJECT: LABOR PROTECTIONS AND WELFARE REFORM

DATE: MARCH 24, 1997

When we last spoke you asked for additional information regarding the Department of Labor's proposed plans to clarify for states issues related to the application of labor laws to welfare recipients. I am forwarding three documents in response to your request.

The first is a **Rollout Strategy** that includes a proposed plan to disseminate information to states and a consultation process to inform intergovernmental representatives, Congress, other key stakeholders, and the press of our legal conclusions and our plans. We believe that all outreach efforts should be conducted in conjunction with HHS, USDA, and other involved federal agencies.

The second item attached is a draft public guide currently titled, **How Workplace Laws Apply to Welfare Recipients**. This guide answers a range of fundamental questions regarding the application of the Fair Labor Standards Act, the Occupational Safety and Health Act, unemployment insurance and anti-discrimination laws to welfare recipients, based on our lawyers' initial legal analysis of the various laws. This document provides preliminary guidance to states and localities administering welfare programs. It also can be used for outreach, consultation, and public education efforts.

The final document contains **Questions and Answers** that will be helpful in responding to media inquiries regarding the policy rationale for the application of the minimum wage to welfare recipients.

I hope these materials are helpful and look forward to moving towards resolution of these issues.

DRAFT: March 18, 1997

ROLLOUT STRATEGY
Labor Protections and Welfare Reform

As states develop and implement their plans for the Temporary Assistance for Needy Families (TANF) grants, they face a number of complex employment law issues. Generally, minimum wage, overtime, health and safety, unemployment insurance, anti-discrimination, and other employment laws apply to "employees" as that term is defined in the law. Based on analysis of the new welfare and employment laws, our lawyers have concluded that these labor protections apply to welfare recipients in the same way that they apply to other workers.

With our technical assistance, states must understand the relationship between employment laws and their plans to meet the work requirements of the TANF grants. Our proposal to disseminate our legal findings includes: (1) outreach, consultation, and public education to stakeholders and other interested parties; and (2) technical assistance to states and localities administering welfare and work programs. Ideally, all efforts would be carried out cooperatively by DOL, HHS, USDA, and other involved agencies.

1. Outreach, Consultation, and Public Education: The agencies would consult with the groups listed below to promote a better understanding of the interaction between the new welfare law and employment laws. We would also educate interested reporters. The attached public guide entitled "How Workplace Laws Apply to Welfare Recipients" would be distributed in this process. The attached internal document entitled "Questions and Answers" would provide the basis for press responses.

- **Congress:** Small briefings of key congressional staff by DOL, HHS, USDA and other relevant federal agencies would be conducted to communicate the Administration's legal conclusions. Majority and minority staff from the following congressional committees should be included: Senate Labor and Human Resources, House Education and Workplace, Finance, Ways and Means, and Senate and House Democratic Policy Committees.

- **State, Local and Intergovernmental Groups:** Informal discussions with the Washington representatives of state and local governments would be initiated. Individual or group discussions should be conducted with representatives from the National Governors' Association, National Conference of State Legislatures, American Public Welfare Association, National Association of Counties, National League of Cities, U.S. Conference of Mayors and the State Labor Commissioners.

  The public guide would also be disseminated to state and local officials including Human Services Directors, Welfare Directors, Labor Commissioners, Welfare Advisors, Legislative Leaders and Committee chairs.

- **Press:** A number of reporters from prominent media outlets, including the Wall Street Journal, Washington Post, USA Today, L.A. Times, and National Public Radio have inquired and written on this issue. A series of background briefings with these and other interested reporters to explain the Administration's legal findings and their implications for welfare reform.

2. Technical Assistance DOL, HHS, and Agriculture would offer technical assistance to states to explain the laws and discuss the options states might choose in designing their programs to meet both FLSA and TANF requirements. We would create a system to respond to inquiries regarding the application and enforcement of employment laws and provide informal advice proactively to states that can help them comply with these laws. This program will include some or all of the following program components.

- Identification of a contact within DOL so that inquiries regarding the application of employment laws to welfare recipients can be referred to a single source for clear and consistent guidance.

- Utilization of some of the systems for communicating with the states established by HHS to provide information to the states proactively and to make DOL officials available to answer their questions. These systems may include regional teleconferences, workshop presentations at regional conferences, or telephone conference calls.

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How Workplace Laws Apply to Welfare Recipients

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in August 1996 increased emphasis on the need to move welfare recipients from welfare to work. Under the Act, Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance for Needy Families (TANF). The new welfare law gives state and tribal governments broad latitude to meet specified work requirements.1 However, requirements of other laws affecting workers and the workplace also must be met.

Work Activities and Requirements: The new welfare law requires 25 percent of all TANF families and 75 percent of two-parent families to have an adult engaged in work activities in FY 1997 (families with no adult are exempted). States have the option of exempting single parents of children under one from the work requirement. The required participation rates increase each year, culminating at 50 percent (for all families with an adult) and 90 percent for two-parent families in FY 2002. In order to be counted towards the work participation rate, a single parent is required to be engaged in work activities, as defined by the bill, for 20 hours per week in FY 1997. For an adult in a two-parent family, 35 hours of work are required. The mandated hours of work for single parents also increase, to 25 hours in FY 1999 and 30 hours in FY 2000. Qualifying work activities include a range of subsidized and unsubsidized, private and pubic sector employment. In addition, a limited number of TANF recipients can meet the work requirement by participating in vocational training, job search, and high school education programs.

Common Questions: This guide contains general questions and answers on how workplace laws apply to welfare recipients. It is an effort to answer fundamental questions about the relationship between welfare law and workplace laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance and anti-discrimination laws. States should consider the applicability of these laws as they design and implement their work programs.

This guide is simply a starting point. It cannot provide the answers to the wide variety of inquiries that could be raised regarding specific work programs. The impact of these laws on work programs for welfare recipients and the answers to many questions will be determined by the specific facts of the particular situation. Many questions will have to be answered on a case-

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1 This Guide will refer only to state governments, although it is possible that county or local government entities will be responsible for implementing state and tribal welfare programs. Information in the Guide concerning the role of a state agency in implementing the welfare program, paying out the benefits, and, where relevant, employing welfare recipients, would apply to a county or local government agency, where that agency, not the state, implements welfare, pays out the benefits and employs welfare recipients.

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by-case basis.

We are offering our assistance to help address specific issues as they arise. Please call XX at XXX for additional guidance.

(1) Do federal employment laws apply to welfare recipients participating in work activities under the new welfare law in the same manner they apply to other workers?

Yes. Federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), unemployment insurance and anti-discrimination laws will apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from these laws.

The Fair Labor Standards Act

(2) Does that mean that welfare recipients engaged in work activities under the new welfare law will have to be paid the minimum wage?

The minimum wage and other FLSA requirements apply to welfare recipients as they apply to all other workers. If welfare recipients are "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage. However, if they are engaged in training programs, as defined by the FLSA, they will not be considered "employees" and are not required to be paid the minimum wage. (See question 3 for additional discussion.)

The FLSA definition of "employee" focuses on the economic realities of the workplace relationship. Welfare recipients would probably be considered employees in most of the work activities described in the new welfare law. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the FLSA.

(3) Aren't welfare recipients who participate in job training exempt from the minimum wage laws?

An individual in training that meets certain criteria under the FLSA and is not otherwise an employee, is considered a trainee and is not entitled to the minimum wage. A welfare recipient engaged in training that meets those criteria would not be an employee covered by the minimum wage requirements of the FLSA. The relevant criteria for such training are:

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- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainee;
- Trainees do not displace regular employees;
- Employer derives no immediate advantage from trainees' activities;
- Trainees are not entitled to a job after training is completed; and
- Employer and trainee understand that trainee is not paid.

(4) How does the FLSA affect "workfare" arrangements that require welfare recipients to participate in work activities as a condition for receiving cash assistance from the state affected?

Welfare recipients in "workfare" arrangements, which require recipients to work in return for their welfare benefits, ordinarily will be "employees" under the FLSA who must be paid the minimum wage and overtime in their workfare assignment. Where the state is the employer, the state may consider all or a portion of cash assistance as wages so long as the payment is clearly identified and treated as wages, the payment is understood by all parties to be wages, and all applicable FLSA record keeping criteria are met.

(5) Could States that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program continue to operate such programs in the same manner under the new welfare law?

The ability of states to operate programs like CWEP will depend on the details of their particular programs. The old welfare law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense provided under any other law. Under CWEP, the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The new welfare law eliminated CWEP and the entire JOBS program. Under the new law, welfare recipients must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition. However, if welfare recipients are participating in community work activities where they are not "employees" under the FLSA definition, they will not have to be compensated at the minimum wage. Thus, while states may be able to continue programs similar to those that existed under CWEP, they may need to modify the programs to reflect changes in the law.

(6) May Food Stamps be counted towards meeting minimum wage requirements?

In certain circumstances, Food Stamps benefits (coupons or their cash value) may contribute ~~towards meeting~~ minimum wage requirements for TANF recipients in work activities.

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Under the Food Stamps work supplementation program, employers may receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. As with other wage subsidy programs, the value of the Food Stamps benefit is converted to a cash wage subsidy paid by the employer as a wage and is counted towards the minimum wage. This program is restricted to recipients of TANF or other public assistance and contains specific worker protections and non-displacement provisions.

The Food Stamps law specifically permits States to establish Workfare programs in which participants are required to perform work in return for compensation in the form of food stamps. In other words, participants may be required to "work off" the value of their food stamps. The State or other employer participating in the workfare program may then credit the value of the food stamps towards its minimum wage obligations. The number of hours that a food stamp recipient may be required to work is determined by dividing the value of the food stamp allotment by the State or Federal minimum wage (whichever is higher), up to a maximum of 30 hours per week.

Participation in food stamps workfare programs may be counted towards TANF participation requirements, so that a participant who is employed by the State may receive food stamps as compensation for certain hours and receive welfare benefits as compensation for other hours of employment. In all cases, total compensation must equal or exceed the minimum wage for each hour worked.

(7) Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?

Only under limited circumstances. Such benefits may be credited as wages only when the state is the employer and all of the following criteria are met:

- Acceptance of noncash benefits must be voluntary;
- Noncash benefits must be customarily furnished by the employer to its employees, or by other employers to employees in similar occupations; and
- Noncash benefits must be primarily for the benefit and convenience of the employee.

Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA. ?

<u>**Occupational Safety and Health Act**</u>

(8) How does the Occupational Safety and Health Act (OSHA) apply to welfare

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recipients participating in work activities under the new welfare law?

The new welfare law does not exempt employers from meeting OSH Act requirements. Therefore, OSH Act coverage applies to welfare recipients in the same way that it applies to all other workers. However, because the OSHA does not have direct jurisdiction over public sector employees in many states, the question of who is the responsible "employer" is an important one. This is particularly true in cases where work activities are administered as part of a public-private partnership. In these situations, OSHA will determine whether the employee is in the public or private sector on a case-by-case basis. Generally, case law under OSHA tends to place compliance responsibility on the party most directly controlling the physical conditions at a worksite.

(9) Does that mean that welfare recipients in work activities deemed to be public employees are exempt from health and safety regulations?

It depends on the state. In the 23 states and two territories where there are OSHA-approved state plans, the states are required to extend health and safety coverage to employees of state and local governments. To the extent participants in these states and territories are employees of public agencies, they would be protected by the applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants who are public sector employees.

(10) Can a public agency be held jointly liable for compliance with OSHA regulations? If so, how?

Yes. In general, the greater a state's involvement in the placement and control of participant's work activities, the greater the chance that a state could be considered a joint employer. If a state is a joint employer, it could be held jointly liable for OSHA (under state OSHA plans) violations -- even if the participant is actually working on the premises of a private employer. However, the mere payment of a state subsidy to an employer would not be enough to create a joint employment relationship.

<u>Unemployment Insurance</u>

(11) Are welfare recipients participating in work activities covered by the Unemployment Insurance (UI) System ?

Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Unemployment insurance coverage extends only to workers who are considered "employees," according to definitions provided by state UI laws. Consequently, if welfare recipients are in work activities where they would be classified as employees, they will be covered by the UI system.

There are some exceptions. While federal law requires states to extend UI coverage to services performed for state governments and non-profit employers, services performed as part of publicly funded "work-relief" employment or "work training" programs are not covered. Under the new welfare law, a number of community service-related activities could fall within the "work-relief" exception to UI coverage.

An Unemployment Insurance Program Letter (UIPL 30-96) issued in August 1996 clarified the criteria applicable to the "work-relief" and "work training" exceptions. In order to fall within the exception, activities must primarily benefit community and participant needs (versus normal economic considerations) and services must not otherwise normally be provided by other employees. If such activities do not fall within the exception, participants providing services for these entities would likely be covered by the UI program.

(12) What about welfare recipients who are working for private sector employers? Will they be covered by the UI program?

The "work relief" and "work training" exceptions for UI do not apply to the private sector. For private employers the question of UI coverage will hinge on whether a participant is deemed an "employee." The tests for making these determinations are made by the states and are generally similar to the common law test which is based on "the right to direct and control work activities."

Anti-Discrimination Laws

(13) Would federal anti-discrimination laws apply to welfare recipients who participate in work activities under the new welfare law?

Yes. Anti-discrimination issues could arise - primarily under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Age Discrimination in Employment Act. Furthermore, if participants work for employers who are also federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act. ~~As with the other laws discussed above,~~ these laws would apply to welfare recipients as they ~~apply to~~ other workers.

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QUESTIONS & ANSWERS ON THE APPLICATION OF ~~FLSA~~ TO TANF PARTICIPANTS

1. Can you provide a list of the labor protections to which welfare recipients will be entitled?

Welfare recipients who are employees will be subject to the same federal and state labor protections as any other workers. Because of variations in state laws and the variations of labor standards among specific jobs and industries, it is not possible to prepare a complete list of labor standards that will apply to all such workers. (For example, there is no federal overtime requirement in agriculture. Employees engaged in door-to-door sales are not subject to the federal minimum wage. And newspaper delivery persons are exempt from the federal child labor rules.)

In general, however, such participants are likely to be eligible for:

(1) Minimum wage (federal or state, whichever is applicable);
(2) Overtime pay;
(3) Child labor protections;
(4) Unemployment insurance;
(5) State workers' compensation;
(6) Safety and health standards;
(7) Family and Medical Leave Act protections; and
(8) Equal employment opportunity protections.

2. Does the FLSA apply to welfare recipients who are required to work? How would the FLSA be enforced for TANF recipients?

The FLSA has a very broad definition of employment that applies to welfare recipients who are required to work just as it does to any other worker. Some TANF recipients will participate in work activities that would be considered training activities under the FLSA, ~~such as GED classes~~. These activities may not constitute employment and, as a result, the minimum wage would not apply. But in most cases, where welfare recipients in work activities will be performing some kind of work for a private company or a public agency, they will be entitled to the minimum wage, just like other workers are entitled to the minimum wage. ?

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The goal of welfare reform is to move people from the dependency of welfare to productive employment that can raise American families and their children out of poverty. Assuring that welfare recipients who work receive the minimum wage advances this goal.

Participants in work programs who believe that their employer is not complying with the law can, just like any other worker, file a complaint with the Department's Wage and Hour Division or file a private lawsuit in court.

3. **What is an example of the type of work activity that would qualify as training under the Fair Labor Standards Act?**

TANF recipients can participate in work activities that may be classified as "training programs" under the FLSA. In these cases, they are not required to be compensated at the minimum wage because they are not "employees."

The standard FLSA test provides that an employment relationship does **NOT** exist in that situation if:

(1) the training is similar to that which would be given in a vocational school;
(2) the training is for the benefit of the employee;
(3) the trainee does not displace a regular employee;
(4) the employer derives no immediate advantage from the trainee's activities;
(5) the trainee is not entitled to a job after the training is completed; and
(6) the employer and the trainee understand that the employer will not pay the trainee wages or other compensation.

In situations where the training is not connected with any employment and is provided in a school setting, the trainee is not likely to be engaged in "work" and is likely to be classified as a "trainee" rather than an employee. On the other hand, where the training is provided in a work-based setting, a determination of whether "work" is being performed and an employment relationship exists is more difficult. In either case, the FLSA test must be applied to the specific facts of the situation in order to make a determination.

For example, a trainee may learn to weld by working beside and under the supervision of an experienced welder at a manufacturing plant, without expecting compensation. If the employer gets no benefit from the trainee's activities, because the time and effort the welder spends in closely observing the trainee outweighs any usefulness, and there is no

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guarantee that the employer will hire the trainee after the training, the test for employee status probably would not be met.

4. **Considering all of the valuable training and workforce experience they will be receiving in these welfare-to-work programs, why should welfare recipients be guaranteed a minimum wage?**

As people move from welfare to work, one of the most important lessons they can learn is that work pays. Paying them less than the minimum wage defeats this purpose, because no one can achieve self-sufficiency and raise a family on less than the minimum wage. That's why Congress, at the President's behest, raised the minimum wage last year from $4.25 an hour -- a level at which, even with the Earned Income Tax Credit and food stamps, a single mother or father with two kids and a full-time minimum wage job did not make enough to rise above the poverty level.

Raising the minimum wage is a signal that the nation should reward -- and not hold back -- people who try their very best to make it on their own. Welfare recipients should not be excepted from that ideal. To do so would be to send the wrong message to Americans who are moving from welfare to work.

5. **If welfare recipients have to be paid the minimum wage, doesn't that undermine the President's Welfare-to-Work Challenge?**

No. The President's Welfare-to-Work Challenge is dedicated to moving welfare recipients into long-term private sector jobs by providing $3 billion in funding for job placement and job creation. States and cities can use these funds to provide subsidies and other incentives to encourage private businesses to hire welfare recipients. The requirement that welfare recipients who are required to work must be paid at least the minimum wage is entirely consistent with the goal of moving people into real jobs at fair wages.

6. **Is the DOL only studying FLSA and its applicability to welfare recipients in work activities at the urging of the unions?**

No. Whether someone is an employee entitled to the minimum wage has nothing to do with politics or unions. The Fair Labor Standards Act requires that if you want someone to work for you, you have to pay that person at least the minimum wage in virtually all circumstances.

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The American people understand the need to be fair in this issue. We want welfare recipients to work and they need to be paid the minimum wage. We need to move people away from welfare dependency to work-- but we need to help them make enough to achieve self sufficiency.

7. **Is it legal to pay welfare recipients a training wage? If so, is there a time limit?**

There is no "training wage" provision in the Fair Labor Standards Act. Under some circumstances, individuals who are trainees are not employees under the FLSA rules and therefore don't have to be paid the minimum wage. There is no specific time limit on a program that qualifies as training under the FLSA.

The FLSA does allow the payment of a subminimum wage to newly hired employees under 20 years of age for a strictly limited period of time. The FLSA's youth subminimum wage provisions – enacted with the 1996 minimum wage increase -- do not require any training. The President strongly opposed the subminimum wage when it was proposed last year.

The FLSA's subminimum wage -- $4.25 an hour -- may be paid only to an employee under 20 years of age during his/her first 90 consecutive calendar days of employment with an employer. Welfare recipients are treated the same as any other workers under these provisions. Consequently, as with any other worker, if a welfare recipient who is under age 20 performs work that is subject to the FLSA, he or she can be paid the subminimum wage for the first 90 consecutive calendar days of employment with an employer.

Employers are prohibited from displacing employees in order to hire youth at the subminimum wage. Also prohibited are "partial displacements" such as reducing other employees' hours, wages, or employment benefits.

8. **Why not permit a special, lower minimum wage for welfare recipients who are placed in work assignments? They are not going to be as productive as other workers. They are going to need a lot of training.**

The President strongly opposed the new subminimum wage for workers under age 20 when it was proposed last year. Welfare reform is supposed to move people from the dependency of welfare into real jobs, with real pay and real futures--jobs that lead to self sufficiency and independence. That means paying at least the minimum wage.

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As President Clinton said in signing the new minimum wage into law last year:

> "If we want to really revolutionize America's welfare system and move people from welfare to work and reward work... the first, ultimate test we all have to meet [is]: If you get up every day and you go to work, and you put in your time and you have kids in your home, you and your children will not be in poverty".

To pay welfare recipients less than the minimum wage would undermine the goal of self sufficiency.

9. **While the government is out there taking care of TANF participants and ensuring them the minimum wage, what happens to low-wage workers in this country who aren't on welfare?**

The President has done a great deal to help low-wage workers. He has increased the minimum wage, expanded the EITC, increased access to pensions, passed the Family Medical Leave Act, and improved health insurance portability because of his concern for improving the economic condition of low and moderate income working Americans.

The President initiated welfare reform to remove the barriers to work that have kept many welfare recipients trapped in dependency. TANF will help move these individuals into the economic mainstream of working men and women. Paying TANF participants in work activities the minimum wage does not make them better off than other low-wage workers.

10. **What has the President said about the relationship between work, welfare reform and the minimum wage?**

The President has consistently called for moving welfare recipients into <u>real</u> jobs at <u>fair</u> wages that offer real opportunities for independence and self sufficiency. For example:

(1) "Welfare reform should be about work. Welfare should provide people the opportunity to move from welfare to work as quickly as possible.

In return, people must take responsibility for supporting themselves and their families. All those who can work must go to work to support their families."

[**President Clinton**, "Rebuilding America For A New Era"]

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(2) "Two days ago we signed a bill increasing the minimum wage here and making it easier for people in small businesses to get and keep pensions. Yesterday we signed the Kassebaum-Kennedy bill which makes health care more available to up to 25 million Americans, many of them in lower-income jobs where they're more vulnerable.

The bill I'm signing today preserves the increases in the earned income tax credit for working families. It is now clearly better to go to work than to stay on welfare -- clearly better. Because of actions taken by the Congress in this session, it is clearly better. And what we have to do now is to make that work a reality."

[**President Clinton**, in his remarks at the signing of The Personal Responsibility And Work Opportunity Reconciliation Act, August 22, 1996]

(3) "This week I will sign into law an increase in the minimum wage. For those who work hard to stay off welfare, but can't live on $4.25 an hour, this is a very important act. It will truly honor work and family."

[**President Clinton**, Radio Address, August 17, 1996]

(4) "Together with our tax cut for working families, this [minimum wage] bill ensures that a parent working full-time at the minimum wage can lift himself or herself and their children out of poverty. Nobody who works full-time with kids in the home should be in poverty. If we want to really revolutionize America's welfare system and move people from welfare to work and reward work... the first, ultimate test we all have to meet [is]: If you get up every day and you go to work, and you put in your time and you have kids in your home, you and your children will not be in poverty.

At its heart, this bill does reaffirm our most profoundly American values, offering opportunity to all, demanding responsibility from all and coming together as a community to do the right thing."

[**President Clinton** in his remarks on signing the minimum wage bill, August 20, 1996]

(5) "Welfare as we knew it was a bad deal for everyone. We're determined to create a better deal. We want to say to every American, work pays. We raised the minimum wage; we expanded the earned income tax credit to allow the working

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poor to keep more of what they earn. Now we have to create a million jobs for people on welfare by giving businesses incentives to hire people off welfare and enlisting the private sector in a national effort to bring all Americans into the economic mainstream."

[**President Clinton**, Radio Address, December 7, 1996.]

(6) "We continue to take action to value work and to value families. I fought for and signed legislation that raises the minimum wage by 90 cents over two years. This action will significantly improve the lives of 10 million Americans by rewarding work and responsibility and ensuring that work pays."

[**President Clinton**, *Florida Times-Union*, September 22, 1996]

(7) "It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it . . . .Empower people with the education, training, and child care they need for up to two years, so they can break the cycle of dependency; expand programs to help people learn to read, get their high school diplomas or equivalency degrees, and acquire specific job skills; and ensure that their children are cared for while they learn. After two years, require those who can work to go to work, either in the private sector or in community service; provide placement assistance to help everyone find a job, and give the people who can't find one a dignified and meaningful community service job."

[**Bill Clinton and Al Gore**, *Putting People First*]

(8) "Under the increase which the Congress voted in 1993 in the earned income tax credit, 15 million working families have been given a tax cut -- it's worth about $1,000 in lower taxes to a family of four with an income of less than $28,000, and that's most Hispanic families in the United States. And that's one big reason that the welfare rolls are down, because we're making work pay. On October 1st, 10 million more Americans will get a pay raise when the minimum wage increase goes into effect."

[**President Clinton**, in his remarks at the Congressional Hispanic Caucus Institute Dinner, September 25, 1996]

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(9) "On Tuesday, the Senate voted to pass a 90-cent increase in the minimum wage. It's about time. You can't raise a family on $4.25 an hour, and if we don't raise it, the minimum wage will fall to a 40-year low this year in terms of what it will buy. So I congratulate the Republican members of Congress who joined with the Democrats to honor work and family, opportunity and responsibility, by voting to give minimum wage workers a raise."

[**President Clinton,** Radio Address, July 13, 1996]

(10) "On this 4th of July weekend, I want to talk about one thing that is at the root of all of our independence -- going to work. It makes you self-sufficient. It makes you and your family truly independent.

Unfortunately, millions of Americans are not independent because they are dependent on welfare. The vast majority of these Americans dream the same dreams most of us do. They want the same dignity that comes from going to work and the pride that comes from doing right by their children. They want to be independent.

Today I'm pleased to announce that Virginia will receive the newest waiver. Virginia's plan requires people on welfare to go to work. Like the states of Oregon, Missouri and a few others, it also allows money now spent on welfare and food stamps to go to employers to supplement wages to help create jobs in the private sector. And it helps people get child care. It's a good plan, and I'm proud to be supporting it.."

[**President Clinton,** Radio Address, July 1, 1995]

(11) "Our job is to create opportunity for those who take responsibility to work hard and lift themselves up. Those are the values that have always sustained us and kept us a great nation. That's why we fought so hard for the earned income tax credit in 1993 -- a working family tax cut for 15 million families with incomes under $26,000. And that's why I now call on Congress to raise the minimum wage .90 to $5.15 an hour over the two years.

In terms of real buying power, the minimum wage will be at a 40-year low next year if we don't increase it above where it is now at $4.25 an hour. As I told the Congress, already just this year in one month of work, members of Congress have earned more than full-time minimum wage workers earn all year long.

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Nobody can live on $4.25 an hour and, yet, 2.5 million Americans are working for just that amount, and many of them have children to feed. Millions more are just above the minimum wage.

The only way to strengthen the middle class and shrink the underclass is to ensure that hard work pays. Increasing the minimum wage is an important part of our strategy to do that. Congress is considering other economic strategies now as well. The test for all of these ideas should be: Do they reward work? Do they grow the middle class and shrink the underclass? Do they build economic opportunity in America? I believe, for example, if we're really serious about welfare reform, increasing the minimum wage will plainly help.

More than anything, I want to give a genuine bipartisan welfare reform effort the best chance it can to produce a bill that we can all be proud of, a bill that will encourage work and responsible parenting and independence. But welfare reform can't possibly succeed unless the people we expect to leave welfare and go to work are rewarded for their labors."

[**President Clinton**, Radio Address, February 5, 1995]

11. Have states' welfare plans been approved by HHS already? Does this mean that states are in compliance with employment laws?

HHS does not approve state welfare plans -- it merely certifies that they are "complete". A "complete" plan encompasses the requirements laid out in the statutory language relative to State TANF plans, such as establishment of goals and actions to prevent and reduce the incidence of out-of-wedlock pregnancies and ensuring that parents and caretakers receiving assistance under the program engage in work activities. HHS makes no substantive judgments about the contents of the plans, nor does it make any judgment about whether the plans or their implementation comply with federal employment laws. Most of the plans which have been submitted have already been certified as complete.

12. It appears the Federal and State governments will have to pay more than expected to move people off welfare. Where will the Governors and Mayors find resources to move people from welfare to work?

New block grant rules and declining caseloads have resulted in many states having more flexible resources and additional funds available per welfare household this fiscal year. A report by the House Ways and Means subcommittee shows that next year the typical

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Fed only?

state will receive a 56 percent increase per recipient family over 1994 levels. In addition, states may use their state-only welfare funds to serve a variety of needs and special populations. We are encouraging states and localities to maintain their investment in low-income families and use all resources to move people from welfare to work.

The President has proposed the Welfare-to-Work Jobs Challenge, which would make an additional $3 billion available over three years to States and localities for the purpose of placing the hardest-to-serve recipients into lasting jobs. States and localities would be expected to coordinate these funds with private and other public sector resources, including TANF block grant dollars, JTPA funds and the Work Opportunity Tax Credit.

The President has also proposed a "super" Work Opportunity Tax Credit for long-term welfare recipients--employers could receive a credit equal to 50 percent of the first $10,000 in wages for each of two years, making for a maximum credit of $10,000, as opposed to $2,100 under the regular WOTC. In addition, the existing WOTC would be expanded to include able-bodied childless food stamps recipients aged 18-50. Creation of this targeted credit would further increase the resources available for welfare-to-work efforts.

13. **What is the history of federal jobs programs intended to move welfare participants into work activities? Have recipients been paid or exempt from the minimum wage?**

Federal jobs programs intended to move people out of poverty or unemployment over the last 60 years generally have required that participants receive at least the minimum wage, as illustrated in the following chart.

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Program	Not less than MW or Equivalent	Compensation Standards
Works Progress Administration (1935 - 1943)	Yes	Prevailing wages [1]
Community Work and Training Program (1962 - 1967)	Yes	Hours set by grant divided by Prevailing wages
Work Incentive Program (1967 - 1988)	Not Available[2]	AFDC grant only (no record of hours; included training)
Comprehensive Employment and Training Act (1973 - 1982)	Yes	Prevailing wages
Community Work Experience Programs (1981 - Present)	Yes	Hours set by grant divided by FLSA minimum wage
Alternative Work Experience Programs (1988 - Present)	Not Available[3] ?	AFDC grant only (no record of hours; includes training)

A brief description of each of these federal programs follows.

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[1] The prevailing wage is the wage rate paid for comparable work in the locality. It is always at least the minimum wage, and usually higher.

[2] The WIN Program combined job readiness training, job search and other activities not considered work under the FLSA.

[3] Similar to WIN, AWEP is a variation of CWEP which provides increased flexibility to the States in structuring work and training programs with sponsors. State plans are approved by HHS as an alternative to CWEP; and participants are limited to 4 months of work experience.

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WPA

The purpose of the Works Progress Administration (WPA) (1935 - 1943) was to move employable individuals from federal relief programs to a very wide variety of work projects.

WPA wages were paid at a level that was termed a "security" level, which was initially intended to be higher than the federal relief payments, but lower than prevailing wages. Many unions and others objected that the WPA's practice of paying security wages was lowering wages in the private sector. Consequently in its second year of operation, the wage rates paid under the WPA were raised to the prevailing hourly wages at the same time that the number of hours worked each month was reduced, so that the monthly amounts paid did not increase.

CWT

The first federal effort to require welfare recipients to work was the Community Work and Training Program (CWT) that accompanied the creation of the AFDC-U program in 1962. (The AFDC-U gave the states the option of providing assistance for children in two-parent households in which the father was unemployed.) States could require AFDC-U recipients to "work off" the amount of assistance they received at a community job, with the number of work hours determined by the prevailing community wage rate for comparable work.

Usage of this optional provision by the states was extremely limited.

WIN

In 1967, Congress created the Work Incentive Program (WIN), which added work requirements for able-bodied fathers, out of school youths aged 16 or older, and other adults receiving AFDC who were not themselves parents. The program provided that when an individual became employed, the first $30 of earnings per month plus one-third of the remainder would be excluded from income in calculating the welfare benefit.

The WIN program included training, education, and unpaid work experience, under which the participant received no remuneration other than the welfare benefits. The work experience lasted up to 13 weeks of unpaid work activities, with an allowance for work-related expenses.

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In 1971 Congress amended the WIN program to include more emphasis on employment training and job search. Among those who participated in WIN, very few ever performed work in exchange for welfare.

CETA

The Comprehensive Employment and Training Act (CETA), enacted in 1973 and administered by DOL until its repeal in 1982, contained provisions for on-the-job training and public service employment targeted to areas of unemployment of 6.5 percent or more. Wages paid under either component were required to be the highest of: the FLSA minimum wage; the state minimum wage; the prevailing wage for persons similarly employed; the minimum entrance wage rate for inexperienced workers in the same occupation in the establishment; the wage rate required by an applicable collective bargaining agreement; or the prevailing wage rate under the Davis-Bacon Act, if applicable.

1981 Omnibus Budget Reconciliation Act

In 1981, Congress gave the states greater latitude in administering WIN and imposing work requirements. The states could run the following optional programs:[4]

(1) *WIN Demonstration Programs* - The states could administer WIN demonstration programs (as described above) with greater flexibility on the mix of services.

(2) *Community Work Experience Programs* - CWEP required that the hours worked by participants not exceed the amount they received in grants divided by the FLSA minimum wage.

(3) *Job Search Programs* - The states could adopt mandatory job search activities or job referral programs for AFDC recipients.

(4) *Work Supplementation Programs* - The states were permitted to use AFDC grants to subsidize on-the-job training for welfare recipients with a public or private employer.

JOBS

[4]As indicated, CWEP had special pay provisions. Standard FLSA rules applied to participants in the other programs.

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In 1988, Congress passed the Family Support Act, which included nearly $5 billion in initial funding to be spent between 1989 and 1995 on the Job Opportunities and Basic Skills Training Program (JOBS). JOBS remained in place until it was replaced by the recent TANF legislation.

The JOBS program established participation standards for states for the first time: 7% of AFDC recipients had to participate by 1990, rising to 20% by 1995. JOBS encouraged activities such as education and training. In addition, the states had to offer at least two of the following: group and individual job search, on-the-job training, work supplementation, and CWEP or Alternative Work Experience.

Under the "on-the-job training" component, participants were hired by private or public employers and provided training in skills essential to the full and adequate performance of the job. These participants received wages and benefits commensurate with those for similarly situated employees as trainees, and in no event less than the amount required by the FLSA or State minimum wage law.

CWEP and Alternative Work Experience both involve the assignment of welfare recipients to work for no additional wages at public or private nonprofit agencies. In the case of CWEP, a participant's hours of work have been limited to the family's monthly AFDC grant divided by the federal minimum wage (or the state minimum wage, if higher) for a period up to nine months. Unlike CWEP, participants in Alternative Work Experience have not been limited in the number of hours they can work; instead, the work schedule has been worked out by the participant and the sponsoring public or private nonprofit entity. AWEP assignments have been limited to 12 or 13 weeks.

INTERNAL REVENUE SERVICE
INCOME TAX & ACCOUNTING
CC:DOM:IT&A

PHONE NUMBER: 202-622-4800

TO: Diana Fortuna
PHONE NUMBER: 456-5570
FAX NUMBER: 456-7431

SUBJECT: Welfare to Work – Per our Conversation

PAGES: 3
(Including this cover sheet)

FROM: Lewis J. Fernandez
PHONE NUMBER: 622-4810
FAX NUMBER: 202-622-6316

DATE: 5/13/97 TIME: 3:45 PM

4 Margaret Pugh on 5/7/97
— [illegible] 5/8/97

Workfare Examples

Thank you for providing us with the six situations concerning Workfare programs. Before we can proceed with our legal analysis, however, we require additional factual information to determine the tax treatment of payments that individuals receive while performing services in workfare programs. We hope that the following discussion of income tax principles will explain our need for this information.

Section 61(a)(1) of the Internal Revenue Code states that gross income includes "**compensation for services.**" Under this broad principle, a person who performs services in order to receive a payment must include the payment in income. Although the Internal Revenue Service has held that payments made from a government welfare fund to needy individuals may be excluded from income, it is well established that this exception does not apply if the payments are made for services. In other words, payments made to a needy individual for services rendered are includible in gross income, notwithstanding that they are made from a federal or state welfare fund.

The resolution of this issue involves many general factors, which are set forth in the next three paragraphs. Although you have submitted some of the information requested below, we believe it would be helpful to set forth for you all of the factors that are necessary to our legal analysis.

Factors Related to Program Arrangements. The factors related to program arrangements are as follows: (1) Who arranged and financed the individual's participation in the workfare program?; (2) Who made the work assignments and determined the number of hours the individual would work?; (3) Who is responsible if the individual is injured while performing services in a workfare program?

Factors Related to Work Activities. The factors related to work activities are as follows: (1) What type of activities does the individual engage in while participating in the workfare program?; (2) What is the nature of job training, if any, that the individual receives?; (3) Is any of the training classroom training or other training that is not "on-the-job" training?; (4) Is the individual held to the same job performance standards as other employees?; (5) If so, why is the individual compensated at a rate different than that of other employees?; (6) Is the individual treated as an employee under the common law or other law?

Factors Related to Compensation. The factors related to work activities are as follows: (1) Who fixed the hourly rates?;

Workfare Questions

(2) Does the individual receive a larger payment under the workfare program than he or she received under welfare?; (3) Does the recipient receive the same payment regardless of the number of hours worked?; (4) Is the total amount of the payment received by the individual (from the employer and the state welfare agency) based on the need of the individual or the value of the services rendered?; (5) Are the payments funded by the state welfare agency based on need?; (6) Does the individual receive his or her check from the state welfare agency or a third party?; (7) Is the individual entitled to employee benefits?

We would appreciate it if you would respond to these general questions (to the extent you have not already done so) for each of the five situations that you have presented to us and, if applicable, for the Community Service example. With regard to question 6 under **Factors Related to Work Activities** please answer (to the extent possible) the questions in the attached copy of Form SS-8, which enumerates some of the relevant factors in determining whether an individual is a common-law employee.

The various fact patterns that you submitted also raise specific factual questions. In order to comment on these examples, we need factual responses to the questions set forth below.

Example 1. Was any remuneration paid by hospital? Is she treated as an employee for any purpose of federal or state law? Is the $145/month she receives while working at the hospital equal to the amount she received from the state welfare agency prior to working at the hospital?

Variation 1. What is the amount of the grant that she receives from the state welfare agency? Does it exceed the amount that she was receiving prior to working at the hospital? What does it mean to say that Ms. Smith and the state understand that the welfare grant is compensation for her hours of work? Is the $475/month paid to Ms. Smith by the state welfare agency or the hospital? Does the state welfare agency reimburse the state hospital for the $475/month (if the payroll check is paid by the hospital)? If Ms. Smith fails to work the required number of hours (including justified absences) is her welfare grant reduced? If Ms. Smith fails to work the required number of hours (including justified absences) is her $475/month payroll check reduced?

Variation 2. Is Ms. Smith receiving any money from the hospital? What does it mean to say that Ms. Smith and the state understand that the welfare grant is compensation for her hours of work? If Ms. Smith fails to work the required number of hours (including justified absences) is her $625/month welfare grant reduced? Is

Workfare Questions

the state welfare agency or the hospital making the payment of $625/month to Ms. Smith?

Variation 3. What does it mean to say that Ms. Smith is **not** treated as an employee of the private hospital for purposes other than the FLSA? Is the $625/month the hospital receives from the state funded from the state welfare fund? If Ms. Smith fails to work the required number of hours (including justified absences) is the $625/month she receives from the hospital reduced? Which provision of law authorizes the state to pay the hospital? What is the extent of the control the hospital may exercise over the money it receives from the state? (for example, if Ms. Smith were terminated by the hospital, must the hospital return any portion of the $625 to the state or may it use it to pay another welfare recipient who is assigned to the hospital?) Is the money that the hospital receives from the state received as a block grant? Are the subsidies for child care and transportation paid by the state out of a general welfare fund?

Variation 4. Is the training program an on-the-job training program? What does it mean to say that Ms. Smith is an employee for all purposes? Is the $625/month the hospital receives from the state funded from the state welfare fund? If Ms. Smith fails to work the required number of hours (including justified absences) is the $625/month she receives from the hospital reduced? Which provision of law authorizes the state to pay the hospital? What is the extent of the control the hospital may exercise over the money it receives from the state? (for example, if Ms. Smith were terminated by the hospital, must the hospital return any portion of the $625 to the state or may it use it to pay another welfare recipient who is assigned to the hospital?) Is the money that the hospital receives from the state received as a block grant? Are the subsidies for child care and transportation paid by the state out of a general welfare fund? Is it possible that the state welfare agency would make the payment to Ms. Smith in this situation?

Community Service Example. No questions.

Please send the original of the response to the questions to:

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
ATT'N : CC:DOM:IT&A:2
Room 5131

You may fax a copy of your response to 622-6316. If you have any questions, please call Ms. Elizabeth Wickstrom at 622-4920. Thank you for your cooperation.

Talking Points on FLSA
5/16/97

- The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees.

- This means that many, if not most, welfare recipients in these programs will receive at least the minimum wage for their work activities.

- Welfare recipients in these programs will not have to be paid the minimum wage if they fall within the FLSA's exception for "trainees." Some states will probably try to structure their workfare programs so that recipients fall within the "trainee" exception.

- In most cases in which the minimum wage is required, both cash assistance and food stamps will count toward the minimum wage. The Department of Agriculture will take necessary administrative action to ensure that food stamps can be counted to the greatest degree possible.

- This will not affect the work requirements of the welfare law. States will still be able to meet those requirements, not only by putting recipients in workfare, but by placing people in private sector jobs (where the minimum wage already applies). With both cash assistance and food stamps counting toward the minimum wage, very few states will have to increase their assistance payments. In fact every state but one (Mississippi) can comply with the welfare law's current work requirements (now 20 hours per week for a welfare recipient) and pay minimum wage without increasing their current benefit level.

- The Labor Department will provide guidance within the next week or two on the specifics of this policy and will engage in extensive consultation with states on how to apply this policy with the least disruption.

- The Treasury Department is still exploring how the tax laws apply to welfare recipients in workfare programs. We hope to be able to give states an answer to that question very shortly.

Paper? - be careful, take a wk or 2, we want to see all proposals

Farm legislation

~~Email~~ new Q+A + name

Texas

Q&A

Question: Won't this end welfare reform as we know it by making work more expensive?

Answer: Not at all. With both TANF and food stamps counting toward the minimum wage, every state except Mississippi will be able to give welfare recipients workfare slots for 20 hours each week (the welfare law's current work requirement) without raising their benefit levels. And of course states should be trying to place welfare recipients in private sector jobs where the minimum wage already applies.

Question: Are most welfare recipients who are working going to be considered "employees"?

Answer: Most welfare recipients participating in the work activities described in the new welfare law probably will count as "employees," entitled to the minimum wage, under the FLSA. But some individuals, engaged in such activities as job search, vocational education, and secondary school, may count as "trainees" instead. The Labor Department will advise states on how the FLSA applies to particular programs and individuals engaged in them.

Question: What's the difference between a trainee and a worker under FLSA?

Answer: An individual is in training if:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainee;
- Trainees do not displace regular workers;
- The employer derives no immediate advantage from the trainees' activites;
- Trainees are not entitled to a job after training is completed; or
- The employer and trainee understand that the trainee is not paid.

Question: Can Food Stamps count as wages?

Answer: We believe that through waivers or other mechanisms such as the Simplified Food Program option now in law, states will be able to count food stamps toward the minimum wage for all those required to work under the new welfare law.

Question: Does this mean welfare recipients in workfare and other subsidized employment programs can unionize?

Answer: No -- that is a different question entirely. Whether and when workers can unionize is a function of the National Labor Relations Act. The National Labor Relations Board, an independent entity that administers that Act, has not ruled on the unionization question.

FACSIMILE TRANSMISSION
Office of the Assistant Secretary
The Administration for Children and Families

DATE:

TO: see below

Telephone:

Fax:
Number of Pages (excluding cover): 5

FROM: Margaret Pugh

Telephone: (202)401-6944
Fax: (202)401-4678

MESSAGE:

to - Lew Fernandez 622-6316
Liz Wickstrom & Mike Monanino 622-6316
cc - Stacey Grundman 219-9216
Cynthia Rice & Diana Fortuna 456-7431

Revised case study from HHS & issue paper from DOL on FLSA.
Please call if there are questions. Thanks!

Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
Phone: (202) 401-9200

DRAFT -- May 14, 1997

Workfare

Ms. Smith filed for welfare assistance for herself and one child in January. She had no other income and the amount of her welfare grant was determined to be $145 a month. During the initial interview, the case worker informed Ms. Smith of the work requirements and made clear that failure to cooperate in a work activity (which could include: subsidized and unsubsidized work, work experience, on-the-job training, community service, jobs skills training, vocational education training, job search, job readiness, education directly related to employment, GED training or child care for an another individual who is participating in community service) or quitting a job would result in a sanction (i.e., a reduction or termination of her welfare payment - each State established its own policy).

Since Ms. Smith had little work history and had not finished high school, her case worker immediately assigned Ms. Smith to attend adult education classes at the local community college. These classes are specially designed for welfare recipients and are scheduled for 20 hours per week. Ms. Smith participated in the adult education classes for 16 weeks, followed by a 4-week program that included life skills training, job club and job search. The 4-week program is scheduled for 30 hours per week and involves classroom training and instruction four days a week. It involves and one day of job search (She had to see at least 6 employers and each had to mark her card that she had asked them about work). In all of these activities, attendance was taken, any absences or tardiness would be reported to the case manager, as well as any behavior that would indicate non-cooperation. Ms. Smith was very diligent and cooperative, but she did miss 3 days of class in March when her child got chicken pox. She was also late 2 days, once when her electricity was off due to general power outage and once when the bus did not come. Under the criteria for good cause established by the State, her case manager determined that Ms. Smith had good cause for being late and for her absences and no sanction (reduction) was taken against Ms. Smith's $145 a month assistance payment.

Ms. Smith was not successful finding employment during her job search. The principal barrier seemed to be her lack of any meaningful work experience. Her case manger suggested a work experience placement and offered her 3 choices, including one at a local hospital. Ms. Smith expressed an interest in the hospital placement and determined that transportation and child care arrangements would be easiest at the hospital as well. Although Ms. Smith had no prior experience or training in food preparation, she though she might enjoy that type of work.

The welfare agency has had an agreement with this hospital for the past 2 years. It is an ongoing agreement that generally covers about 20 welfare recipients at any given time. Though there is no commitment by the hospital to hire welfare recipients who have participated in work experience at the hospital, the hospital has in fact hired about 50 percent of the individuals who have participated thus far. The agreement specified that:

- The hospital would provide the welfare recipient with work experience, supervision and the usual training associated with the position.
- The hospital would not receive any remuneration from the welfare agency.
- The hospital would not provide any remuneration to the welfare recipient during this period of work experience, nor would the welfare recipient be considered an employee for any other purposes by the hospital.
- For ease of management, the hospital specified that all positions would be for 30 hours a week.
- The hospital agreed to notify the case manager of any absences, tardiness or other indications of non-cooperation.
- The State agreed that the case manager would be available to help with any supportive services (transportation, child care, uniforms, counseling, etc.)
- The State agreed to provide workman's compensation and tort claims protection in the event of injury.
- Each placement will be generally last for 4 months though it may be extended for an additional 2 months.

Ms. Smith's assignment at the hospital began in July and was for 30 hours a week as a dietary aide, preparing special meals and snacks. On the job, she was given guidance, direction and supervision by a food preparation supervisor, under the overall direction of the shift dietician. She was responsible for meeting the same expectations and performance standards as other dietary aides, recognizing that she was in a new learning situation like any other new employee. During September, one of the other dietary aides was ill and Ms. Smith was asked if she would come stay later 2 days, she did. She did not receive any remuneration from the hospital for these additional hours. This additional work did not affect her welfare grant in any way either.

In the case of nonsatisfactory performance, the shift dietician had the authority to dismiss the recipient from the work setting. However, special arrangements had been made for the hospital to contact the case manager if performance or attendance problems arose, before such termination to mutually try to resolve issues. There was also an understanding that since many of the referred welfare recipients had little or no work history, the hospital would be more understanding of less than perfect attendance and performance ("cut them some slack") until the welfare recipient became acclimated to the new environment.

In this case, no unsatisfactory performance situations ever came up and the client held this position from July to October. During that time, she continued to receive her monthly assistance grant of $145 from the State welfare agency, but no other remuneration by the employer. Because of her excellent performance, she was hired by the hospital in a full-time dietary aide position in October at $5.50 per hour and due to her earned income she became ineligible for assistance.

<u>Variation</u> Another welfare recipient who was working at the hospital in housekeeping presented some real issues with non-cooperation. On most Mondays, she came in an hour or two late. She frequently did not show up on Fridays. She argued about assignments. Initially, the welfare recipient called in to make excuses for absences. When the case manager intervened, the welfare recipient said that her supervisor treated her unfairly. The supervisor presented a different picture, but responsibility for determining good cause, failure to cooperate and sanctioning rests with the case manager. The welfare recipient was assigned to a different floor and a new supervisor, but the same problems with absences and arguments continued and in fact, there were more absences. On one occasion, she missed 3 days of work without calling and then showed up 2 hours late. At that point, the hospital told her not to come back. The case manager advised the welfare recipient that as she had been warned previously, she was going to be sanctioned for failure to cooperate with her work activity requirement and that her check would be reduced 25

percent for a minimum of 3 months or until she agreed to cooperate. This recipient has 2 children and no other income, so her check was $176 a month. With the reduction, it will now be $132 a month.

Is the money Ms. Smith received while in the work experience program from July - October taxable income? Is it subject to employer taxes such as FICA and FUCA?

47 YEAR-OLD FEMALE

# OF CHILDREN IN HOME	3 (1 MINOR CHILD AND 2 GROWN CHILDREN)
GRANT AMOUNT	$145
OTHER INCOME	$0
WORKFARE ASSIGNMENT	30 HRS WKLY AS DIETARY AIDE
PLACED BY STATE?	YES
TRANSPORTATION COST	NONE, PROVIDED BY CHILDREN
CHILD CARE COST	NOT NEEDED
WORK PLACEMENT	JULY'96 -- OCTOBER' 96
HOW LONG IT LASTED	4 MONTHS
WAS GRANT SIZE CONSIDERED IN MAKING ASSIGNMENT?	NO
PRE-ASSIGNMENT PREP	ADULT BASIC EDUCATION, LIFE SKILLS JOB CLUB, JOB SEARCH
EDUCATION LEVEL	COMPLETED 8TH GRADE

U.S. Department of Labor

Office of the Assistant Secretary for Policy
200 Constitution Avenue NW,
Room S-2312
Washington, D.C. 20210
Phone 202-219-6197
Fax 202-219-9216

FAX COVER SHEET

May 16, 1997

TO: Dianna Fortuna

FAX: 456-7431

FROM: Stacey Grundman

OF PAGES: 3 + cover

MESSAGE: As discussed, attached are: (1) our additional proposed talking point (sent to Elena by Seth this morning) and (2) options memo prepared by USDA on the Food Stamps under 6 issue (sent by USDA to us on 4/23). Call if you need anything else.

DRAFT

Suggested addition to White House Talking Points on FLSA - 5/16/97

We are committed to implementing welfare reform, but we are also committed to the Fair Labor Standards Act and the minimum wage. While the Labor Department's analysis is based exclusively on a reading of the law, it is also true that paying the minimum wage is essential to achieving one of the fundamental goals of welfare reform --- moving welfare recipients into real jobs at fair wages that will allow them to break the cycle of dependency. Anything less would deprive working welfare recipients of the dignity of work and the ability to support their families. The President fought hard to make the minimum wage a living wage --- working welfare recipients are not and should not be excluded.

Faxed to Elena Kagan 5/16/97

1st 2 in

Commit to 30 days,
aim for less

TANF WORKFARE FIX

- Section 20 of the Food Stamp Act contains specific exemptions from food stamp workfare. Exemptions are provided for, among others, parents or other caretakers of a dependent child under 6 years old (between 1 and 6 in some States for three years), students, individuals participating in drug or alcohol treatment programs, and parents or other caretakers of a dependent child who are members of a household which include another member that is subject to workfare or is employed full time.

- States are required under PRWORA to make TANF recipients work 20 hours weekly to retain eligibility; this requirement will increase to 30 hours in 7 years. Some households' TANF benefits, however, may not be large enough to cover 20 (or, later, 30) hours per week of work at the minimum wage.

- One means to address the TANF workfare problem would be to exclude able-bodied-TANF recipients from food stamp workfare exemptions. This would allow States to combine a household's TANF and food stamp benefit when determining the workfare obligation.

- We have three options for excluding able-bodied-TANF recipients from food stamp workfare exemptions:

    1. **We may advise States to exclude able-bodied-TANF recipients from food stamp workfare exemptions through means of the Simplified Food Stamp Program.** The simplified program was designed specifically to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can exclude able-bodied TANF recipients from food stamp workfare exemptions simply by adopting TANF rules relating to workfare. States, however, may make other changes to workfare beyond removing the exemptions for able-bodied-TANF recipients. For example, States may choose to adopt TANF's less restrictive workfare participation protections in place of the protections afforded participants under the Food Stamp Act.

    2. **We may grant States waivers of Section 20 to exclude able-bodied-TANF recipients from food stamp workfare exemptions.** Waivers have the advantage of being narrow and targeted; there is no potential for States to make additional changes to food stamp workfare requirements. The waiver option, however, may be unpopular with States because waivers are subject to a number of Federal requirements. For example, waivers are time-limited and must be reevaluated periodically. Waivers may also be undesirable from a Federal standpoint. The Food and Consumer Service has taken the position that the intent of waivers is to test and evaluate new procedures, not to provide States with operational alternatives. Granting 30 waivers or more in this area would undermine FCS' position. Finally, waivers of food stamp workfare exemptions may be questionable legally. The Food Stamp Act prohibits waivers of the exemptions from work requirements in Section 6(d). Section 20 of the Act, while not prohibiting waivers of work exemptions, is predicated on Section 6(d). Thus, while waivers of Section

20 to eliminate workfare exemptions for able-bodied-TANF recipients may be technically permissible, they may contradict the spirit of the law.

3. **We may make a legislative change to Section 20 of the Food Stamp Act to allow States to require able-bodied TANF recipients to participate in workfare under TANF rules.** Legislation would provide a permanent solution to the TANF workfare issue, unlike a waiver which would need to be periodically reevaluated. It also would not call attention to the simplified program and its risks. A legislative change could be written as a technical amendment which would make it less likely that the change would be a subject of controversy. It is unclear if the Agriculture Committee will take up a food stamp technical amendment package. If a legislative change is drafted, however, and legislation delayed, the other two options could always be reexamined. A drawback to making a legislative change is that legislation can be unpredictable. Congress may select a different solution to the problem of a TANF participant's inability to meet the 20-hour-a-week work requirement than the one which we suggest. For example, Congress may eliminate the problem by allowing participants to be reimbursed for workfare at a rate below the minimum wage.

PROGRAM DEVELOPMENT DIVISION
FOOD STAMP PROGRAM

DATAFAX REQUEST COVER SHEET
DATAFAX # 703-305-2486

DATE: 5-21

TO: Diana Fortuna

OFFICE:

PHONE: 202-456-7431

****

FROM: Art Foley

OFFICE: FSP: PDD

PHONE: 305-2496

SUBJECT: USDA Guidance

REMARKS:

NO. OF PAGES INCLUDING COVER SHEET: 4

SUBJECT: TANF Workfare Fix for Parents or Caretakers of Dependent Children

TO: All Regional Administrators
Food and Consumer Service

Enclosed is a letter to State Commissioners addressing the issue of combining Food Stamp and Temporary Assistance for Needy Families (TANF) program benefits when determining a participant's workfare obligation. This issue has been raised as a result of the recent announcement by the Administration that TANF related work activities are subject to labor protections including the Fair Labor Standards Act and, therefore, as a general matter, participants must be paid at least the minimum wage rate.

?

The enclosed letter offers an option for resolving the workfare problem for TANF recipients who are subject to the TANF work requirement and who are also parents or caretakers of dependent children under 6 years old (and therefore exempt from workfare requirements). Please transmit it to States immediately. If you or your staff have questions or concerns relative to this option, please contact Matthew Crispino at (703) 305-2519.

Yvette S. Jackson
Deputy Administrator
Food Stamp Program

Attatchment

State Commissioners

The Administration has recently announced that participants in the Temporary Assistance for Needy Families (TANF) Program are subject to labor protections including the Fair Labor Standards Act and, therefore, as a general matter, participants must be paid at least the minimum wage rate for their work activities. States are required under the Personal Responsibility and Work Opportunity Act of 1996 to make TANF recipients work 20 hours weekly; a requirement that will increase to 30 hours by the year 2002. Some households' TANF benefits, however, may not be large enough to cover 20 (or, later, 30) hours per week of work at the minimum wage. ?

States can enable most households to meet the TANF work requirement, however, by combining participants' food stamp benefits and TANF grants when calculating their work obligation. This can be done through either workfare or a wage supplementation program (under a wage supplementation program, the value of benefits are cashed out and provided to an employer who in turn pays the money to participants as a wage.). Combining benefits will ensure that most individuals receive sufficient public assistance to meet the work obligation while adhering to the FLSA.

Furthermore, for those TANF households normally exempt from food stamp workfare because they are parents or caretakers of a dependent child under 6 years old (between 1 and 6 in some States), States may use the Simplified Food Stamp Program ~~to ensure that work requirements and minimum wage protections do not conflict.~~ The simplified program was designed specifically to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can include parents or other caretakers of a dependent child under the age of six in food stamp workfare simply by adopting TANF rules relating to workfare exemptions. Simplified programs must be cost neutral. Because removing the workfare exemption for parents or caretakers of dependent children will not increase program costs, we will provide prompt approval to such requests. States may include other TANF workfare ~~rule~~ substitutions that do not increase ~~Federal program~~ costs.

For additional information regarding the application and conditions for operating this SFSP, please contact Matthew Crispino at (703) 305-2519. Mr. Crispino's mailing address is Food and Consumer Service - Food Stamp Program, 3101 Park Center Drive, Alexandria, VA 22302.

Sincerely,

Timing?

Regional Administrator

I:data/shared/pdb/TANF Workfare Fix - f

Talking Points on FLSA
5/16/97; 2:20 p.m.

- The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees.

- This means that many, if not most, welfare recipients in these programs will receive at least the minimum wage for their work activities.

- Welfare recipients in these programs will not have to be paid the minimum wage if they fall within the FLSA's exception for "trainees." Some states will probably try to structure their workfare programs so that recipients fall within the "trainee" exception.

- In most cases in which the minimum wage is required, both cash assistance and food stamps will count toward the minimum wage. The Department of Agriculture will take necessary administrative action to ensure that food stamps can be counted to the greatest degree possible.

- This will not affect the work requirements of the welfare law. States will still be able to meet those requirements, by placing people in private sector jobs (where the minimum wage already applies) and in workfare programs. With both cash assistance and food stamps counting toward the minimum wage, very few states will have to increase their assistance payments. In fact, every state but one (Mississippi) can comply with the welfare law's current work requirements (now 20 hours per week for a welfare recipient) and pay minimum wage without increasing their current benefit level.

- Far from undermining the welfare law, paying welfare recipients the minimum wage required by the law promotes the goals of welfare reform by giving people the ability to support their families and break the cycle of dependency.

application of law

- The Labor Department will provide guidance within the next week or two on the specifics of this ~~policy~~ and will engage in extensive consultation with states on how to apply this ~~policy~~ with the least disruption.

- The Treasury Department is still exploring how the tax laws apply to welfare recipients in workfare programs. We hope to be able to give states an answer to that question very shortly.

Q&A

Question: Won't this end welfare reform as we know it by making work more expensive?

Answer: Not at all. With both TANF and food stamps counting toward the minimum wage, every state except Mississippi will be able to give welfare recipients workfare slots for 20 hours each week (the welfare law's current work requirement) without raising their benefit levels. And of course states should be trying to place welfare recipients in private sector jobs where the minimum wage already applies.

Question: Are most welfare recipients who are working going to be considered "employees"?

Answer: Most welfare recipients participating in the work activities described in the new welfare law probably will count as "employees," entitled to the minimum wage, under the FLSA. But some individuals, engaged in such activities as job search, vocational education, and secondary school, may count as "trainees" instead. The Labor Department will advise states on how the FLSA applies to particular programs and individuals engaged in them.

Question: What's the difference between a trainee and a worker under FLSA?

Answer: An individual is in training if:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainee;
- Trainees do not displace regular workers;
- The employer derives no immediate advantage from the trainees' activities;
- Trainees are not entitled to a job after training is completed; or
- The employer and trainee understand that the trainee is not paid.

Question: Can Food Stamps count as wages?

Answer: We believe that through waivers or other mechanisms such as the Simplified Food Program option now in law, states will be able to count food stamps toward the minimum wage for all those required to work under the new welfare law.

To Barry Toiv
Fr Diana Fortuna

Question: Does this mean welfare recipients in workfare and other subsidized employment programs can unionize?

Answer: No -- that is a different question entirely. Whether and when workers can unionize is a function of the National Labor Relations Act. The National Labor Relations Board, an independent entity that administers that Act, has not ruled on the unionization question.

Question: Would the Administration support or oppose legislation to exempt welfare recipients from the minimum wage laws?

Answer: We would oppose legislation that flatly exempts welfare recipients from the minimum wage law. The Administration believes that people who work should be paid at least the minimum wage.

Question: Would you oppose <u>any</u> legislation addressing this issue?

Answer: Not necessarily, but any legislation would have to be consistent with our support for the minimum wage. In determining how the minimum wage law applies to workfare, the Administration has had to address a host of technical issues that Congress did not deal with in passing the welfare law. If Congress wants to address these issues, the Administration will consider the proposals carefully. But any legislation must reflect the Administration's position that people who work should be paid at least the minimum wage.

6-6210

Sign-in Sheet
5/19/97

Name	Dept	Phone	Fax
Diana Fortuna	WH DPC	456-5570	456-7431
Geri Palast	DOL/OCIA	219-4692	219-5288
Seth Harris	DOL/ASP	219-6181	219-6924
Mary Bourdette	HHS/ASL/HHS	690-6311	690-8425
John Monahan	HHS/IGA	690-6060	690-5672
Katie Steele	HHS/IGA	690-6060	690-5672
John Fraser	USDOL/Wage Hour	219-8305	219-4753
Anne Lewis	NEC	65368	62223
Rich Tarplin	HHS	690-7627	690-7380
Paul Crispino	Treasury	622-0224	622-9260
Karl Scholz	Treasury	6220120	622-0646
Don Oellerich	HHS/ASPE	690-6805	690-6562
Emily Bromberg	WH/IGA	456-2896	2889
Raymond Uhalde	DOL/ETA	219-6050	x6827
Stacey Grundman	DOL/ASP	219-6197	x9216
Retha Oliver	USDA/FSP	703 305 2098	x2486
Abigail Nichols	USDA/FSP	703-305-2414	x0928
Margaret Pugh	HHS	401-6944	401-4678
Janet Himler	OMB	395-3262	395-1596
Larry Matlack	OMB	395-3262	395-1596
Kitty Higgins	W.H.	6-7072	6-2983
Malcolm Kristov	DOL/SOL	219-7684	219-7257

LewF - Timeline - still don't have?!
- smaller wkg gp - exs - end of last wk
- telephone conf.
- HHS wants no tax
- Late Thurs - agreed
- Still no exs.
- Probably get this wk from HHS
- Back couple of wks - Cum Bulletin w/draft preclose

LEWIS J. FERNANDEZ
DEPUTY ASSISTANT CHIEF COUNSEL
(INCOME TAX & ACCOUNTING)

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL

1111 CONSTITUTION AVE., NW
ROOM 5501
WASHINGTON, DC 20224

(202) 622-4810
FAX. (202) 622-6316

Mary had long conversation
IRS

Agreement
Scholz - transpl, reptd cols, DRL [illegible]

IRS

4/22

Sec 61 (Title 22)

General welfare doctrine

to get exclusion

→ distribution from ~~fe~~ Gov't welfare fund based on need

→ not "compensation for services"

About 40-50 published rulings on general welfare doctrine

→ 3-4 on these types of programs

could do summary sheet on top of these rulings summarizing principles

~~Technical advice memo~~

~~General information~~

Written options

1) Response ~~from~~ to state letter.

2) General principles (à la Rimer letter) as cover to copies of 3-4 rulings

HHS by Fri

JRS by mid week

3) Prep HHS ~~data~~ fact based scenarios based on current ...

4) Response to written questions (Labor)

MAZUR_M @ A1
04/23/97 03:46:00 PM

Record Type: Record

To: Cynthia A. Rice

cc:
Subject: taxing workfare/welfare benefits

Cynthia,
It seems to me that IRS will not be getting helpful advice out very soon on the issue of what types of welfare/workfare payments are taxable for income and payroll tax purposes. It might be appropriate to put together a joint DPC/NEC decision process that would develop legislative options in this area and run parallel to the process involving IRS. I could imagine a proposal being developed that would simply codify current practice in the area of taxation and provide some reasonable safe harbors for tax treatment and that would cost nothing in terms of foregone revenue (because the legislation just followed current practice). Alternatively, the exclusion for benefits could be expanded at some revenue cost.

What do you think about this?
Mark

Whether an amount received by an individual is excludable from his gross income under section 117 of the Code depends upon the facts and circumstances under which the payment is made. The exclusion provision applies only to a scholarship or fellowship grant. A scholarship or fellowship grant, as defined in section 1.117-3 of the Income Tax Regulations, is an amount paid to or for the benefit of an individual to aid him in the pursuit of studies.

Section 1.117-4(c) of the regulations provides, in part, that any amount or amounts paid or allowed to, or on behalf of, an individual to enable him to pursue studies or research shall not be considered to be an amount received as a scholarship or fellowship grant if such amount represents compensation for past, present, or future employment services, if such amount represents payment for services which are subject to the direction or supervision of the grantor, or if such studies or research are primarily for the benefit of the grantor. Any of these conditions will negate the existence of a scholarship or fellowship grant as defined in these regulations.

The Supreme Court of the United States in the case of *Bingler v. Johnson*, 394 U.S. 741 (1969), 1969-2 C.B. 17, consistent with the regulations under section 117 of the Code, held that the ordinary meaning of the term scholarship or fellowship is a relatively disinterested, "no-strings" educational grant, with no requirements of any substantial "quid pro quo" from the recipient.

In the instant case although the activities of the interns may be of educational value to them, the amounts were paid for services performed by them in connection with the operation of the Congressman's office. See Rev. Rul. 71-559, 1971-2 C.B. 102.

Accordingly, the amounts received by the interns are compensation for services performed and are not excludable from gross income under section 117 of the Code, but are includible in their gross income under section 61.

Section 162(a) of the Code provides, in part, that there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Accordingly, the Congressman may deduct the amounts paid to the interns as an ordinary and necessary business expense within the meaning of section 162 of the Code. See Rev. Rul. 73-464, 1973-2 C.B. 35.

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26 CFR 1.61-1: Gross income.
(Also Sections 3121, 3306, 3401; 31.3121(a)-1, 31.3306(b)-1, 31.3401(a)-1.)

Payments under Comprehensive Employment and Training Act. Payments received by a trainee, in a program under titles I and II of the Comprehensive Employment and Training Act, for services performed during on-the-job training for a private construction company or for work experience in a city clinic are includible in gross income; however, allowances received for participation in a program, or to enable the trainee to participate, and not for the performance of services are excludible from gross income. The FICA, FUTA, and income tax withholding requirements with respect to such payments are also set forth.

Rev. Rul. 75-246

Advice has been requested concerning the Federal income and employment tax treatment of payments made and received under titles I and II of the Comprehensive Employment and Training Act of 1973 (CETA), 29 U.S.C. Sections 811-851 (Supp. III 1973).

The stated purpose of the CETA is to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, state, and local programs.

The CETA authorizes the Secretary of Labor to enter into grant agreements to provide financial assistance from appropriated funds through eligible applicants (including, among others, a qualified prime sponsor such as a state or, within certain limitations, a unit of the general local government) to accomplish the purposes of the CETA.

Title I of the CETA relates to comprehensive manpower services, and title II relates to public employment programs.

The specific questions to be resolved are whether the amounts received by individuals under the programs in various situations are includible in their gross incomes under section 61 of the Internal Revenue Code of 1954, and whether the payer of such amounts is required to withhold and pay employment taxes on such amounts.

Section 61(a)(1) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services.

Disbursements by a governmental unit that are made to individuals in the interest of the general welfare where services are not rendered are excludable from the gross income of the recipient. The determination as to whether payments under work-training programs are includible in a participant's gross income rests on whether the activity for which the payments are received is basically the performance of services or is only participation in a training program that promotes the general welfare. If the activity engaged in is basically the performance of services, the payments are compensation for services rendered, and are includible in the gross income of the recipient. Conversely, if the activity amounts only to participation in a training program, the payments are in the nature of relief payments made for the promotion of the general welfare and are excludable from the gross income of the recipient.

In chapters 21, 23, and 24 of subtitle C of the Code, employers are charged with the duty of withholding Federal income tax and collecting and paying Federal employment taxes with respect to wages paid to their employees. These provisions are found in section 3402 of the Code, relating to the Collection of Income Tax at Source on Wages; sections 3102 and 3111 of the Federal Insurance Contributions Act (FICA), relating to the deduction and payment of FICA taxes; and section 3301 of the Federal Unemployment Tax Act (FUTA), relating to the payment of FUTA tax.

For purposes of withholding income tax, deducting and paying FICA taxes, and paying FUTA tax, the term "wages" is defined, with exceptions not here material, as all remuneration for employment. Sections 31.3401(a)-1, 31.3121(a)-1, and 31.3306(b)-1, respectively, of the Employment Tax Regulations.

An individual is an employee for Federal employment tax purposes if he has the status of an employee under the usual common law rules applicable in determining the employer-employee relationship. Guides for determining whether the relationship exists are found in three substantially similar sections of the Employment Tax Regulations, namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1. Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is the employer.

The above income tax and employment tax principles are illustrated in a number of revenue rulings, such as Rev. Rul. 63-136, 1963-2 C.B. 19, which holds that benefit payments made to individuals under the Area Development Act or the Manpower Development and Training Act of 1962 are not includible in the gross income of the recipient because they are intended to aid the recipient in his efforts to acquire new skills that will enable him to obtain better employment opportunities and, therefore, are in the nature of unemployment relief payments made for the promotion of the general welfare.

Rev. Rul. 74-413, 1974-2 C.B. 333, holds that payments to participants in a state program established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Training Act of 1962, are compensation for services and are includible in the participants' gross incomes under section 61 of the Code and subject to income tax withholding under section 3402, but not subject to FICA and FUTA taxes because the participants are employees of the state excepted from employment for purposes of the FICA and FUTA taxes. Rev. Rul. 63-136 is distinguished in Rev. Rul. 74-413 since the overriding purpose of the program in the latter Revenue Ruling is to provide the participants with compensation for services and not to provide them with training or retraining that would enable them to obtain better employment opportunities.

Rev. Rul. 65-139, 1965-1 C.B. 31, as clarified by Rev. Rul. 66-240, 1966-2 C.B. 19, holds that payments made to enrollees in the work-training program established under title I-B of the Economic Opportunity Act of 1964 are includible in an enrollee's gross income, since the enrollee is receiving "wages" for services performed, even though such services embody some degree of training

Rev. Rul. 71-425, 1971-2 C.B. 76, holds that payments made by a state welfare agency in lieu of (and in amounts no greater than) the normal relief allowance, to participants in work-training programs under title V of the Economic Opportunity Act of 1964, are not includible in the gross income of the recipient and are not wages for employment tax purposes, since the payments are measured by the personal or family need of the recipient rather than the value of any services performed.

The above principles are applied to the case of a state that, as a prime sponsor under titles I and II of the CETA entered into a grant agreement with the United States Department of Labor to provide comprehensive manpower services and public employment programs that include both work experience and classroom training activities. The situations that developed in this case and the income and employment tax treatment of payments made in each situation are set out below.

Situation (1).—The trainee is given vocational and occupational training, and educational training designed to upgrade basic skills (such as remedial education), in a classroom or institutional setting. The training is provided by both public and private agencies in courses having a duration of 104 weeks or less. The trainee performs no services for the training agency. The trainee receives from the state as prime sponsor an allowance, described below, for his participation in the training activity.

The basic allowance paid to a trainee who is not a recipient of public assistance is an amount equal to the minimum hourly wage under the Fair Labor Standards Act (currently $2), increased by $5 per week for each dependent over two up to a maximum of $20 per week for six or more dependents, plus additional reasonable allowances, where appropriate, for meals, travel, transportation, subsistence, emergency, and other purposes, up to a maximum of $5 per week.

The trainee who is a recipient of public assistance is paid an incentive allowance of $30 per week in lieu of basic allowances.

Income tax treatment accorded payments in Situation (1).—Because the participant is merely engaged in a training program in which he performs no services for the training agency, the payments he receives are in the nature of relief payments made for the promotion of the general welfare. Accordingly, such payments are not includible in the gross income of the recipient under section 61 of the Code.

Employment tax treatment accorded payments in Situation (1).—Since the trainee performs no services for the training agency and the allowance paid to him is not directly related to any services performed, there is no employer-employee relationship between the trainee and the training agency, and the allowance the trainee receives is not remuneration for employment. Accordingly, the payer of the allowance is not obliged to withhold income tax, nor to deduct and pay FICA taxes, nor to pay FUTA tax, with respect to the allowances.

Situation (2).—The trainee is given on-the-job training by a privately owned construction company selected by the state as the prime sponsor. The facts show that the company has and exercises the degree of direction and control over the trainee to establish an employer-employee relationship under the usual common law rules. The company receives the trainee's services and pays the trainee initially at the regular entry wage for the position for which training is being given. The company's training expenses are reimbursed by the prime sponsor at a maximum of 50 percent of the amount paid to the trainee.

Income tax treatment accorded payments in Situation (2).—Because the activity in which the trainee is engaged is basically the performance of services, the amounts he receives therefor are compensation for services rendered, even though the services embody some degree of training. Accordingly, such payments are includible in the gross income of the recipient under section 61 of the Code.

Employment tax treatment accorded payments in Situation (2).—The payments made by the company to the trainee are based on an hourly rate for the time spent and are part of the company's wage structure. The payments maintain their character as wages even though the services for which they are made embody some degree of training for which the company is reimbursed. The facts show that an employer-employee relationship exists under the usual common law rules. Accordingly, the payments made by the company to the trainee are "wages" with respect to which the company is required to withhold income tax under section 3402 of the Code, to deduct and pay FICA taxes under sections 3102 and 3111 of the Federal Insurance Contributions Act, and to pay FUTA tax under section 3301 of the Federal Unemployment Tax Act.

Situation (3).—The trainee is given work experience in a public employment program under title II of the CETA by a medical clinic owned and operated by a city. The facts show that the city has and exercises the degree of direction and control over the trainee to establish an employer-employee relationship under the usual common law rules. In addition to the work experience, the program involves a small amount of counseling and classroom training. The city receives the trainee's services, and the trainee receives $2 per hour for the time during which he receives work experience, counseling, and classroom training. One-fourth of the amount per hour paid the trainee is paid from funds furnished to the city by the state as the prime sponsor.

In addition, the trainee may receive an allowance, on the basis of need, to cover certain expenses incident to the training. Items for which such allowances may be provided include travel and transportation expenses; payments for auto insurance, to make the trainee's presence at the clinic possible; or expenditures for work clothing, without which he could not engage in the work training experience.

Income tax treatment accorded payments in Situation (3).—Because the activity in which the trainee is engaged is basically the performance of services, even though such services embody some degree of training, the $2 per hour the trainee receives therefor is compensation for services rendered. Accordingly, such payments are includible in the gross income of the recipient under section 61 of the Code.

However, any allowance that the trainee receives is provided only to make possible the trainee's participation in the training program. Therefore, such payments are in the nature of relief payments made for the promotion of the general welfare and are excludable from the gross income of the recipient.

Employment tax treatment accorded payments in Situation (3).—Except for allowances, payments made by the city to the trainee are based on an hourly rate for the time spent and are part of the wage structure. The payments maintain their character as wages even though the trainee is absent briefly from the job to attend school and receive counseling, and even though one-fourth of the amount per hour paid the trainee comes from funds furnished to the city by the prime sponsor. The facts show that an employer-employee relationship exists under the usual common law rules. Accordingly, in making the per-hour payments to the trainee, the city is required to withhold income tax on the payments under section 3402 of the Code.

However, for purposes of the taxes imposed by the Federal Insurance Contributions Act, section 3121(b)(7) of that Act excepts from the definition of "employment" services performed in the employ of a state or any political subdivision thereof. Section 3306(c)(7) of the Federal Unemployment Tax Act contains a similar provision. Accordingly, the city is not required to deduct and pay FICA taxes nor to pay FUTA taxes with respect to the payments.

When social security coverage is desired for employees whose services are excepted from "employment," as here, by section 3121(b)(7) of the Federal Insurance Contributions Act, the coverage may be obtained only by means of an agreement between the state and the Secretary of Health, Education, and Welfare, entered into pursuant to section 218 of the Social Security Act, as amended, 42 U.S.C. 418 (1970).

With respect to any allowance of the kind described in this situation, since such payments made to the trainee are in the nature of relief payments made for the promotion of the general welfare and are excludable from the gross incomes of the recipients, they are not remuneration for services and are not "wages." Accordingly, the payer of such allowances is not obligated to withhold income tax nor to deduct and pay FICA taxes, nor to pay FUTA tax with respect thereto.

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26 CFR 1.61-1: Gross income.

Guidelines that the Service will use for advance ruling purposes in determining whether certain transactions purporting to be leases of property are, in fact, leases for Federal income tax purposes. See Rev. Proc. 75-21, page 715.

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26 CFR 1.61-1: Gross income.

A Revenue Procedure setting forth the information and representations required to be furnished by a taxpayer submitting a request for an advance ruling concerning whether a transaction purporting to be a leveraged lease within the meaning of Rev. Proc. 75-21, page 715, this Bulletin, is in fact a lease. See Rev. Proc. 75-28, page 752.

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26 CFR 1.61-1: Gross income.

Whether income from testamentary trust is includible in gross income of recipient. See Rev. Rul. 75-68, page 184.

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26 CFR 1.61-1: Gross income.

Whether the taxpayer has income from the fluctuation of foreign currency. See Rev. Rul. 75-109, page 69.

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26 CFR 1.61-1: Gross income.

Whether stipends received under title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 1973-2 C.B. 441, 93rd Cong., 1st Sess. (October 1, 1973) are compensation for services. See Rev. Rul. 75-209, page 50.

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26 CFR 1.61-4: Gross income of farmers.
(Also Sections 37, 162, 170, 1402, 7805; 1.37-3, 1.162-12, 1.170A-1, 1.1402(a)-1, 301.7805-1.)

Crop shares received as rent; contributed to charity or used as feed. The fair market value of crop shares received as rent by a farmer-landlord, which are contributed to a charitable organization or are used as feed in the farming operation, must be included in the farmer-landlord's gross income at the time of such contribution or use. The taxpayer is considered to have made a charitable contribution under section 170 of the Code or becomes entitled to a deduction under section 162 at the same time and in the same amount as the income recognized. Taxpayer may be entitled to use the optional method of determining net earnings from self-employment under section 1402(a) and the retirement income credit under section 37. Rev. Ruls. 56-496 and 63-66 modified.

Rev. Rul. 75-11

Advice has been requested concerning the Federal income tax treatment of the disposition of crop shares received as rent under the circumstances described below.

Situation (1). During 1972 a farmer-landlord who files his returns on the calendar year basis contributed crop shares received by him as rent to a charitable organization described in section 170(c) of the Internal Revenue Code of 1954. In 1973 the crop shares received by the charitable organization in 1972 were sold by it for cash.

Situation (2). During 1972 the farmer-landlord used crop shares received by him as rent as feed in his farming operation.

Section 61 of the Code states that, except as otherwise provided, gross income means all income from whatever source derived, including, among other things, rents.

Section 1.61-1(a) of the Income Tax Regulations provides that gross income includes income realized in any form, whether in money, property, or services.

Section 1.61-4 of the regulations provides, in part, that crop shares (whether or not considered rent under state law) shall be included in gross income as of the year in which they are reduced to money or its equivalent under both the cash and accrual methods of accounting.

States Supreme Court in *J. D. Adams Manufacturing Co.* v. *Storen et al.*, 304 U.S. 307 (1938), where the Court upheld the constitutionality of the Indiana Gross Income Tax Act of 1933.

Partnerships are subject to the Indiana gross income tax, and if the tax imposed upon the receipt of gross income by the partnership has been paid by the partnership, such gross income is exempt from the tax when received by the individual members. For Federal income tax purposes, partnerships are not treated as taxable entities, but the members thereof are liable for tax in their individual capacities. Section 701 of the Internal Revenue Code. The taxable income of a partnership is computed, for Federal income tax purposes, in the same manner and on the same basis as in the case of an individual, with certain exceptions not material here. Thus, if a tax paid to a State by an individual is deductible under section 164 of the Code in computing the individual's taxable income, the same tax would be deductible in computing the taxable income of a partnership.

Accordingly, it is held that in computing the taxable income of a partnership and the distributable shares of the partners, the Indiana gross income tax paid by a partnership on account of the receipt by it of gross income is deductible from partnership gross income under section 164 of the Code. The partnership tax is not allowable as a deduction to the partners, but they are not precluded from claiming the optional standard deduction under section 141 of the Code.

I.T. 3766 is hereby superseded since the position therein is set forth under the current law in this Revenue Ruling.

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26 CFR 1.61–1: Gross income.

Proceeds of matured National Service Life Insurance contracts and dividends paid on unmatured contracts are not includible in gross income; interest on dividends left on deposit is includible in income in the taxable year received or credited.

Rev. Rul. 71–306

Advice has been requested whether payments of the proceeds of matured insurance contracts issued under the National Service Life Insurance Act of 1940, payments of dividends on unmatured insurance contracts issued under such Act, and payments of interest earned on such dividends left on deposit with the Veterans' Administration are subject to Federal income taxes.

The National Service Life Insurance Act of 1940, Public Law 801, Seventy-sixth Congress, 54 Stat. 1008, as amended, was reenacted by Public Law 85–857, 72 Stat. 1105, 38 U.S.C. 701–725.

The following is provided with respect to the taxation of benefits administered by Veterans' Administration at 38 U.S.C. 3101(a):

> (a) Payments of benefits due or to become due under any law administered by the Veterans' Administration * * * and such payments made to, or on account of, a beneficiary shall be exempt from taxation * * *

The Administrator of Veterans' Affairs is authorized to pay dividends on National Service Life Insurance contracts. The dividends may be left on deposit with the Veterans' Administration or received in cash at the option of the insured. Dividends left on deposit with the Veterans' Administration earn interest that is credited to the insured's account. Both the dividends and interest thereon, if any, are withdrawable by the insured at any time.

It is held that both the proceeds of matured insurance contracts issued under the National Service Life Insurance Act of 1940, as amended and reenacted, and the dividends paid under unmatured contracts are not subject to Federal income tax. However, the interest earned on dividends left on deposit with the Veterans' Administration is includible in gross income in the taxable year received or made available to the insured. See Revenue Ruling 57–441, C.B. 1957–2, 45.

26 CFR 1.61–1: Gross income.
(Also Sections 3306, 3401; 31.3306(b)–1, 31.3401(a)–1.)

Payments made by a State welfare agency to participants in work training programs under Title V of the Economic Opportunity Act of 1964 are not includible in gross income and are not wages for employment tax purposes; Revenue Ruling 67–144 modified.

Rev. Rul. 71–425

Advice has been requested whether payments of amounts derived from funds supplied by a State welfare agency, made to participants in programs under Title V of the Economic Opportunity Act of 1964, Public Law 88–452, 42 U.S.C. 2701, and similar programs are includible in the gross incomes of the recipients for Federal income tax purposes and are "wages" subject to the withholding of income tax and the taxes under the Federal Insurance Contributions Act.

The State welfare agency requires individuals on a welfare roll who are able to work to participate in work experience projects that it sponsors or administers under Title V of the Economic Opportunity Act of 1964. The agency makes the work assignments and makes the only payments the participants receive in connection with the work. A participant receives payments at a rate equal to the prevailing hourly rate for similar work in the community or the minimum rate established by the State law for such work, whichever is higher. The participant works only the number of hours that produce a payment equal to the relief allowance he and his family would receive in any one month period. If a participant incurs transportation expenses to and from work or other expenses, such as the cost of safety equipment required for the work, the additional cost is met by an increase in the number of hours worked by him.

The question is whether the payments received while the participant is engaged in the work related program are compensation for services performed or are in the nature of welfare payments.

Section 61(a)(1) of the Internal Revenue Code of 1954 provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services. However, disbursements from a general welfare fund in the interest of the general welfare, which are not made for services rendered, are not includible in gross income. See Rev. Rul. 63–136, C.B. 1963–2, 19, which holds that benefit payments made under either the Area Redevelopment Act or the Manpower Development and Training Act of 1962 are not includible in the gross income of the recipients.

The Senate Committee report on the Economic Opportunity Act of 1964 (Report No. 1218, 88th Congress, 2nd Session) states on page 35 that Title V will stimulate the expansion of work experience and other needed training, including basic education, for needy individuals who are currently receiving some type of public assistance. This report points out that studies of unemployed persons aided under the public assistance programs indicate that in general these persons lack sufficient education and work skills to compete in the labor market. Many are either so lacking in knowledge and skills or in self-confidence because of prolonged unemployment they are not ready for training programs such as those offered by the Manpower and Development Training Act.

Some examples of constructive work experience in Title V projects are: simple maintenance in public roads, recreation areas and facilities; routine and general office clerical work; untrained aides and assistants in institutions, including such occupations as helpers, bus boys, and kitchen workers; trained practical nurses and nurses' aides, laboratory assistants and orderlies.

An assignment to work in an unskilled job may be a form of training to an individual who has never before held a job. Such a program may be designed to teach the participant work habits such as regular attendance, promptness, appearance, job discipline, etc. Thus, in most Title V programs the elements of work and training combine and overlap to such a degree that it is extremely difficult to characterize any program as being primarily work or primarily training. In most cases it would not be realistically feasible to dissect a program to determine the relative proportions of work and training contained therein.

However, in many cases the payments received under a work-training program are received in lieu of (and in amounts no greater than) payments that the participant was receiving based upon personal and family subsistence requirements from a public welfare agency prior to his participation in the work-training program. In such cases, the primary measure of the amount received is the personal or family need of the recipient rather than the value of any services performed and thus seems more in the nature of a welfare payment in connection with participation in a training program than a payment for services rendered.

Accordingly, amounts received by a participant in a work-training program, such as a program under Title V of the Economic Opportunity Act, are neither includable in gross income under section 61(a)(1) of the Code nor considered "wages" for purposes of the withholding of income tax at sources on wages or the taxes under the Federal Insurance Contributions Act, provided that:

(1) participation in such work-training program was arranged and financed by a public agency from which the participant was receiving public welfare benefits based upon personal or family subsistence requirements, and

(2) the payments received under the work-training program (exclusive of any extra allowance that may be provided for transportation or other costs related to participation) are not greater than the amount of such public welfare benefits that he would have been receiving.

In the event that the amount received under the work-training program (exclusive of allowances, as described above) is greater than the amount that would have been received by the participant had there been no work-training program, the entire amount received will be considered as taxable gross income and "wages", except to the extent that it can be demonstrated that the amount received exceeds the fair market value of the services performed under the program.

Revenue Ruling 67–144, C.B. 1967–1, 12, is hereby modified to the extent it holds that the payments received under the facts therein are includable in income.

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26 CFR 1.61–1: Gross income.

Political contributions used for personal purposes by a candidate for office are includible in his gross income in the year diverted; contributions to a political candidate or a political organization are not deductible; I.T. 3276 and Revenue Ruling 54–80 superseded.

Rev. Rul. 71–449 [1]

A candidate seeking political office received contributions totaling $1,000 from individuals and organizations for use in his campaign for election to such office. During the campaign the candidate expended $600 of the contributed funds for campaign purposes. He used the balance of the campaign funds to reduce the mortgage on his personal residence.

Political funds are not taxable to a political candidate by or for whom they are collected if they are used for expenses of a political campaign or some similar purpose. However, any amount diverted from the channel of campaign activity and used by a political candidate for any personal purpose is income taxable to such candidate for the year in which the funds are so diverted.

Held, in the instant case the $400 which represents the portion of the fund which the candidate diverted to his personal use is includible in his

[1] Prepared pursuant to Rev. Proc. 67–6, C.B. 1967–1, 576.

FACSIMILE TRANSMISSION
Office of the Assistant Secretary
The Administration for Children and Families

DATE:

TO: see below

Telephone:

Fax:
Number of Pages (excluding cover):

FROM: Margaret Pugh

Telephone: (202)401-6944
Fax: (202)401-4678

MESSAGE:

To: Lew Fernandez + James Atkinson 622-6316

CC: Cynthia Rice 456-7431
Stacey Grundman 219-9216
Kathy Curran 219-4753
Art Foley 305-2454

Revised + final TANF case studies. Please call if you have questions. Thanks - Margaret

Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
Phone: (202) 401-9200

Workfare

Ms. Smith, who was unemployed received training and participated in adult education classes for 16 weeks and life skills programs, job club and job search for 4 weeks prior to being placed at a hospital for additional work experience. Her assignment at the hospital began in July and was for 30 hours a week as a dietary aide, preparing special meals and snacks. On the job, she was given guidance, direction and supervision by a food preparation supervisor, under the overall direction of the shift dietician. She was responsible for meeting the same expectations and performance standards as other dietary aides, recognizing that she was in a new learning situation like any other new employee.

In the case of nonsatisfactory performance, the shift dietician had the authority to dismiss the recipient from the work setting. However, special arrangements had been made for the hospital to contact the case manager if performance or attendance problems arose, before such termination to mutually try to resolve issues. In this case, no unsatisfactory performance situations ever came up and the client held this position from July to October 1996. During that time, she continued to receive her monthly assistance grant of $145 from the state welfare agency, but no other remuneration by the employer. Because of her performance, she was hired by the hospital in a fulltime dietary aide position in October at $5.50 per hour and became ineligible for assistance.

Is the money she received while in the work experience program from July - October taxable income? Is it subject to employer taxes such as FICA and FUCA?

The Department of Labor also asks: What would be the answers to these questions for each of the attached variations in the fact patterns?

47 YEAR-OLD FEMALE

# OF CHILDREN IN HOME	3 (1 MINOR CHILD AND 2 GROWN CHILDREN)
GRANT AMOUNT	$145
OTHER INCOME	$0
WORKFARE ASSIGNMENT	30 HRS WKLY AS DIETARY AIDE

PLACED BY STATE?	YES
TRANSPORTATION COST	NONE, PROVIDED BY CHILDREN
CHILD CARE COST	NOT NEEDED
WORK PLACEMENT	JULY'96 -- OCTOBER' 96
HOW LONG IT LASTED	4 MONTHS
WAS GRANT SIZE CONSIDERED IN MAKING ASSIGNMENT?	NO
PRE-ASSIGNMENT PREP	ADULT BASIC EDUCATION, LIFE SKILLS JOB CLUB, JOB SEARCH
EDUCATION LEVEL	COMPLETED 8TH GRADE

Workfare - Variation 1 (otherwise assume the same facts)

Ms. Smith works for a State hospital. Ms. Smith is considered an employee under the Fair Labor Standards Act and must be paid the minimum wage ($4.75) for all hours worked. Ms. Smith is not treated as an employee of the State under the State civil service code, but the State keeps a record of the hours worked and otherwise complies with the recordkeeping requirements of the FLSA. Other dietary aides are treated as State employees and are paid $6.00 per hour. Ms. Smith and the State understand that the welfare grant from the State welfare agency is compensation for her hours of work. In addition, she receives a payroll check from the State for $475 per month.

Variation 2

Ms. Smith works for a State hospital. Ms. Smith is considered an employee under the Fair Labor Standards Act and must be paid the minimum wage ($4.75) for all hours worked. Ms. Smith is not treated as an employee of the State under the State civil service code, but the State keeps a record of the hours worked and otherwise complies with the recordkeeping requirements of the FLSA. Other dietary aides are treated as State employees and are paid $6.00 per hour. Ms. Smith and the State understand that the welfare grant from the State welfare agency is compensation for her hours of work. The welfare grant is $625 per month, which is large enough to cover the minimum wage obligation, and is for the same amount as she would otherwise be receiving.

Variation 3

Ms. Smith works for a private, non-profit hospital. Ms. Smith is considered an employee under the Fair Labor Standards Act and must be paid the minimum wage ($4.75) for all hours worked. Ms. Smith is not treated as an employee of the hospital for other purposes, but the State keeps a record of the hours worked and otherwise complies with the recordkeeping requirements of the FLSA. Other dietary aides are treated as employees and are paid $6.00 per hour. The State pays the hospital a wage subsidy of $625 per month, the amount of her welfare grant, and the hospital pays Ms. Smith $625 per month. Ms. Smith does not receive any welfare grant from the State, but does receive a subsidy for child care and transportation.

Variation 4

Ms. Smith works for a private, non-profit hospital. Ms. Smith is considered an employee under the Fair Labor Standards Act and must be paid the minimum wage ($4.75) for all hours worked. Ms. Smith is treated as an employee of the hospital for all purposes, but like other aides is not guaranteed a permanent job after the three-month training period is over. The State pays the hospital a wage subsidy of $625 per month, the amount of her welfare grant, and the hospital pays Ms. Smith $625 per month. Ms. Smith does not receive any welfare grant from the State, but does receive a subsidy for child care and transportation.

Community Service

Mrs. Jones is a 31-year old recipient with 2 children. When she applies for assistance, she was already attending the community college taking vocational education courses that total 12 hours a week. Since she needs an additional 8 hours of activity in order to meet the 20-hour participation requirement under TANF, she and her case manager agree that Mrs. Jones will do at least 8 hours of community service each week.

To fulfill that 8 hour requirement, Mrs. Jones agrees to work at the local food bank 5 hours a week (sorting food items, checking dates and stocking shelves) and count her time as a Scout Leader for her daughter's Girl Scout troop. She spends 3 to 4 hours a week as a Scout Leader. All of the "workers" at the food bank are volunteers.

Mrs. Jones receives no remuneration from the charitable programs for her work. However, if she does not fulfill her 8 hour requirement, she will be penalized and her welfare check will be reduced. She will complete her course work for her certificate in Computer xxx in May 1997 and expects to be employed by June 1997. In the meantime, she will go the school and perform her 8-9 hours week of community service. Her assistance grant will remain the same unless her ex-husband starts to pay child support.

Is all or any portion of her assistance check subject to tax? Is the "employer" liable for taxes? Who would be deemed her employer? Would the degree of supervision (if any) by the charitable organization to the welfare agency on her performance make any difference? Would the amount deducted from her benefit for failure to do the 8 hours of "community service" be relevant? Would it matter whether she was deemed a volunteer or employee for the purposes of FLSA?

31 year-old female

# of Children in Home	2
Grant	$350 per month
Other Income	$0

Assignment	(1) Voc Ed (computer courses at the community college) -- 12 hours/week (2) Community service (food bank and Girl Scout Leader) -- 8 hours/week
Placed by State?	Yes
Transportation Cost	Bus tokens provided by State agency
Child Care Cost	$180/month paid directly to provider

Was grant size considered in making the assignment? No

Activity pre-assignment	None
Education Level	High school diploma, but tests at 10th grade for reading, writing, analysis.

PROGRAM DEVELOPMENT DIVISION
FOOD STAMP PROGRAM

DATAFAX REQUEST COVER SHEET
DATAFAX # 703-305-2486

DATE: 4-30-97

TO: Cynthia Rice

OFFICE; DPC

PHONE; 202-456-7431

****

FROM; Arthur Foley

OFFICE;

PHONE;

SUBJECT;

REMARKS:

NO. OF PAGES INCLUDING COVER SHEET: 2

INCOME TAXES AND SECTION 8 (b) OF THE FOOD STAMP ACT

Section 8 (b) of the Food Stamp Act specifies that the food stamp benefit shall not be considered income or resources for any purpose under any Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare or public assistance programs.

Historically, there has been no income tax question when food stamp recipients have had to work as a condition of eligibility for receiving benefits under the Food Stamp Program, because the Act specifies that food stamp benefits are not considered income for tax purposes.

However, work supplementation programs which are operating under demonstration project authority, and optional work supplementation or support programs provided by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), present a slightly different issue. In these programs, the value of a recipient's food stamp benefit and public assistance benefit are combined and given to an employer as a wage subsidy as an incentive for the employer to hire public assistance recipients. The public assistance recipient, who is participating in a work supplementation or support program as a condition of eligibility for the Food Stamp Program, receives a wage from the employer which includes the food stamp and public assistance subsidy paid to the employer, as well as any additional wages the employer owes the employee.

For example, if a recipient normally would receive $277 in food stamp benefits and $350 in public assistance a month, these amounts are combined by the State agency and paid to an employer as a $627 wage subsidy. When the employee receives a monthly check from the employer for $713 as payment for hours worked, $277 of the $713 is the amount representing the value of the recipient's food stamp benefit and $350 is the amount representing the public assistance benefit, leaving $86 as the employer's contribution.

PRWORA amended Section 16(b) of the Food Stamp Act to provide that for purposes of Section 8(b) the amount received under the work supplementation or support program shall be considered to be the value of an allotment provided to the household. Section 8(b) specifies that the value of food stamp benefits is not taxable. Therefore, in the example above, we believe the recipient should not incur an income tax liability for the $277 that represents the value of the food stamp benefit.

Initially, USDA required States to reimburse recipients for any tax liability imposed. However, we now believe that that approach was inappropriate and burdensome, and merely accentuates the need to ensure that recipients ***do not incur*** a tax liability for the cash value of their food stamp benefits provided as a wage subsidy.

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF CHIEF COUNSEL

Copy to:
- Olivia Golden
- Margaret Pugh
- Kevin Thurm
- Cynthia Rice
- Ann Rosewater

+ Rahm

MAR 27 1997

Mr. David R. Riemer
City of Milwaukee
Department of Administration
Room 606 -- City Hall
200 East Wells Street
Milwaukee, Wisconsin 53202

Dear Mr. Riemer:

This is in response to your letter dated January 23, 1997, requesting information regarding the federal tax treatment of government assistance payments in the context of the recently enacted welfare reform law with regard to programs you are proposing in the future.

The Internal Revenue Service ordinarily does not issue rulings on proposed transactions or on hypothetical situations. Accordingly, because the programs you described are proposed, we are providing you with the following general information.

In 1996, Congress reformed the Nation's welfare system through the enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"). Under the Act, Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance for Needy Families (TANF). Under TANF, states are given greater flexibility to determine basic eligibility rules and benefit amounts.

Under the general welfare doctrine, government assistance payments that are intended to promote the general welfare, and are not in exchange for services rendered, are not includible in the recipient's income. See Bannon v. Commissioner, 99 T.C. 59, 62-63 (1992); Bailey v. Commissioner, 88 T.C. 1293, 1299-1301 (1987).

The general welfare doctrine applies to payments that are not intended as compensation. Thus, for example, a federal benefit to an eligible individual is excludable from the recipient's gross income so long as the payments are not compensation for services. Similarly, government benefit payments made directly by a government agency to an individual undergoing training or retraining (including on-the-job training) are excludable from the recipient's gross income because the payments are intended to promote the general welfare and are not compensation for services. See Rev. Rul. 63-136, 1963-2 C.B. 19, concerning payments made to individuals to aid them in their efforts to acquire new skills that will enable them to obtain better employment opportunities. See also Rev. Rul. 72-340, 1972-2 C.B. 31, which holds that city-paid stipends paid to unemployed or underemployed probationers, including some who are placed with private employers, are excludable from the recipient's income, and are not wages for income tax withholding or FICA tax purposes, because the stipends are intended to aid the recipients in acquiring training in skills that will afford them opportunities for gainful employment.

Whether payments under work-training programs are includible in a participant's gross income depends on whether the payments are for the performance of services or for participation in a training program that promotes the general welfare. If the activity engaged in is the performance of services, then the payments are includible in gross income as compensation for services; otherwise the payments are for the promotion of the general welfare and are excludable.

In Rev. Rul. 71-425, 1971-2 C.B. 76, a state welfare agency requires able-bodied individuals on welfare to participate in work experience projects that is sponsors or administers under Title V of the Economic Opportunity Act of 1964. The agency makes the work assignments and makes the only payments the participants receive in connection with the work. Participants receive payments at a rate equal to the prevailing hourly rate for similar work in the community or the minimum rate established under state law for such work, whichever is higher. They work only the number of hours that produce a payment equal to the welfare allowance they would otherwise receive in any one month period. If additional costs, such as transportation, are incurred, the participant works sufficient additional hours to cover those costs.

Rev. Rul. 71-425, recognizes that work-training programs include elements of both work and training, and thus, it is extremely difficult to characterize any program as primarily involving one or the other and not practical to bifurcate a program into the relative proportions of work and training. However, where the primary measure of the amount a participant receives under a program is based on the participant's personal or family need rather than the value of any services performed, the payments are more in the nature of welfare payments in connection with the recipient's participation in the training program than payments for services rendered.

Rev. Rul. 75-246, 1975-1 C.B. 24, illustrates the federal income and employment tax treatment of payments made and received

Mr. David R. Riemer

under titles I and II of the Comprehensive Employment and Training Act of 1973 (CETA) in three factual situations. In one situation, a trainee is given on-the-job training by a privately owned company selected by the state sponsor. The company has and exercises the degree of control over the trainee to establish an employment relationship between the trainee and the company. The company receives the trainee's services and compensates the trainee at the usual entry wage for the position for which training is being given. The company's training expenses are reimbursed in part by the state.

Rev. Rul. 75-246, concludes that the payments the trainee receives from the company are includible in gross income because the trainee is basically engaged in the performance of services, even though the services embody some degree of training. The payments are also subject to income tax withholding and FICA and FUTA taxes.

Based on the above principles and revenue rulings, it seems that the participants in the second model you described are employees, and any payments they receive would constitute wages for income tax withholding and FICA and FUTA tax purposes. This conclusion would not change even if a government agency reimburses the employer for a portion of the amounts paid to the participants.

For purposes of the earned income tax credit (EITC), section 32(c)(2)(A) defines "earned income," in part, as wages, salaries, tips, and other employee compensation. Thus, all payments of wages qualify as earned income.

We hope that this general information will be helpful to you. If you have any questions regarding this letter, please contact Felicia A. Daniels at (202) 622-6050.

Sincerely yours,

Philip M Cornk

PHILIP M. CORN
Special Assistant
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Taxation And the Food Stamp Program

- Section 8(b) of the Food Stamp Act provides that the value of benefits that may be provided "shall not be considered income or resources for any Federal purpose under any Federal , State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs...".

- States are precluded by law from imposing a sales tax on food purchased with program benefits. Any waivers that cash-out the value of food stamps in States with sales taxes on groceries must provide for a State-funded supplement to the cash benefit to offset the effect of the tax.

- In the past several years, USDA has approved demonstration project waivers in which the value of the food stamp allotment is paid in cash to an employer as a wage subsidy. These subsidies could increase or decrease a family's tax liability or EITC entitlement depending on the family's annual income.

- In the early projects, USDA required State agencies to set up systems to compensate recipients for any tax liability they may incur. In later projects, these requirements were relaxed: States were required to inform participants about the value of their wage subsidies and the statutory exclusion of these benefits from tax liability.

- The PRWORA (1996 welfare reform law) established wage supplementation as an operational alternative for the Food Stamp Program. This means that States will be able to operate these programs without seeking Federal waivers. USDA must implement this section with regulations.

4/18

→ New Hope letter

→ prepare program examples
Kind of questions IRS will get
interaction w/ minimum wage

→ Get IRS/Treasury folks together
w/ program folks Mon + Tues.

People will call me this afternoon

→ tell me who to have at next
week's mtg

Dozen or so examples

⇒ Get examples from DGA?
(talk to Monahan)

4/18

(1) 1) Legislation

(3) 2) Time limited waiver that would be tested

(2) 3) Simplified program
use TANF rules

→ ~~to~~ substitute part of TANF rules for food stamps

→ need to cost neutrality reporting requirement

? risk: states could substitute TANF weak worker deployment rules ~~[illegible]~~ to food stamps

Can we use simplified food but keep it contained to work force under 6?

Guidance

→ specifically on [illegible]

→ we will approve one aspect of Simple food

→ will do quickly
(Ag would have no auth to hold line)
Waiver could be contained

Announce - accept apl for waivers for one thing because commanding on [is seeking] legislation

Bruce/Diana/Cynthia –
FYI.
Elena

MEMORANDUM

TO: **AFL-CIO**

FROM: **Guy Molyneux and Geoffrey Garin**

DATE: **June 10, 1997**

SUBJECT: **Minimum Wage Coverage for Workfare Recipients**

Peter D. Hart Research Associates has just completed a national voter survey that includes two questions measuring support for extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. The survey was conducted by telephone June 6 through 9 among a representative sample of 800 registered voters who participated in the 1996 elections. The margin of error on these results is +/-4%.

Strong voter support for minimum wage coverage. The survey results reveal that American voters strongly believe that minimum wage laws and other basic legal workplace protections should apply to those in state workfare programs. The survey question reads as follows:

> As you may know, Congress passed a law last year requiring able bodied welfare recipients to work in state workfare programs. Do you believe that the people who are required to work in these workfare programs should be covered by basic legal protections, including the minimum wage law, or do you believe that the states should not have to pay the minimum wage to welfare recipients in workfare programs?

Fully 69% agree that workfare participants should be covered, while just 25% believe that states should not have to pay participants the minimum wage.

We would note that workfare participants are clearly identified in this question wording (*twice*) as still being "welfare recipients," making the strong favorable response that much more impressive (and meaningful). The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over $50,000 (67%), professionals (67%), and white voters (67%). Even college-educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.

Wage impact argument for coverage is strong. Voters' initial support for coverage doubtless arises from a fundamental sense of fairness. Since other workers receive this protection, they reason, why shouldn't workfare participants in similar jobs? However, organized labor has another, less immediately obvious reason for believing that coverage is needed -- namely, the corrosive effect that sub-minimum-wage workfare programs could have on the jobs and wages of low-wage workers *outside* of workfare programs. The survey tested the appeal of this argument for coverage against a powerful opposition case that focuses on the cost of coverage to taxpayers, and finds the wage impact argument prevails by a decisive two to one margin.

> Supporters of paying the minimum wage to people in workfare programs say that many employees who currently work at the minimum wage would lose their jobs if workfare participants could be forced to work for less, and also say that exempting one group of workers from minimum wage protections opens the door to undermining the minimum wage for others. (59% agree.)

> Opponents of paying the minimum wage to people in workfare programs say that the taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage, and also say that welfare recipients who want better pay should get off welfare and find a job on their own. (31% agree.)

Cynthia/EK/DF

—BR

Copy to Elena + Cynthia From Stacy Dean — Dcang

Combining Food Stamp and TANF Benefits for the Purposes of Work Requirements

Issue -- A legislative fix may be necessary if minimum wage requirements are applied to TANF workfare: Under the new welfare law States are required to move large portions of their TANF caseload into work activities. By FY02, States must place 50% of their caseload in activities which last at least 30 hours per week[1]. (In FY's 97-98, only 20 hours are required.) Many States will try to meet these work requirements by placing recipients in workfare slots. If it is determined that the Fair Labor Standards Act applies to these workfare positions, then States cannot require individuals to work more hours each month than the individual's monthly benefit divided by the minimum wage. Almost no State's TANF benefit is high enough to meet this requirement.[2]

One way for States to mitigate this problem would be to count the value of a household's food stamp benefit towards the total benefit which recipients must work off as a part of their work requirement. The Food Stamp Act (FSA) allows States to require TANF recipients to perform workfare for the value of the food stamp benefit, but work requirements for the two programs are not consistent. Specifically, the FSA contains a prohibition against requiring individuals with children under age 6 to participate in work activities. Approximately, 62% of the AFDC families had children under age six in 1994. This barrier would create significant obstacles for States who wish to meet the work requirements by creating workfare slots without raising TANF benefits. For the purposes of wage supplementation, there are no barriers to combining Food Stamps to the underlying TANF benefit because there are no specific exemptions from workfare.

Cynthia — What is % w/kids under 6 but over 1?

Administrative Fixes: States could request a Food Stamp demonstration waiver from this prohibition. However, there are a couple of complications with using demonstration waivers as a solution. First, the demonstration waiver authority is intended for time limited welfare experiments which apply to limited portion of the State caseload and require an evaluation. It is likely States would consider these requirements as burdensome and problematic with regards to meeting their requirements. Second, the exemption for households with children under six exists in two places in the FSA. One is within the food stamp work requirements and the other is in the workfare provisions. USDA is prohibited under statute from waiving the food stamp work requirement exemption. Some might interpret a waiver of the workfare requirements as undermining Congressional intent. Finally, States may have some flexibility under a Food Stamp Simplifed Program. However, USDA staff do not believe this is true. Even if it is, many States may not want to adopt a Simplied Program, and its requirements are significantly more burdensome than a demonstration waiver.

Legislative Fixes: The Administration could formally propose, or could informally propose as a part of the technicals bill discussion, an amendment to the food stamp act which would eliminate the exemption from work requirements and workfare for individuals working to fulfill an TANF

Yes

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[1] Of these 30 hours, 10 may be education or job training while the rest must be in work.

[2] Using July 1996 AFDC benefit levels, only Alaska and Hawaii's maximum benefit for a three person family is in excess of the minimum wage when divided by 30 hours per week.

requirement. This would not be inconsistent with the Administration's previous position on the Food Stamp work requirement child care exemption -- the Administration would have lowered the exemption age to 1 as long as child care was available. Also, it would assist States in meeting their TANF work requirements and it would continue to provide an exemption for non-TANF households who may not have the necessary child care to fulfill the requirement.

Recommendation: If a policy is announced which would indicate that the FLSA applies to TANF workfare slots, information should be provided on the food stamp issue. Food Stamps could be combined with TANF for the purposes of wage supplementation and for workfare as long as the household does not have children under six. The Administration should proposal a technical amendment to fix the problem for households with children under six. In the interim, the Adminstration should state that it would provide waivers to States that feel they need them immediately to meet the 20 hour per week requirement.

Agree

(ii) The Secretary may suspend the termination of payments under subparagraph (C)(i) for such period as the Secretary determines appropriate, and instead withhold payments provided for under subsection (a), in whole or in part, until the Secretary is satisfied that there will no longer be any failure to comply with the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), at which time such withheld payments shall be paid.

(iii) Upon a finding under subparagraph (C)(i) of a substantial failure to comply with any of the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), the Secretary may, in addition to or in lieu of any action taken under subparagraphs (C)(i) and (C)(ii), refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the Commonwealth of Puerto Rico, and upon suit by the Attorney General in an appropriate district court of the United States and a showing that noncompliance has occurred, appropriate injunctive relief shall issue.

(c)(1) The Secretary, shall provide for the review of the programs for the provision of the assistance described in subsection (a)(1)(A) for which payments are made under this Act.

(2) The Secretary is authorized as the Secretary deems practicable to provide technical assistance with respect to the programs for the provision of the assistance described in subsection (a)(1)(A).

(d) Whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property provided or financed under this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both, but if the value of the funds, assets or property involved is not over $200, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both.

WORKFARE

SEC. 20. [2029] (a)(1) The Secretary shall permit any political subdivision, in any State, that applies and submits a plan to the Secretary in compliance with guidelines promulgated by the Secretary to operate a workfare program pursuant to which every member of a household participating in the food stamp program who is not exempt by virtue of the provisions of subsection (b) of this section shall accept an offer from such subdivision to perform work on its behalf, or may seek an offer to perform work, in return for compensation consisting of the allotment to which the household is entitled under section 8(a) of this Act, with each hour of such work entitling that household to a portion of its allotment equal in value to 100 per centum of the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938 [(29 U.S.C. 201 et seq.)].

(2)(A) The Secretary shall promulgate guidelines pursuant to paragraph (1) which, to the maximum extent practicable, enable a political subdivision to design and operate a workfare program under this section which is compatible and consistent with similar workfare programs operated by the subdivision.

(B) A political subdivision may comply with the requirements of this section by ~~operating—~~

~~(i) a workfare program pursuant to title IV of the Social Security Act (42 U.S.C. 601 et seq.); or~~

~~(ii) any other~~ *operating any*[20-1] workfare program which the Secretary determines meets the provisions and protections provided under this section.

~~(b)(1) A household~~ *(b) A household*[20-2] member shall be exempt from workfare requirements imposed under this section if such member is—

~~(A)~~[20-3] *(1)* exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2);

~~(B)~~ *(2)* at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work ~~training program~~ *activity*[20-4] required under title IV of the Social Security Act (42 U.S.C. 601 et seq.);

has a child aged 0-5

~~(C)~~ *(3)* mentally or physically unfit;

~~(D)~~ *(4)* under sixteen years of age;

~~(E)~~ *(5)* sixty years of age or older; or

~~(F)~~ *(6)* a parent or other caretaker of a child in a household in which another member is subject to the requirements of this section or is employed fulltime.

~~(2)~~[20-5]~~(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the maximum number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—~~

~~(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month, by~~

~~(ii) the higher of the Federal or State minimum wage in effect for such month.~~

~~(B) In no event may any such member be required to participate in such program more than 120 hours per month.~~

~~(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.~~

(c) No operating agency shall require any participating member to work in any workfare position to the extent that such work exceeds in value the allotment to which the household is otherwise entitled or that such work, when added to any other hours worked during such week by such member for compensation (in cash or in kind) in any other capacity, exceeds thirty hours a week.

(d) The operating agency shall—

[20-1] Effective July 1, 1997, section 109(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) amends subpara. (B) by striking "operating—" and all that follows through "(ii) any other" and inserting "operating any".

[20-2] Effective July 1, 1997, section 109(e)(2)(A)(i) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) amends para. (1) by striking "(b)(1) A household" and inserting "(b) A household".

[20-3] Effective July 1, 1997, section 109(e)(2)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) redesignates subparas. (A) through (F) as paras. (1) through (6), respectively.

[20-4] Effective July 1, 1997, section 109(e)(2)(A)(ii) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) amends subpara. (B) by striking "training program" and inserting "activity".

[20-5] Effective July 1, 1997, section 109(e)(2)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) strikes para. (2).

(1) not provide any work that has the effect of replacing or preventing the employment of an individual not participating in the workfare program;

(2) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours; and

(3) reimburse participants for actual costs of transportation and other actual costs all of which are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month.

(e) The operating agency may allow a job search period, prior to making workfare assignments, of up to thirty days following a determination of eligibility.

(f) DISQUALIFICATION.—An individual or a household may become ineligible under section 6(d)(1) to participate in the food stamp program for failing to comply with this section.

(g)(1) The Secretary shall pay to each operating agency 50 per centum of all administrative expenses incurred by such agency in operating a workfare program, including reimbursements to participants for work-related expenses as described in subsection (d)(3) of this section.

(2)(A) From 50 per centum of the funds saved from employment related to a workfare program operated under this section, the Secretary shall pay to each operating agency an amount not to exceed the administrative expenses described in paragraph (1) for which no reimbursement is provided under such paragraph.

(B) For purposes of subparagraph (A), the term "funds saved from employment related to a workfare program operated under this section" means an amount equal to three times the dollar value of the decrease in allotments issued to households, to the extent that such decrease results from wages received by members of such households for the first month of employment beginning after the date such members commence such employment if such employment commences—

(i) while such members are participating for the first time in a workfare program operated under this section; or

(ii) in the thirty-day period beginning on the date such first participation is terminated.

(3) The Secretary may suspend or cancel some or all of these payments, or may withdraw approval from a political subdivision to operate a workfare program, upon a finding that the subdivision has failed to comply with the workfare requirements.

SEC. 21. [2030] DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon written application of the State of Washington (in this section referred to as the "State") and after the approval of such application by the Secretary, the State may conduct a Family Independence Demonstration Project (in this section referred to as the "Project") in all or in part of the State in accordance with this section to determine whether the Project, as an alternative to providing benefits under the food stamp program, would more effectively break the cycle of poverty and would provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—In an application submitted under subsection (a), the State shall provide the following:

tification period unless there is a change in the composition of the household.

(vi) CHANGE IN HEAD OF HOUSEHOLD.—If the head of a household leaves the household during a period in which the household is ineligible to participate in the food stamp program under subparagraph (B)—

(I) the household shall, if otherwise eligible, become eligible to participate in the food stamp program; and

(II) if the head of the household becomes the head of another household, the household that becomes headed by the individual shall become ineligible to participate in the food stamp program for the remaining period of ineligibility.

6(d)(2)(B)

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under title IV of the Social Security Act, as amended (42 U.S.C. 602), or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis. A State that requested a waiver to lower the age specified in subparagraph (B) and had the waiver denied by the Secretary as of August 1, 1996, may, for a period of not more than 3 years, lower the age of a dependent child that qualifies a parent or other member of a household for an exemption under subparagraph (B) to between 1 and 6 years of age.

(3) Notwithstanding any other provision of law, a household shall not participate in the food stamp program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 501(2) of the Labor Management Relations Act, 1947, [(29 U.S.C. 142(2))]because of a labor dispute (other than a lockout) as defined in section 2(9) of the National Labor Relations Act [(29 U.S.C. 152(9))]: *Provided,* That a household shall not lose its eligibility to participate in the food stamp program as a result of one of its members going on strike if the household was eligible for food stamps immediately prior to such strike, however, such household shall not receive an increased allotment as the result of a decrease in the income of the striking member or members of the

F: FLSA

EK/CR/DF - I don't think this is enough to do the trick. - BR

[redacted] 06:14:32 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP
Subject: New approach to FICA/workfare issue

Courtesy of the unions, a little known part of Social Security and tax law has come to light, along with SSA's interpretation of it. Two questions have emerged: First, should we give up on Treasury and ask SSA for its opinion on whether this law exempts workfare participants from FICA coverage? Second, is SSA's existing guidance on this question already so helpful and clear that essentially we already have in our possession a document we could just hand to the Governors and tell them that workfare participants are already exempt from FICA under certain circumstances?

Background: The Social Security and tax law both state that FICA coverage and taxes don't apply to a state employee "who is employed to relieve such individual from unemployment." It dates from 1950, when state government employees first began to join the FICA system. There is some legislative history from that time that suggests it applies to people on "work relief."

Social Security has interpreted this language in its handbook, but it appears that the IRS has never issued an interpretation. According to SSA's handbook, a program's intent determines whether it is designed to relieve someone from unemployment. SSA offers two interesting examples: First, a welfare recipient who performs a service in return for assistance payments is **not** covered (not earning credit toward Social Security). Second, however, a participant in a state program "designed to provide work experience and training to increase the employability of the individual" **is** covered by FICA benefits.

Not reassuring

The difficulty here is that all of this relates to FICA **coverage** (i.e., eligibility for benefits), not to FICA **taxes**. No one at Treasury or SSA can think of a reason that someone would be eligible for one and not the other, but nevertheless everyone says it is the IRS that must make the tax interpretation. Apparently SSA and IRS try to work in tandem on such questions, but legally I can't determine whether one must defer to the other. In any case, if we did hand out the SSA guidance to Governors, they could rightly respond that this doesn't answer the question of whether they must pay FICA taxes.

One plausible possibility is that the unearthing of this language will spur the IRS to make a decision. It might even affect the content of their decision, since apparently they were not aware of SSA's handbook guidance.

Our decision is whether to (1) ask SSA for a more fulsome interpretation and see what they come up with in the next few days/weeks/months; or (2) circulate the existing SSA guidance to Governors at an appropriate point in the process, arguing that this does the trick. We could do both. (If we choose the first option, SSA would run its interpretation by the IRS.)

May 22, 1997

MEMORANDUM TO INTERESTED PARTIES

SUBJECT: LABOR PROTECTIONS AND WELFARE REFORM

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased emphasis on the need to move welfare recipients from welfare to work. The new law gives state and tribal governments broad latitude to meet specified work requirements. However, requirements of other laws affecting workers and the workplace also must be met.

In an effort to help you better understand the requirements of these other laws, the United States Department of Labor has prepared a guide entitled *"How Workplace Laws Apply to Welfare Recipients"* that is attached. In addition, the United States Department of Agriculture has developed additional guidance to clarify the use of food stamps as a means to meet the requirements of the minimum wage law that is also attached.

Representatives of the Departments of Labor, Health and Human Services, and Agriculture are available to brief you and your staffs on the attached information. If you require additional information, you can contact Paul Richman of the Department of Labor, at (202) 219-6181.

attachments

USDA

United States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

USDA GUIDANCE

The Department of Labor has concluded that the Fair Labor Standards Act (FLSA) applies to participants in the Temporary Assistance for Needy Families (TANF) program in the same way as it applies to other workers. This means that in many cases participants will have to be paid the minimum wage.

In calculating the minimum wage, States can combine food stamp benefits and TANF grants. This can be done in either workfare or a wage supplementation program. Under a wage supplementation program, the value of benefits are cashed out and provided to an employer who in turn pays the money to participants as a wage.

Furthermore, for those TANF households normally exempt from food stamp workfare because they include parents or caretakers of a dependent child under 6 years old (between 1 and 6 in some States), States may use the Simplified Food Stamp Program to ensure that food stamps count toward the minimum wage. The simplified program was designed to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can include parents or other caretakers of a dependent child under the age of six in food stamp workfare simply by adopting TANF rules relating to workfare exemptions. Simplified programs must be cost neutral. Because removing the workfare exemption for parents or caretakers of dependent children will not increase program costs, we will provide expedited approval to such requests.

To make this change, States need only send a letter to the Food and Consumer Service (FCS) indicating their wish to avail themselves of the simplified program. A cost neutrality analysis is not required.

For additional information on the Simplified Food Stamp Program, States should contact FCS at (703) 305-2519. FCS' mailing address is Food and Consumer Service - Food Stamp Program, 3101 Park Center Drive, Alexandria, VA 22302.

U.S. Department of Labor - May 1997 -

How Workplace Laws Apply to Welfare Recipients

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in August 1996 increased emphasis on the need to move welfare recipients from welfare to work. Under the Act, the Aid to Families with Dependent Children (AFDC) program was replaced with the Temporary Assistance for Needy Families (TANF) program. The new welfare law gives state and tribal governments broad latitude to meet specified work requirements.[1] However, requirements of other laws affecting workers and the workplace also must be met.

Work Activities and Requirements

The new welfare law requires 25 percent of all TANF families and 75 percent of two-parent families to have an adult engaged in work activities in FY 1997 (families with no adults are exempted). States have the option of exempting single parents of children under one from the work requirement. The required participation rates increase each year, culminating at 50 percent for all families with an adult and 90 percent for two-parent families in FY 2002.

In order to be counted towards the work participation rate, a single parent is required to be engaged in a work activity, as defined by the law, for 20 hours per week in FY 1997. For an adult in a two-parent family, 35 hours of work are required. The mandated hours of work for single parents increase, to 25 hours in FY 1999 and 30 hours in FY 2000. Qualifying work activities include a range of subsidized and unsubsidized, private and public sector employment.

In addition, a limited number of TANF recipients can meet the work requirement by participating in vocational training and high school education programs.[2]

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[1] This guide refers only to state governments, although it is possible that county or local government entities will be responsible for implementing state and tribal welfare programs. Information in the guide concerning the role of a state agency in implementing the welfare program, paying out the benefits, and, where relevant, employing welfare recipients, would apply to a county or local government agency, where that agency, not the state, implements welfare, pays out the benefits and employs welfare recipients.

[2] Indian Tribes may choose to run their own Tribal TANF programs separate from the state. While these programs must incorporate time limits and work requirements, participation rates are determined on a case-by-case basis according to economic need.

About This Guide

This guide contains general questions and answers on how workplace laws enforced by the Department of Labor apply to welfare recipients. It is an effort to answer fundamental questions about the relationship between welfare law and workplace laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI) and anti-discrimination laws. States should consider the applicability of these laws as they design and implement their work programs.

This guide is simply a starting point. It cannot provide the answers to the wide variety of inquiries that could be raised regarding specific work programs. The impact of these laws on work programs for welfare recipients and the answers to many questions will be determined by the specific facts of the particular situation. Many questions will have to be answered on a case-by-case basis.

Employment Laws

1. **Do federal employment laws apply to welfare recipients participating in work activities under the new welfare law in the same manner they apply to other workers?**

   Yes. Federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI), and anti-discrimination laws, apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from these laws.

The Fair Labor Standards Act

2. **Does that mean that welfare recipients engaged in work activities under the new welfare law will have to be paid the minimum wage?**

   The minimum wage and other FLSA requirements apply to welfare recipients as they apply to all other workers.[3] If welfare recipients are "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage.

---

[3] The FLSA establishes federal minimum wage, overtime pay (for hours worked over 40 in a workweek), child labor, and recordkeeping requirements. The law affects full-time and part-time workers in the private sector and in federal, state and local governments. For the FLSA to apply, there must be an employment relationship between an employer and an employee. To "employ" under the FLSA means to "suffer or permit to work." This is a broader definition of employment than exists under the traditional common law. To determine if there is an employment relationship for purposes of the FLSA, one must consider all the circumstances, including the economic realities of the workplace relationship.

F; FLSA

Welfare recipients would probably be considered employees in many, if not most, of the work activities described in the new welfare law. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the FLSA.

3. **Are welfare recipients who participate in job training exempt from the minimum wage laws?**

An individual in training that meets certain criteria under the FLSA and is not otherwise an employee, is considered a trainee and is not entitled to the minimum wage. Similarly, a welfare recipient engaged in training that meets those criteria would not be an employee covered by the minimum wage requirements of the FLSA. The relevant criteria for such training are:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainees;
- Trainees do not displace regular employees;
- Employers derive no immediate advantage from trainees' activities;
- Trainees are not entitled to a job after training is completed; and
- Employers and trainees understand that trainee is not paid.

4. **How does the FLSA affect "workfare" arrangements that require welfare recipients to participate in work activities as a condition for receiving cash assistance from the state?**

Welfare recipients in "workfare" arrangements, which require recipients to work in return for their welfare benefits, must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition.

Where the state is the employer of a workfare participant who is an employee for FLSA purposes, the state may consider all or a portion of cash assistance as wages for meeting the minimum wage so long as the payment is clearly identified and treated as wages, the payment is understood by all parties to be wages, and all applicable FLSA record keeping criteria are met. Where a private company or local government agency is the employer of the workfare participant, the state welfare agency may use the recipient's welfare benefits to subsidize or reimburse that employer for some or all of the wages due.

5. **Could states that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program continue to operate such programs in the same manner under the new welfare law?**

The ability of states to operate programs like CWEP will depend on the details of their particular programs. The old welfare law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense provided under any other law. Under CWEP, the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The new welfare law eliminated CWEP and the entire JOBS program. As a result, welfare recipients must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition. However, if welfare recipients are participating in activities where they are not "employees" under the FLSA definition, they will not have to be compensated at the minimum wage. Thus, while states may be able to continue programs similar to those that existed under CWEP, they may need to modify the programs to reflect changes in the law.

6. **May food stamps be counted towards meeting minimum wage requirements?**

Under two programs created by the Food Stamp law, food stamp benefits (coupons or their cash value) may contribute towards meeting minimum wage requirements for TANF recipients in work activities.

Under the Food Stamp work supplementation program, employers may receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. As with other wage subsidy programs, the value of the Food Stamp benefit is converted to a cash wage subsidy paid by the employer as a wage and is counted towards the minimum wage. This program is restricted to recipients of TANF or other public assistance and contains specific worker protections and non-displacement provisions.

The Food Stamp law specifically permits states to establish Workfare programs (to be approved by the U.S. Department of Agriculture) under which certain welfare recipients are required to perform work in return for compensation in the form of food stamps. In other words, participants may be required to "work off" the value of their food stamps. The state or other employers participating in the workfare program may then credit the value of the food stamps towards its minimum wage obligations. The number of hours that a food stamp recipient may be required to work is determined by dividing the value of the food stamp allotment by the state or federal minimum wage (whichever is higher), up to a maximum of 30 hours per week.

Participation in Food Stamp workfare programs may be counted towards TANF participation requirements, so that a participant who is employed by the state may receive food stamps as compensation for certain hours and receive welfare benefits as compensation for other hours of employment. In all cases, total compensation must equal or exceed the minimum wage for each hour worked. Additional guidance on the use of food stamps towards the minimum wage will be provided by the U.S. Department of Agriculture's Food Stamp Program Office.

7. **Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?**

Only under limited circumstances. Such benefits may be credited as wages only when the state is the employer and all of the following criteria are met:

- Acceptance of noncash benefits must be voluntary;
- Noncash benefits must be customarily furnished by the employer to its employees, or by other employers to employees in similar occupations; and
- Noncash benefits must be primarily for the benefit and convenience of the employee.

Because these criteria are quite strict, it is likely that these benefits will not count as wages in most circumstances.

Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA.

Occupational Safety and Health Act

8. **How does the Occupational Safety and Health Act (OSHA) apply to welfare recipients participating in work activities under the new welfare law?**

The new welfare law does not exempt employers from meeting OSH Act requirements. Therefore, OSH Act coverage applies to welfare recipients in the same way that it applies to all other workers. However, because the OSHA does not have direct jurisdiction over public sector employees in many states, the question of who is the responsible "employer" is an important one. This is particularly true in cases where work activities are administered as part of a public-private partnership. In these situations, OSHA will determine whether the employee is in the public or private sector on a case-by-case basis. Generally, case law under OSHA tends to place compliance responsibility on the party most directly controlling the physical conditions at a worksite.

9. **Does that mean that welfare recipients in work activities deemed to be public employees are exempt from health and safety regulations?**

It depends on the state. OSHA does not have direct jurisdiction over public sector employees in many states. Yet, in the 23 states and two territories where there are OSHA-approved state plans, the states are required to extend health and safety coverage to employees of state and local governments. To the extent participants in these states and territories are employees of public agencies, they would be protected by the applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants who are public sector employees.

Unemployment Insurance

10. **Are welfare recipients participating in work activities covered by the Unemployment Insurance (UI) System ?**

Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Unemployment insurance coverage extends only to workers who are considered "employees," according to definitions provided by state UI laws. Consequently, if welfare recipients are in work activities where they would be classified as employees, they will be covered by the UI system.

There are some exceptions. While federal law requires states to extend UI coverage to services performed for state governments and non-profit employers, services performed as part of publicly funded "work-relief" employment or "work training" programs may be excluded by states and, in fact, are excluded by all states except Hawaii. Under the new welfare law, a number of community service-related activities could fall within the "work-relief" exception to UI coverage.

An Unemployment Insurance Program Letter (UIPL 30-96) issued in August 1996 clarified the criteria applicable to the "work-relief" and "work training" exceptions. In order to fall within the exception, activities must primarily benefit community and participant needs (versus normal economic considerations) and services must not otherwise normally be provided by other employees. If such activities do not fall within the exception, participants providing services for these entities would likely be covered by the UI program.

11. **What about welfare recipients who are working for private sector employers? Will they be covered by the UI program?**

The "work relief" and "work training" exceptions for UI do not apply to the private sector. For private employers the question of UI coverage will hinge on whether a participant is deemed an "employee." The tests for making these determinations are made by the states and are generally similar to the common law test which is based on "the right to direct and control work activities."

Anti-Discrimination Laws

12. **Would federal anti-discrimination laws apply to welfare recipients who participate in work activities under the new welfare law?**

Yes. Anti-discrimination issues could arise -- primarily under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, and the Equal Pay Act. Furthermore, if participants work for employers who are also federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act. As with the other laws discussed above, these laws would apply to welfare recipients as they apply to other workers. Additional guidance on these laws, many of which are not within the jurisdiction of the Department of Labor, will be forthcoming.

Sander Levin

Real Work for Real Wages

Post 8/2[illegible]

At its core, welfare reform is about the value of work. To the person performing the work; to his or her dependents learning by example and to a society that gains in productivity and the diminution of stereotypes, work is the central policy of welfare reform.

The strength of a policy for reform based on work was clearly evident when the public supported the president's veto of earlier proposals because they did not provide for adequate day care and health care for people moving off welfare into work, even though many other workers are not assured them.

It was evident last month when we restored benefits denied to elderly and disabled legal immigrants because the public agreed that welfare reform was about moving able-bodied people into work, not withdrawing benefits from persons too elderly or disabled to work.

Many states reaffirmed the principle by recycling extra funds from decreased welfare caseloads back into work-related services such as child care, transportation and job placement.

And this year a $3 billion welfare-to-work initiative to help states with longer-term recipients who are often more difficult to place in jobs prevailed with bipartisan support.

Contrast this bipartisan approach with the partisan flare-up that occurred in July, when House Republicans tried to strip away federal minimum-wage and other federal workplace protections for welfare recipients who go to work in the public or not-for-profit sectors. Their initial effort had the pretense of paying the minimum wage, but states could have deducted the value of child care, housing and health care, allowing them, in effect, to pay significantly less than the minimum wage. When the light was shined on this effort, Republicans backed off the proposal for such a sub-minimum wage, but their approach still would have denied federal enforcement of minimum-wage laws and of a [illegible] other important federal protections [illegible] and safety hazards in the workplace, discrimination based on age or religion, or sexual harassment.

Thwarted in the final budget bill, the Republicans may try again in September. If they do, you can expect to hear the following arguments for their approach:

- **Denying federal protections under the new welfare reform law follows the pattern of the Democratic-initiated Family Support Act of 1988.** The work program in the 1988 act differed substantially from the [illegible] of the 1996 welfare reform law. It represented primarily a training program limited [illegible] months of participation for most individuals, and it had no mandate to move people into work.
- **Because public workfare jobs [illegible] temporary, they are not "real jobs," and paying these individuals less gives them [illegible] incentive to move into the private [illegible].** Numerous community service and other work[illegible] fare positions are indistinguishable from private-sector jobs, and for them [illegible] positions, payment of at least [illegible] is a greater incentive to stay in the [illegible] and stay off welfare.
- **Running these programs with [illegible] minimum-wage and other protections would be prohibitively costly and burdensome.** This argument fails to take into account the [illegible] decrease in caseloads nationwide, the strength of the economy and the additional funds states are receiving from the federal government, which should provide states with adequate funds to meet the work participation [illegible] in the years immediately ahead. If [illegible] any state cannot meet participation [illegible] required by the federal government, the answer is to provide assistance to the [illegible] not to create a second class of American workers by [illegible] broad exemption from federal protections.
- People moving off welfare into work are not "real" workers. This stereotypical attitude infused the remarks of one House Republican who recently asserted that "it is dishonest, it seems to me, or at least misleading to try and convince America that these are hard-working people just trying to raise their families when in fact they are welfare recipients."

I found vivid answers to these arguments during my recent visits to Detroit Workfirst, a program that combines discipline, an emphasis on work's dignity and support services for people moving into jobs. Both administrators and participants were clear: Do not create a second class of citizens by degrading the value of work. In their eyes, paying the [illegible] minimum wage was not an incentive to stay in the workplace and off welfare.

To be sure, there was a political context [illegible] welfare reform inevitable for what was probably the least popular of all social programs. That makes it easy for antagonists to claim that the president's position stems from [illegible] from "big labor," ostensibly [illegible] vote. And one observer has even suggested this issue gives the Republicans a rare opportunity to define the political landscape.

But such notions miss what [illegible] of welfare reform—the value and dignity of work. And though the road ahead will be more difficult than the journey of the first year, the answer is surely not to degrade the [illegible] of those moving from welfare into jobs.

[illegible], a Democratic representative from Michigan, is the ranking [illegible] of the House Ways and Means subcommittee [illegible] human resources, which has jurisdiction [illegible] welfare reform.

F: FLSA

GINGRICH PROMISES TO FIGHT CLINTON ON WELFARE LAW

F: FCSA

SPEAKER TAKES OFFENSIVE

Truce Between Democrats and G.O.P. Seems to Be Shaky as '98 Election Nears

By RICHARD L. BERKE

INDIANAPOLIS, Aug. 22 — Speaker Newt Gingrich accused President Clinton today of caving in to unions on rules that, he said, undermine the welfare law. Mr. Gingrich vowed that his central legislative drive for the fall would be a bill intended to correct those weaknesses.

The Speaker's comments showed a new combativeness after months in which Republicans in Congress have worked closely with the White House on issues like balancing the budget. Many Republicans had seemed convinced, in fact, that a picture of harmony and progress in Washington could only help their political fortunes back home.

But today Mr. Gingrich, addressing more than [illegible] Republicans from Midwestern states who gathered here this weekend, made clear he was eager to take on Mr. Clinton over welfare and said he had discussed the matter with Senator Trent Lott, the Republican leader, and other important figures who were ready to join him. His remarks signaled difficult times leading up to next year's midterm elections, if Mr. Gingrich and other prominent Republicans follow a strategy of attacking Mr. Clinton and the unions on welfare. [illegible]

"We ought to finish welfare reform by passing this law," Mr. Gingrich said [illegible]

Continued on Page [illegible]

NYT Front Page 8/23/97

With New Fire, Gingrich Vows to Fight President on Welfare

Continued From Page 1

work within two years and limits payments to families to five years. When he signed the bill last year, Mr. Clinton called it imperfect and vowed to fight for changes, many of which he won in the balanced-budget bill he signed last month, including restoring benefits for some immigrants.

But Mr. Gingrich expressed particular concern about regulations issued this year by the Department of Labor that require states to treat welfare recipients in community service jobs as regular employees, with protections and benefits like the minimum wage, which states have argued are too expensive.

The Speaker asserted that he would press to make the battle over welfare "a major national issue."

"We are prepared to work with the Governors of both parties to make reforming welfare for real a major part of our September and October legislative agenda," he said.

Hours after Mr. Gingrich set the stage for battle with the White House, former Vice President Dan Quayle took to the podium to criticize implicitly the Speaker and other Republicans who forged the budget deal with the White House.

"There is a time to compromise and there's a time to stand firm," Mr. Quayle said.

"Under this budget agreement, the Government is going to get bigger," he said, at the expense of taxpayers, and he ridiculed the child tax credit as selective, therefore amounting to "social engineering at its worst."

Turning to welfare, Mr. Quayle, who is preparing a run for the Presidency, suggested that Mr. Clinton's efforts to alter the law were reason enough to scuttle the budget bill.

"Under this budget," he said, "tax complication will be enhanced and welfare reform was stopped dead in its tracks."

All Mr. Gingrich's comments did was to escalate a debate between the Administration and many Republican and Democratic Governors over the rules for former welfare recipients who join the work force.

Not only do they consider the rules too expensive, but many Republicans in Congress have also objected that many of the welfare recipients who join the work force would automatically become members of public-sector unions. Republicans have also pressed for other changes, like allowing states to privatize their welfare administrative jobs.

Mr. Gingrich and other Republicans had sought to include their welfare changes in the budget bill but were rebuffed by the White House. Nevertheless, they went along with the Administration's provisions, like allowing certain non-citizens to apply for Supplemental Security Income if they become disabled.

Speaking of the President, Mr. Gingrich told reporters after his speech: "In the budget negotiations they clearly felt they could not afford to make the unions mad at them in terms of doing the whole budget agreement, and I don't know what their position will be this fall. It's a very, very serious issue."

Mr. Gingrich, who is on a two-week nationwide tour to rehabilitate his image after this summer's abortive coup attempt against him by his fellow Republicans, was the kickoff speaker for the three-day conference of the Midwest Republican Leadership Conference.

Republicans from 13 states converged here for the first gathering of prospective Presidential contenders for the year 2000.

Mr. Gingrich did nothing to dampen speculation spread by his advisers that he was seriously weighing a run for President. In his address, Mr. Gingrich for the first time embraced a basic flat-tax plan that would eliminate most deductions and credits. Such a plan drew currency in Steve Forbes's unsuccessful campaign for the Republican Presidential nomination last year and was endorsed by Mr. Quayle today. Many Republicans expect the flat tax to emerge as an important issue in the 2000 campaign.

"There are things I'd like to do, like a flat tax with virtual elimination of the I.R.S.," Mr. Gingrich said, perhaps to the most rousing applause in his speech. "But I don't think Bill Clinton's going to sign it."

Despite this unmistakable comment to the Republican rank and file, Mr. Gingrich insisted to reporters who questioned him afterward that he had not staked out a new position. He repeated his position that he would back either a flat tax or a consumption tax on goods and services, which would replace the income tax. He said that if a flat tax was enacted, he would support certain modifications that are politically popular, like exemptions for charities, a family's principal home and for children.

As part of the effort to improve his image, Mr. Gingrich's supporters passed out "I ♥ Newt" placards that the delegates waved when he was introduced.

And Mr. Gingrich's staff members distributed a glossy four-page brochure extolling the Speaker's virtues with photographs of him surrounded by American flags.

"Newt Gingrich is a family man," the brochure trumpeted, "a man of strong will," dedicated to education, "animal lover," an "Army brat," active with charities, "an innovative leader."

The flier said that Mr. Gingrich at age 8 "risked his life by diving into a frozen creek to save his dying dog." It neglected to mention that the dog ran into the water to fetch a stick thrown there by young Newt.

FLSA

FORTUNA_D @ A1
07/31/97 04:42:00 PM

Record Type: Record

To: Diana Fortuna

cc:
Subject: REPUBLICANS PROMISE TO REVISIT WELFARE ISSUE

Date: 07/30/97 Time: 08:34
BRepublicans promise to revisit welfare issue

WASHINGTON (AP) Republicans vow to roll back a budget agreement provision that would apply the minimum wage and other labor laws to people on welfare.

``We're going to come back to it,'' promised House Speaker Newt Gingrich.

Under the budget accord detailed Tuesday, Republicans contend that states and welfare recipients will have to pay Social Security and Medicare taxes for these workers.

And Rep. Clay Shaw, the Republican chairman of the House welfare subcommittee, said states also might be forced to pay the ``prevailing wages'' that government pays other workers. That would guarantee welfare workers ``wages'' that rival those paid to unionized workers, he said.

``It's going to be terrible for everybody, including welfare recipients,'' Shaw said. ``The states are simply not going to be able to afford to produce as many of the jobs that are needed.''

The Labor Department has ruled that welfare recipients on work assignments are workers and therefore are covered by federal labor laws. That means they must be paid the minimum wage and are protected by civil rights and other protections.

The House, in its version of the budget bill, would have exempted those welfare recipients on community service assignments from federal labor laws. But that was dropped in final negotiations.

Negotiators did agree to exempt welfare recipients from the earned income tax credit, designed to ease the tax burden on the working poor.

But the White House would not consider an exemption from payroll taxes, Shaw said.

On another contentious welfare issue, the budget deal restores benefits for an estimated 350,000 immigrants cut off under last year's law.

President Clinton had vowed last summer to reverse welfare cuts to those immigrants legally here. After retaining control of Congress, Republicans promised not to ``reopen'' the welfare debate, and few thought Clinton would get them to change their minds.

But the budget bill restores disability and Medicaid benefits to noncitizens who are already on the rolls. In addition, immigrants

who were in the United States when the welfare law was signed will remain eligible for benefits if they become disabled. The budget agreement still leaves immigrants ineligible for food stamps.
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