Same as DOL through section on budget agreement (with 2 changes proposed by OMB -- dropping "even including all the benefits isted in #2" and "Inclusion in reconciliation would violate the terms of the budget agreement.")

This proposal undermines the fundamental goals of welfare reform. Under welfare reform, everyone who can work, must work. Those who do work should be treated like any other worker -- paid a minimum wage for their work. For welfare reform to succeed, states must be encouraged to place people in real, private sector jobs -- instead, this proposal makes it cheaper for states to put people in workfare.

The proposal undermines the minimum wage and denies welfare recipients who work the fundamental protection of laws created by Congress to protect workers. The proposal allows states to count Medicaid, child care and housing benefits towards the minimum wage.

- This would set a new precedent for a de facto subminimum wage. Employers generally may not use non-cash benefits, such as health coverage, to count towards the minimum wage for non-welfare employees.

- These benefits are not substitutes for the minimum wage. Making welfare recipients choose between targeted benefits that enable them to continue to work and cash benefits to cover basic necessities is incompatible with the fundamental goals of welfare reform. ?

The proposal will hurt the working poor. Including the value of noncash benefits toward the minimum wage for welfare recipients lowers the cost of hiring those on welfare relative to the cost of other low wage workers -- exacerbating the potential for displacement.

Making states count noncash benefits is a huge administrative burden. Under this proposal, states will be required to quantify and track the value of Medicaid, child care, and housing assistance (in addition to the cash welfare grant and food stamps) provided to each working welfare recipient for the duration of the period that the benefits are received.

- This will be an administrative nightmare for states, since individual welfare recipients get different amounts of benefits, and these amounts can change frequently.

Enforcing the payment of the minimum wage will be difficult or impossible. Under this proposal, the minimum wage's standard enforcement procedures are null and void.

- Because this proposal removes these workers from the oversight of the Fair Labor Standards Act, the usual enforcement mechanisms for the minimum wage will not apply.

- Compliance difficulties may be compounded by the large number of recipients required to work under the new law and the fact that, unlike under prior law, states can't simply lower the required number of hours of work to meet the work participation rates.

Under this proposal, working welfare recipients would not be covered by key labor laws.

The proposal specifies that welfare recipients working in public and nonprofit (?) sectors are not employees for purposes of the FLSA and other federal laws. These include:

- race, geneder, and national origin discrimination;
- discrimination on the basis of disability;
- unsafe and unhealthy workplaces; and
- the minimum wage and child labor.

- The proposal would create a supply of second class workers who could be subjected to unfair wages, unsafe workplaces, and discriminatory treatment.

To: Stacey Grundman
Fr: Diana Fortuna
1 page

Janet Himler 06/03/97 06:26:21 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: DOL's talking points on FLSA

Here are some additional comments on the DOL talking points per Barry's e-mail:

1. In the first paragraph, recommend dropping the phrase "even including all the benefits listed in #2" under (3). It implies that a state would have to count non-cash assistance benefits in addition to the cash benefits toward the minimum wage before calculating the hours of non-work training that could be applied toward the total work requirement.

2. Typo in the paragraph on the budget agreement -- "not included **in** the budget".

3. On the third issue addressing enforcement mechanisms, minimum wage enforcement under FLSA is addressed in the previous section which addresses extending the worker protections to welfare participants who work, so it is unclear if this section is necessary. Jeff Farkas is checking the regulations to make sure the first bullet is accurate (e.g., work requirements under CWEP). Recommend dropping the second bullet in this section which addresses compliance resources -- it may lead to a future request for additional enforcement funds and/or staff.

4. Under the fourth issue, recommend adding a bullet to address one of the questions raised in today's conference call regarding equity and the use of non-cash benefits. It could read something like, "Under current law, employers in general may not use non-cash benefits, such as health coverage, to count towards the minimum wage for non-welfare employees." However, I recognize that in some cases the FLSA does permit an employer to apply some non-cash benefits toward the minimum wage, so DOL may have a better suggestion on the language.

Thanks.

Message Copied To:

Barry White/OMB/EOP
Cynthia A. Rice/OPD/EOP
Larry R. Matlack/OMB/EOP
Keith J. Fontenot/OMB/EOP
Jeffrey A. Farkas/OMB/EOP

DATE: 6/3

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 INDEPENDENCE AVE., SW
WASHINGTON, D.C. 20201

PHONE: (202) 690-6311 FAX: (202) 690-8425

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
HUMAN SERVICES LEGISLATION
ROOM 413 H HUMPHREY BUILDING

TO : Diane F

OFFICE :

ROOM NO :

PHONE NO :

FAX NO : 456-7431

TOTAL PAGES
INCLUDING COVER) : 3

FROM:

[✓] MARY M. BOURDETTE

[ ] BARBARA P. CLARK

[ ] GREG JONES

[ ] PATRICIA SAVAGE

[ ] JOSEPH WARDEN

[ ] LAUREN GRIFFIN

[ ] LULA BARNES

REMARKS: here's "new" cover pages.

The Difference Between the Minimum Wage for 20 Hours a Week and the Combined Maximum Food Stamps and TANF Benefits: Key Points and Methodological issues

- The attached tables illustrate that relatively few states will face additional monthly costs if they combine the maximum AFDC and food stamp benefits to pay the minimum wage for a 20 hour work week.

- The analysis calculates the effective wage rate for a 20 hour work week as required in FY 1997 for single parent families (25% of the caseload is required to work in FY 1997). While the number of hours required for participation increases to 30 in FY 2000, only 20 of those hours must be within the activities described in Scc. 407. As a result, states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for 10 hours of training. In addition, single parents with a child under 6, about 60% of the caseload, are required to participate for only 20 hours per week even when the hours requirement increases in later years. Finally, two-parent families are required to participate in work activities for 30 hours a week beginning in FY 1997. The additional hours required for two-parent families would result in more states being unable to pay the minimum wage by combining food stamp and TANF benefits.

- The analysis utilizes the maximum food stamp benefit calculated for a family that receives the maximum TANF benefit. Approximately 25% of the 1995 AFDC caseload received less than maximum benefits as a result of earned or unearned income such as child support.

- Most of the discussion has centered on the potential impact of the FLSA for a family of three, the average unit size of an AFDC family. However, approximately 40% of single parent AFDC families have only two persons in the unit (one adult and one child), 30% have three persons in the unit and 16% have four persons in the unit.

- The analysis assumes that states maintain the level of benefits offered under AFDC. To the extent that states increase their benefit levels, even fewer states would have be unable to meet the minimum wage by combining food stamp and TANF benefits. To the extent that states decrease their benefit levels, more states would be unable to meet the minimum wage simply by combining food stamps and TANF benefits.

- It is important to note that the attached tables generally illustrate the difference between the minimum wage and the combined maximum food stamp and TANF benefits as they would apply to workfare. Participants employed in the private sector through a state work supplementation program will receive the minimum wage under TANF in the same way that they received the minimum wage under the prior law JOBS program -- the value of the AFDC/TANF and/or food stamp benefits will be paid to the employer as a subsidy to pay the recipient at least the minimum wage. So, the application of the minimum wage to TANF work participants should not result in additional costs within state work supplementation programs. ?

The Difference Between the Minimum Wage for 30 Hours a Week and the Combined Maximum Food Stamps and TANF Benefits: Key Points and Methodological issues

- The attached tables illustrate that a number of states will have difficulty paying the minimum wage by combining the maximum AFDC and Food Stamp benefits for a 30 hour work week as required for two parent families in FY 1997 and at state option for some single parent families beginning in FY 2000.

- The analysis calculates the effective wage rate for a 30 hour work week. While two parent families must participate for 35 hours per week beginning in FY 1997, only 30 of those hours must be in work activities as described in Sec. 407. Similarly, while single parent families must participate for 30 hours a week beginning in FY 2000, only 20 of those hours must be within the activities described in Sec. 407. States could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for 10 hours of training. In addition, single parents with a child under 6, about 60% of the caseload, are required to participate for only 20 hours per week even when the hours requirement increases in later years.

- The analysis utilizes the maximum food stamp benefit calculated for a family that receives the maximum TANF benefit. Approximately 25% of the 1995 AFDC caseload received less than maximum benefits as a result of earned or unearned income such as child support.

- Most of the discussion has centered on the potential impact of the FLSA for a family of three, the average unit size of an AFDC family. However, approximately 40% of single parent AFDC families have only two persons in the unit (one adult and one child), 30% have three persons in the unit and 16% have four persons in the unit. For two parent families, approximately 25% of two parent families have three persons in the unit and 30% have four persons in the unit

- The analysis assumes that states maintain the level of benefits offered under AFDC. To the extent that states increase their benefit levels, even fewer states would have be unable to meet the minimum wage by combining food stamp and TANF benefits. To the extent that states decrease their benefit levels, more states would be unable to meet the minimum wage simply by combining food stamps and TANF benefits.

- It is important to note that the tables generally illustrate the difference between the minimum wage and the combined maximum Food Stamp and TANF benefits as they would apply to workfare. Participants employed in the private sector through a state work supplementation program will receive the minimum wage under TANF in the same way that they received the minimum wage under the prior law JOBS program -- the value of the AFDC/TANF and/or food stamp benefits will be paid to the employer as a subsidy to pay the recipient at least the minimum wage. So, the application of the minimum wage to TANF work participants should not result in additional costs within state work supplementation programs.

cc: Bruce Reed
Cynthia
Diana
+ return

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

MEMORANDUM FOR ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT
FOR DOMESTIC POLICY

FROM: DONALD C. LUBICK DCL
ACTING ASSISTANT SECRETARY (TAX POLICY)

SUBJECT: Taxation of Welfare-to-Work Programs

DATE: May 28, 1997

At a recent meeting regarding the Administration's efforts to address the issues raised by welfare-to-work programs, you raised the prospect of legislation that would exempt all welfare payments from federal taxation. This memorandum provides a status report on the Internal Revenue Service's (IRS) progress in analyzing the taxability of welfare-to-work payments. It also discusses certain issues that need to be considered regarding the proposed legislative solution.

Status Report

The IRS has adopted a two-pronged approach to determine the federal tax treatment of government assistance payments in the welfare-to-work context. First, the IRS is presently analyzing whether food stamp wage supplementation payments are exempt from tax under the Food Stamp Act of 1977. We understand that the IRS expects to reach a preliminary conclusion with respect to this issue very soon.

Second, the IRS is analyzing the taxable nature of all other welfare-to-work payments under applicable sections of the Internal Revenue Code and the general welfare doctrine. Under the general welfare doctrine, government-paid benefits to welfare recipients are excludable from the recipient's income if the benefits are intended to promote the general welfare and are not compensation for services performed. We understand that the IRS expects to generate two examples that would demonstrate the application of the legal principles embodied in the general welfare doctrine to specific facts and circumstances. These examples would be shared with all interested agencies. Moreover, as always, the IRS is willing to address particular issues that States or local governments have in the private ruling context.

Proposed Legislation

The legislative proposal to exempt welfare-to-work payments from federal tax raises certain tax policy and administrative concerns. The benefit of certainty provided to States by the proposal must be weighed against these concerns.

In particular, because welfare-to-work programs may operate differently from earlier forms of governmental assistance programs, a tax exemption of the former may have interactions with other tax and non-tax laws that did not arise under prior law and have yet to be fully considered. For example, in evaluating the proposal, one should carefully consider whether taxing welfare-to-work payments, and thus treating such payments as earned income for earned income tax credit (EITC) purposes, would provide an overall benefit to States and welfare-to-work recipients. Treating welfare-to-work payments as earned income for EITC purposes would provide a federally funded wage subsidy to welfare recipients that would more than offset the additional employment tax burden imposed on employers. Under the EITC, eligible workers effectively receive a wage subsidy equal to 36% (if they have one qualifying child) or 40% (if they have two or more qualifying children) of their wages. States could use this wage subsidy to reduce the benefits they pay welfare recipients and/or provide greater assistance to recipients so that they can become financially independent. Of course, the proposal could be modified so that welfare-to-work payments would be exempt from tax but would nonetheless be treated as earned income for EITC purposes. Such a proposal, however, would be costly.

DATE: 5/28/97

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 INDEPENDENCE AVE., SW
WASHINGTON, D.C. 20201

PHONE: (202) 690-6311 **FAX: (202) 690-8425**

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
HUMAN SERVICES LEGISLATION
ROOM 413 H HUMPHREY BUILDING

FROM:

[XX] MARY M. BOURDETTE
Deputy Asst. Sec.

TO : Diana Fortuna- WH
Stacey Grundman - DOL

OFFICE :

ROOM NO :

PHONE NO :

456-7028 - Diana

FAX NO : 219-9216 - Stacey

TOTAL PAGES
INCLUDING COVER) : 17 pages

How good is this?
Reasons worse
Reason better – TANF windfall?
Reason
Been
× not wkg/exempt
× wkg - priv sector
× wkg - wkfare

REMARKS:

Attached are two sets of charts re minimum wage and welfare payments. The first set contains state by state calculations for 20 hours a week and the second set makes the calculations for 30 hours a week. While virtually all states are in good shape for families of three or more persons working 20 hours a week; many aren't in such great shape for families of two (40% of the caseload), for two parent families and for families required to work 30 hours or more. The hill folks have requested these, so please review and perhaps we can discuss during the conference call.

[redacted]

Tentative Minimum Wage Provision
May 27, 1997

1. Clarify that workfare participants in the public and nonprofit sectors are not employees for purposes of the Fair Labor Standards Act or any other federal law.

2. However, states may not require recipients to participate in workfare for a number of hours greater than the welfare benefits package divided by the appropriate minimum wage.

- In conducting the hours-of-work computation, states must count cash and other benefits under Title IV-A and food stamps.

- States may count Medicaid, child care, and housing benefits (for the purpose of valuing Medicaid, the Secretary of HHS must publish an annual table of the insurance value of Medicaid coverage for families of various sizes. The Secretary may include geographical variations in her table).

- States may (in addition to the step above) satisfy any remaining hours of the work requirement by counting job search, job readiness activities, basic skills education, vocational education training, job skills training, high school or GED completion. None of these additional activities would be subject to the Fair Labor Standards Act.

Example: The State of Freedonia has a minimum wage of $6 per hour, and a typical family receives $400 in cash welfare and $200 in food stamps per month. The current work requirement is 30 hours per week or 120 hours per month. Because the value of the welfare benefit package ($600 in cash plus food stamps) is not enough to cover the minimum wage ($6 times 120 hours, meaning the package "pays" $5 per hour), the State has three choices: (1) count other benefits (such as child care, housing, or Medicaid) in calculating the total welfare benefits package; (2) satisfy the remaining 5 hours of work required per week* through education and training activities listed above; or (3) some combination of (1) and (2).

*$600 in basic benefits divided by the minimum wage of $6 equals 100 hours of work per month payable at the minimum wage, leaving a remainder of 20 hours per month or 5 hours per week.

r:\tentminimumwage.wpd

PROGRAM DEVELOPMENT DIVISION
FOOD STAMP PROGRAM

DATAFAX REQUEST COVER SHEET
DATAFAX # 703-305-2486

DATE: 5/23/97

TO: Dean Fortune

OFFICE;

PHONE;

****

FROM; Art Foley

OFFICE;

PHONE;

SUBJECT;

REMARKS:

NO. OF PAGES INCLUDING COVER SHEET: 3

USDA

United States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

SUBJECT: Workfare Options for TANF Participants Who Are 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. Legal analysis by the Department of Labor indicates 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. States are required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to make TANF recipients work 20 hours weekly; a requirement that will increase to 30 hours by the year 2000. 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.

The enclosed letter offers States an option for addressing workfare 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 food stamp 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 Department of Labor has concluded that the Fair Labor Standards Act (FLSA) applies to participants in the Temporary Assistance for Needy Families (TANF) program and, therefore, as a general matter, they must be paid at least the minimum wage rate for their work activities.

States can both enable most households to meet the TANF work requirement and satisfy the requirements of the FLSA by combining participants' food stamp benefits and TANF grants when calculating participants' work obligations. 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 allow states to meet both work requirements and minimum wage protections. 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.

Please contact us for additional information regarding operating a Simplified Food Stamp Program.

Sincerely,

Regional Administrator

Talking Points on FLSA
5/22/97

- 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 interpretation and will engage in extensive consultation with states on how to apply the law 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.

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 law?

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.

DRAFT: May 20, 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]

Common Questions: 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

---

[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.

the specific facts of the particular situation. Many questions will have to be answered on a case-by-case basis.

(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.

<u>The Fair Labor Standards Act</u>

(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. However, if they are engaged only in training programs that meet the criteria established under the FLSA, they will not be considered "employees" and are not required to be paid the minimum wage. (See question 3 for additional discussion.)

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) 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

---

[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.

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, ordinarily will be "employees" under the FLSA who must be paid the minimum wage and overtime (when working more than 40 hours per week) in their workfare assignment. Where the state is the employer, 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. new

(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. Changed

(6) May food stamps be counted towards meeting minimum wage requirements?

In certain circumstances, 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 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 extremely 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. new

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 new 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?

New

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.

New

This guide is for general information and is not to be considered in the same light as statements of position contained in Interpretive Bulletins published in the Federal Register and the Code of Federal Regulations, or in official opinion letters of the Department of Labor.

New

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.

out - letter Tues - Emily

~~labor unions - Gerry Shea AFL~~
fax 508-6946
637-5237

1) H Dems - Dem caucus tonight? prob

2) Sep mailing - H+S leadership R+D tonight

PROGRAM DEVELOPMENT DIVISION
FOOD STAMP PROGRAM

DATAFAX REQUEST COVER SHEET

DATAFAX # 703-305-2486

DATE: 5/21/97

TO: Diane Fortune

OFFICE;

PHONE;

****

FROM; Art Foley

OFFICE;

PHONE;

SUBJECT;

REMARKS:

NO. OF PAGES INCLUDING COVER SHEET: 4

SUBJECT: Workfare Options for TANF Participants Who Are 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 Department of Labor 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. 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 2000. 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.

The enclosed letter offers States an option for addressing workfare 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 food stamp 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 Department of Labor has concluded that the Fair Labor Standards Act (FLSA) applies to participants in the Temporary Assistance for Needy Families (TANF) program and, therefore, as a general matter, they must be paid at least the minimum wage rate for their work activities.

States can both enable most households to meet the TANF work requirement and satisfy the requirements of the FLSA by combining participants' food stamp benefits and TANF grants when calculating participants' work obligations. 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.

To operate a simplified program, States need only send a letter to the Food and Consumer Service (FCS) indicating the food stamp workfare rules that they wish to replace with TANF rules, and a description of those TANF rules. As long as States restrict their Simplified Program requests to nonfinancial areas of food stamp workfare, a cost neutrality analysis is not required.

For additional information regarding operating a Simplified Food Stamp Program, 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,

Regional Administrator

Labor Protections and Welfare Reform

The attached documents present the fundamental issues regarding the application of labor protections to welfare recipients and a proposed public education/technical assistance plan.

1. **Roll Out Strategy**: 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.

2. **How Workplace Laws Apply to Welfare Recipients:** This draft public 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.

3. **Questions and Answers:** This draft internal document will be helpful in responding to media and other inquiries regarding the policy rationale for the application of the minimum wage to welfare recipients.

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 would be held.

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.

~~CONFIDENTIAL~~ DRAFT INFORMATION--NOT FOR PUBLIC DISCLOSURE
5/19/97

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: RY DATE: 4/2/2018
2018-0525-S

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-

---

[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.

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:

- 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.

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 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 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. Elena

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?

Fifty H - calls - Elena?
Packets to Hill tonight? - Thurs / Fri

Anti-disc. ~~EE~~ EOC will have more to say

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.

Unemployment Insurance

(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.

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; and
(7) 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. ?

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 constitute training which would not be employment under the Fair Labor Standards Act?

TANF recipients can participate in work activities that constitute training which would not be employment under the FLSA. Where the training meets the FLSA criteria, participants 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 likely to be classified as a "trainee" and not as 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.

any ben =

x trainee

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 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. Does the decision in Johns v. Stewart mean that welfare recipients working under TANF are not entitled to the minimum wage for their hours of work?

No. Johns, 57 F.3d 1544(10th Cir. 1995), did not arise under TANF, but under two Utah state general assistance programs under which recipients were required to participate in a variety of rehabilitative and self-sufficiency activities, including community work. Therefore the case may be distinguishable. Moreover, the court only held that the general assistance recipients were not employees of the **State**, but did not examine the relationship between the recipients of the assistance and the entities (Weber County Division of Aging and Brigham City Corporation) for whom they actually performed work.

Elena

We also believe that the Johns court did not properly apply the principles of the FLSA. Johns recognizes that the FLSA has a very broad definition of the terms "employ" and "employee" and that the question of whether an individual is an employee turns on the "economic realities" of the situation. Nevertheless, the court incorrectly focused upon irrelevant factors (such as that there were rehabilitative aspects to the general assistance programs) and ignored the factors ordinarily examined by the courts to determine whether an employment relationship exists. Therefore, we do not think that the Johns case is useful in analyzing whether individuals who participate in TANF work activities are employees entitled to the minimum wage.

7. 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.

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.

8. 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.

9. 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.

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.

10. 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. The goal of TANF is to move these individuals into the economic mainstream of working men and women. Enforcing labor laws so that welfare recipients are paid the minimum wage for their work will help achieve this goal.

Moreover, according to a recent study by the Urban Institute, paying TANF participants who work the minimum wage does not make them better off than other low-wage workers. The study finds that in low benefit states (such as Mississippi) and medium benefit states (such as Illinois) a TANF participant who works 20 hours per week would have a lower income than a minimum wage worker working 20 hours a week in that state.[1] new

11. 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 real jobs at fair 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"]

(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]

[1] "Comparison of Wages and Benefits of TANF Workers and non-TANF Low-Wage Workers," by Pamela Loprest. The Urban Institute, April 14, 1997.

(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 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]

(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. 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]

12. 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.

13. 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? fed only?

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 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. *Cynthia

Caseloads are falling

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.

14. 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.

Program	Not less than MW or Equivalent	Compensation Standards
Works Progress Administration (1935 - 1943)	Yes	Prevailing wages [2]
Community Work and Training Program (1962 - 1967)	Yes	Hours set by grant divided by Prevailing wages
Work Incentive Program (1967 - 1988)	Not Available[3]	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[4]	AFDC grant only (no record of hours; includes training)

---

[2] 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.

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

[4] 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.

A brief description of each of these federal programs follows.

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.

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:[5]

(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.

---

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

JOBS

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.

?

305-2490
2064

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 and, therefore, as a general matter, they must be paid at least the minimum wage rate for their work activities.

States can both enable most households to meet the TANF work requirement and satisfy the requirements of the FLSA by combining participants' food stamp benefits and TANF grants when calculating participants' work obligations. 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.

change "conflict"

"expedited"

30 days?

drop

To ~~operate a simplified program,~~ make this change States need only send a letter to the Food and Consumer Service (FCS) indicating ~~the food stamp workfare rules that they wish to replace~~ that they intend to adopt TANF rules related to... with TANF rules, and a description of those TANF rules. ~~As long as States restrict their Simplified Program requests to nonfinancial areas of food stamp workfare~~ this area only 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.

all members marking today?

waivers?

To Keith Fontenot
From Diana Fortuna

5-0851
Keith Fontenot

USDA GUIDANCE

DOL concluded interpretation

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. MOC?

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.~~ DOL wants to drop 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 more! will provide prompt approval to such requests. States may include other TANF workfare rule substitutions ~~that do~~ not increase Federal program costs. USDA: drop?

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

more details showing process is easy?

Mention Waivers?

Keith: add "will give expedited treatment of any such req + commit to give it back within x —

Dev preapprovable request for this — form letter States can use; sign here — check this box

To Keith Fontenot
From Diana Fortuna

5-0851
Keith Fontenot

USDA GUIDANCE

The ~~Administration~~ DOL has recently ~~announced that~~ concluded interpretation 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. mec?

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.~~ DOL wants to drop 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. more! USDA drop?

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

More details showing process is easy?

Mention Waivers?

Keith: add "will give expedited treatment of any such req + commit to give it back within x –

DEV preapprovable request form, look States can use Sim...

To Keith
Fr Diana

In calculating the minimum wage, states can

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 ~~and, therefore, as a general matter, they must be paid at least the minimum wage rate for their work activities.~~ 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.

~~States can both enable most households to meet the TANF work requirement and satisfy the requirements of the FLSA by~~ combining participants' food stamp benefits and TANF grants ~~when calculating participants' work obligations.~~ 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.~~ purpose?

Furthermore, for those TANF households normally exempt from food stamp workfare because they ~~are~~ 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 ~~allow States to meet both work requirements and minimum wage protections.~~ ensure that food stamps count toward the minimum wage. 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~~ expedited approval to such requests.

To ~~operate a simplified program~~ make this change, States need only send a letter to the Food and Consumer Service (FCS) indicating ~~the food stamp workfare rule that they wish to replace with a TANF rule, and a description of the TANF rule. As long as States restrict their Simplified Program requests to nonfinancial areas of food stamp workfare,~~ A cost neutrality analysis is not required. Why? STET

their wish to avail themselves of the Simplified Program in this way. ~~Such a~~

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.

-30 hr rcq - limit
- $25/mo - reimb expenses
-previous trg + skills - lingo
-plan to USDA

PHOTOCOPY
MISC. HANDWRITING